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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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NATIONAL HOUSING FINANCE AND INVESTMENT CORPORATION  
BILL 2018  
NATIONAL HOUSING FINANCE AND INVESTMENT CORPORATION  
(CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS)  
BILL 2018

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EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Treasurer, the Hon Scott Morrison MP)



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# Glossary

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
Bill	National Housing Finance and Investment Corporation Bill 2018
ADJR Act	<i>Administrative Decisions Judicial Review Act 1997</i>
Board	Board of the National Housing Finance and Investment Corporation
Bond Aggregator	Affordable Housing Bond Aggregator
Chair	Chair of the National Housing Finance and Investment Corporation
CEO	Chief Executive Officer of the National Housing Finance and Investment Corporation
CFFR	Council on Federal Financial Relations
CHP	Registered community housing provider
Finance Minister	The Minister who administers the <i>Public Governance, Performance and Accountability Act 2013</i>
FOI Act	<i>Freedom of Information Act 1982</i>
Legislation Act	<i>Legislation Act 2003</i>
Minister	Treasurer
NHFIC	National Housing Finance and Investment Corporation
NHIF	National Housing Infrastructure Facility
NHFIC Consequential Amendments and Transitional Provisions Bill	National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
Remuneration Tribunal Act	<i>Remuneration Tribunal Act 1973</i>



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# ***General outline and financial impact***

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## **National Housing Finance and Investment Corporation**

This Bill gives effect to the Government's commitment to establish a new corporate Commonwealth entity, the NHFIC, to improve housing outcomes for Australians. This commitment was announced as part of the Government's *Reducing Pressure on Housing Affordability* plan in the 2017-18 Budget.

### **Context**

Housing plays a critical role in the social and economic wellbeing of Australians and the economy as a whole. Housing is fundamental to employment, educational and health outcomes, and is a significant driver of investment, productivity and participation.

Housing supply has not kept up with demand, particularly in Australia's major metropolitan areas, contributing to sustained strong growth in housing prices. This is impacting on the ability of Australians to purchase their first home or find affordable rental accommodation. The lack of affordable rental accommodation is particularly affecting low-income and vulnerable Australians.

While the community housing sector has grown over recent years, it remains relatively small. There are substantial barriers to the community housing sector achieving the necessary scale and capability to meet current and future demand for affordable rental accommodation. Factors include the fragmentation of the sector and its limited financial capability.

Housing developments also involve the construction of housing enabling infrastructure such as water, sewerage, electricity and transportation. The long construction periods, high upfront costs, limited or no short-term revenue and uncertainties around the timing of infrastructure delivery may result in housing developments being stalled or moving slowly, even though they are fundamentally viable over the life of the project.

### **Government response**

On 7 January 2016, the Australian Government announced the establishment of an Affordable Housing Working Group ('the Working Group') following a request from Treasurers at the CFFR meeting in October 2015 for further work on housing affordability.

The Working Group focused primarily on investigating ways to boost the supply of affordable rental housing through innovative financing models. The Working Group comprised members of the Commonwealth Treasury

and Department of Social Services as well as members from the New South Wales, Victorian and Western Australian governments.

The Working Group's report, *Innovative Financing Models to Improve the Supply of Affordable Housing*, recommended the establishment of a bond aggregator taskforce to design a proof of concept for a bond aggregator model to provide for greater private and institutional investment in affordable housing. The Treasurers at the CFFR meeting agreed to the recommendations of the report, including the establishment of an expert taskforce to design a proof of concept for an affordable bond aggregator to report their findings to Heads of Treasuries by mid-2017.

In the 2017-18 Budget, the Australian Government announced the establishment of the NHFIC to operate a bond aggregator and the NHIF. The Government released a Consultation Paper on the establishment of the NHFIC in September 2017 and feedback from that process has been incorporated into the Bill.

This Bill gives effect to elements of the Government's *Reducing Pressure on Housing Affordability* plan announced at the 2017-2018 Budget<sup>1</sup> to establish the NHFIC. The NHFIC is a new independent corporate Commonwealth entity dedicated to improving housing outcomes, with broad functions to enable it to administer the NHIF and Bond Aggregator.

The \$1 billion NHIF will help to finance critical infrastructure to increase the stock of housing, particularly affordable housing, and to bring forward the supply of such housing. Through the NHIF, the Government will seek to address impediments in building the infrastructure that is critical to unlocking new housing supply. These can take the form of financial constraints — such as mismatches between future revenue streams and the upfront costs of infrastructure — and coordination issues relating to the different stakeholders and different layers of government regulation and responsibilities.

The Bond Aggregator will improve the efficiency of financing for CHPs by aggregating the lending requirements of multiple CHPs and financing those requirements by issuing bonds to institutional investors. The Bond Aggregator will build capacity of the sector and improve housing outcomes by providing CHPs with a more efficient source of funds, reducing the refinancing risk faced by CHPs and reducing borrowing costs.

This Bill is part of the Government's broader plan to improve outcomes across the housing sector, which is focused on three key pillars:

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<sup>1</sup> Further details on the NHFIC were also provided for in the 2017-18 MYEFO.



- boosting the supply of housing and encouraging a more responsive housing market, including by unlocking Commonwealth land;
- creating the right financial incentives to improve housing outcomes for first home buyers and low- to middle-income Australians, including through the Government's First Home Super Saver Scheme; and
- improving outcomes in social housing and addressing homelessness, including through tax incentives to boost investment in affordable housing.

This work is further supported by the efforts that the Commonwealth and State and Territory governments are making to address housing affordability, such as through the development of a new National Housing and Homelessness Agreement.

## **Elements of the Bill**

Key elements of this Bill include:

- The NHFIC is to be established as a corporate Commonwealth entity.
- The NHFIC will be governed by an independent, skills-based, part-time Board consisting of a Chair and between four and six other voting members, responsible for decision making and the efficient and effective performance of the NHFIC's functions. A Commonwealth official may be appointed by exception and on a time-limited basis as a non-voting observer to attend and participate in Board meetings.
- The Government will set its expectations about the performance of the NHFIC's functions in an Investment Mandate (a non-disallowable legislative instrument), which must be issued by the Minister. The Investment Mandate may include directions about such matters as strategies and policies which the Board must observe, decision-making criteria, and risk and return on investments. The Investment Mandate may not, however, direct the NHFIC in relation to specific investments.
- NHFIC's key function is to make loans and investments and issue grants, within constitutional limitations, to improve housing outcomes. Initially, this function will be performed through the administration of the Bond Aggregator and the NHIF, which will be described in the Investment Mandate.

- The Board must maintain adequate capital and reserves of the NHFIC and will consider, at the end of each financial year, whether a dividend may be paid to the Commonwealth.
- Liabilities of the NHFIC will be guaranteed by the Commonwealth.
- A CEO will be responsible for the day to day administration of the NHFIC, and the NHFIC will be able to employ staff and consultants as needed. The Board may establish committees to assist it.
- The NHFIC will be subject to the requirements relating to corporate Commonwealth entities in the PGPA Act, including reporting requirements. The NHFIC will need to include certain additional detail in its annual report, including the particulars and impact of any changes made by the Government to the Investment Mandate and a summary of activities undertaken pursuant to its key function.
- Rules may be made under the Bill.
- The operation of the Bill will be reviewed three years after its commencement.

***Date of effect:*** This Bill commences on the day after Royal Assent to allow Board appointments to be made and the investment mandate to be issued before NHFIC commences its operations. It is the Government’s intention that NHFIC will commence its operations on 1 July 2018.

***Proposal announced:*** This Bill implements the Government’s commitment, announced as part of the *Reducing Pressure on Housing Affordability* plan in the 2017-18 Budget, to establish the NHFIC to operate a bond aggregator and the NHIF. Key design features of the NHFIC included in this Bill were announced by the Assistant Minister to the Treasurer, the Hon Michael Sukkar MP, in a media release dated 1 December 2017.

***Financial impact:*** The measures have the following financial impact:

*Establishment of National Housing Finance and Investment Corporation and National Housing Infrastructure Facility*

Financial impact:	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>	<i>2020-21</i>
Establishment of the NHFIC and NHIF	-9.6	-53.6	-55.7	-55.0

***Human rights implications:*** This Bill supports the realisation of the human right to adequate housing. See Chapter 8, *Statement of Compatibility with Human Rights*.

***Compliance cost impact:*** Minor



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# Chapter 1

## Preliminary

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### Outline of chapter

1.1 Part 1 of the Bill sets out the objects of the Act, arrangements for commencement, application to the Crown, and definitions. This Part also contains a simplified outline of the Act.

1.2 Transitional provisions are included in the NHFIC Consequential Amendments and Transitional Provisions Bill.

### Detailed explanation of new law

#### *Short title*

1.3 This section provides that the Bill, when enacted, may be cited as the *National Housing Finance and Investment Corporation Act 2018*.  
*[Clause 1]*

#### *Commencement, application and transitional provisions*

1.4 The Bill will apply from commencement, that is, on the day after Royal Assent, to enable the initial establishment of the NHFIC including appointment of board members and establishment of governance structures. *[Clause 2]*

1.5 Transitional provisions are included in the NHFIC Consequential Amendments and Transitional Provisions Bill. Under the transitional provisions the NHFIC may not, before the later of 1 July 2018 or such later date as the Minister determines, commence making decisions regarding:

- the making of loans, investments or grants, or to grant financial assistance to a State or Territory; or
- the provision of business advisory services or other capacity building assistance to CHPs.

*[Schedule 2, item 1, National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018]*

1.6 The Minister may determine the time at which that NHFIC commences making decisions according to its functions. However, such a determination cannot be a day earlier than 1 July 2018, and must be made by legislative instrument. If no such determination is made, and the Act has not commenced by 1 July 2018, the NHFIC will be able to commence

making these decisions from 3 months after the Act commences. *[Schedule 2, item 1, clause (2), National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018]*

1.7 It is intended that NHFIC's activities (the Bond Aggregator and the NHIF) will commence on 1 July 2018.

***Objects***

1.8 The object of the Bill is to establish the NHFIC to contribute to efforts to improve housing outcomes for Australians by:

- strengthening efforts to increase the supply of housing;
- encouraging investment in housing, particularly in the social or affordable housing sector;
- providing finance,<sup>2</sup> grants or investments that complement, leverage or support Commonwealth, State or Territory activities relating to housing; and
- contributing to the development of the scale, efficiency and effectiveness of the community housing sector in Australia.

***[Clause 3]***

1.9 These objectives will be implemented through the NHFIC's initial activities of administering the Bond Aggregator and NHIF. The bond aggregator seeks to catalyse institutional investment into the community housing sector and improve the financial and management capabilities of this sector (capacity building) – thereby allowing the sector to better leverage the potential large-scale institutional investment enabled by the bond aggregator.

1.10 Under the NHIF, financial assistance will be made available to enable critical infrastructure to increase the stock of housing, particularly affordable housing, and to bring forward the supply of such housing. It does this by addressing impediments in building the infrastructure that is critical to unlocking new housing supply. These can take the form of financial constraints — such as mismatches between future revenue streams and the upfront costs of infrastructure — and coordination issues relating to the different stakeholders and different layers of government regulation and responsibilities.

1.11 It is intended that the Bond Aggregator and NHIF operate in conjunction with commercial lenders and State and Territory governments in order to ensure that its financing is additional to that otherwise available, rather than replacing finance available from other sources.

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<sup>2</sup> The concept of finance refers to both loans and provision of financial assistance to a State or Territory, referenced in NHFIC's functions (section 8 of the Bill).

***Simplified outline of the Act***

1.12 The Bill contains a simplified outline that summarises its operation. The simplified outline is intended to assist users of the Bill to understand the substantive provisions but is not otherwise comprehensive. For a detailed understanding users of the Bill need to refer to the substantive provisions and explanation in this Explanatory Memorandum. *[Clause 4]*

***Definitions***

1.13 The Bill defines a number of terms. The terms that are defined for the purposes of the structure of the NHFIC include NHFIC, Board, Board member, CEO and Chair. The Finance Minister is defined as the Minister administering the PGPA Act. Paid work is defined as work for financial gain or reward irrespective of the status of the person undertaking the work (for example an employee or otherwise). *[Clause 5]*

***Crown to be bound***

1.14 This Act binds the Crown in each of its capacities but does not make the Crown liable to prosecution for an offence. *[Clause 6]*





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## **Chapter 2**

# ***The National Housing and Investment Corporation***

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### **Summary of new law**

- 2.1 Part 2 of the Bill:
- establishes the NHFIC and sets out its functions, powers and constitutional limits; and
  - provides for the Investment Mandate for the NHFIC.

### **Detailed explanation of the new law**

#### **Establishment of the NHFIC, functions, powers and constitutional limits**

##### ***Establishment***

2.2 This Bill establishes the NHFIC as a corporate Commonwealth entity. This reflects the intention that the NHFIC will operate independently from government in exercising its functions and adopt a corporate model of governance.

2.3 As a corporate Commonwealth entity the NHFIC is subject to the PGPA Act, which imposes obligations regarding reporting and the use and management of public resources. *[Subclause 7(1) and note to Subclause 7(1)]*

- 2.4 The NHFIC is:
- a body corporate;
  - required to have a seal that must be secured as directed by the Board and only used as authorised by the Board;
  - able to acquire, hold and sell real and personal property; and
  - able to sue and also be sued.

*[Subclauses 7(2) and (3)]*

##### ***Functions of NHFIC***

- 2.5 The functions of the NHFIC include:
- making loans, investments and grants to improve, directly or indirectly, housing outcomes;

- setting terms and conditions for such loans, investments and grants;
- providing business advisory services and other assistance in capacity building to CHPs;
- any other functions conferred on the NHFIC by the Bill or any other Commonwealth law;
- doing anything that is incidental to or assists in the performance of the above functions;
- granting financial assistance to States and Territories for the purposes of any of the matters mentioned above in this paragraph; and
- setting the terms and conditions of such grants of financial assistance.

***[Subclauses 8(1) and (2)]***

2.6 A CHP is defined in the Bill as a community housing provider (however described) that is registered under a law of, or under a scheme administered by, a State or Territory. *[Clause 5, definitions]*

2.7 NHFIC’s functions reflect its role as an intermediary providing financial and other assistance to improve, whether directly or indirectly, housing outcomes for Australians. NHFIC may also provide business advisory services and related assistance to further develop the community housing sector.

2.8 The initial activities or ‘business lines’ of the NHFIC will be to operate the Bond Aggregator and NHIF, details of which are intended to be included in the Investment Mandate. The NHFIC will have the capacity to deliver other housing related programs in the future in accordance with its functions, as prescribed by the Government.

2.9 In performing its functions, the NHFIC is required to act in a proper, efficient and effective manner. This ensures that public monies are used in an appropriate way. *[Subclause 8(3)]*

***Powers of the NHFIC***

2.10 The NHFIC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions. For example, the NHFIC will have the power to enter into any contract and enter into arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements. *[Clause 9]*

***Constitutional limits***

2.11 The Bill ensures that it is not implied that the NHFIC can perform functions that exceed the Commonwealth’s legislative power

under the Constitution. The Bill expressly enables the NHFIC to perform its functions only for purposes related to specific constitutional powers. The NHFIC is likely to perform its functions for purposes related to:

- the corporations power in paragraph 51(xx) of the Constitution, however it may only do so if:
  - the NHFIC has entered into an arrangement, with a constitutional corporation, that sets out the terms and conditions on which money may be payable to the corporation under the arrangement; and
  - those terms and conditions provide for the circumstances in which the corporation is required to repay amounts paid under the arrangement;
- the external affairs power in the Constitution, including:
  - implementing the *International Covenant on Economic, Social and Cultural Rights*<sup>3</sup> done at New York on 16 December 1966, and in particular Article 11 of that Covenant; or
  - implementing another international agreement to which Australia is a party;
  - addressing matters of international concern; or
  - performing its functions in a place outside Australia;
- granting financial assistance to which section 96 of the Constitution applies; and/or
- a Territory.

2.12 The Bill also lists other Constitutional powers on which the NHFIC may rely in performing its functions, enabling the NHFIC to perform its functions for purposes related to:

- collecting statistics; or
- trade or commerce:
  - between Australia and places outside Australia; or
  - among the States or within a Territory, between a State and a Territory or between two Territories; or
- using postal, telegraphic, telephonic or other like service under paragraph 51(v) of the Constitution; or

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<sup>3</sup> Australian Treaties Library on the AustLII website — <http://www.austlii.edu.au>

- people of any race under paragraph 51(xxvi) of the Constitution; or
- railway construction or extension under paragraph 51(xxiv) of the Constitution; or
- providing service, or financial assistance, to the Commonwealth or an authority of the Commonwealth for a purpose of the Commonwealth; or
- the implied power of the Parliament to make laws with respect to nationhood; or
- the executive power of the Commonwealth; or
- incidental matters to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

*[Clause 10]*

***Privileges and immunities of the Crown***

2.13 The NHFIC does not have the privileges and immunities of the Crown in right of the Commonwealth. *[Clause 11]*

**The Investment Mandate**

2.14 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. The Investment Mandate will be the key vehicle for the Government to set out its expectations for the NHFIC. *[Subclause 12(1)]*

2.15 The legislative instrument is not subject to disallowance under the Legislation Act as it forms part of a class of legislative instruments to which disallowance does not apply - see regulations made for the purposes of paragraph 44(2)(b) of that Act. *[Note to subclause 12(1)]*

2.16 Directions made by the Minister for the Investment Mandate must take into account the object of the Bill and any other matters the Minister considers relevant. *[Subclause 12(2)]*

2.17 In performing its functions, the NHFIC must take all reasonable steps to comply with the Investment Mandate in the course of undertaking its functions. This ensures that the NHFIC focuses on satisfying the Investment Mandate that applies to it. *[Subclause 12(3)]*

***Matters covered by the Investment Mandate***

2.18 The Investment Mandate may include:

- strategies and policies that the NHFIC must adhere to for its effective performance;
- decision-making criteria for the provision of financial assistance and capacity building activities;
- limits on the extent of financial assistance; and
- risk and return relating to the NHFIC's investments.

***[Paragraphs 13(a), (b), (c) and (d)]***

2.19 The Minister may also include other matters in the directions to ensure that there is sufficient flexibility to address emerging issues or other matters that the Government considers are important. ***[Paragraph 13(e)]***

2.20 As noted above, the details of the Bond Aggregator and NHIF are intended to be included in the Investment Mandate. The inclusion of these details in the Investment Mandate provides flexibility to allow NHFIC's operations to respond to the needs of the community housing sector and other recipients of financial assistance.

2.21 It is expected that the Investment Mandate will set out:

- the eligibility criteria for NHIF finance, investments and grants, and bond aggregator finance;
- the types of financing mechanisms for the NHIF and the bond aggregator functions;
- matters that must be considered by the Board when making lending decisions;
- matters that must be considered by the Board in determining lending conditions;
- benchmark returns for NHFIC investments and finance;
- the level of risk acceptable for NHFIC investments and finance;
- additional corporate governance and transparency matters; and
- the types of support services that the NHFIC may provide to CHPs to assist in building the capacity and capability of the sector.

***Limits on Investment Mandate***

2.22 The Bill provides a number of limits on the direction making power to ensure the independence of the NHFIC. A Government direction cannot require that specific projects or entities receive (or not receive) assistance or investment. The Bill also requires that a direction cannot be

inconsistent with the Bill or the objects of the Bill. This ensures that directions cannot conflict with the intention of the Bill or its objects.

*[Clause 14]*

2.23 Accordingly, the Minister must not give a direction concerning the Investment Mandate that:

- directly or indirectly has the purpose or effect of requiring the Board to:
  - make (or not make) a particular investment; or
  - provide (or not provide) financial assistance for a particular project or entity; or
  - take (or not take) an action relating to an investment or financial assistance provided for a project or to an entity.

*[Clause 14]*

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# **Chapter 3**

## **Board of the National Housing Finance and Investment Corporation**

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### **Summary of new law**

3.1 Part 3 of the Bill establishes the Board, and provides for its membership and meetings.

### **Detailed explanation of new law**

#### **Establishment and functions of the Board**

3.2 Division 1 of Part 3 provides for the establishment of the Board of the NHFIC. As discussed above, the NHFIC is a corporate Commonwealth entity. As a consequence, by operation of the PGPA Act, the Board as the governing body is the accountable authority of the NHFIC (subsection 12(2) of the PGPA Act).

#### ***Establishment of the Board***

3.3 The Bill provides that the Board of the NHFIC is established.  
*[Clause 15]*

#### ***Functions of the Board***

3.4 The functions of the NHFIC Board are:

- to make decisions about the strategies and policies that the NHFIC is to follow, within the scope of the Investment Mandate;
- to ensure the proper, efficient and effective performance of the NHFIC's functions; and
- any other functions that the Board has under the Bill.

#### ***[Subclause 16(1)]***

3.5 The Board has power to do all things that are necessary or convenient to be done relating to the performance of its functions to ensure that it can effectively carry out its functions. *[Subclause 16(2)]*

3.6 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. This ensures it is clear that actions of the Board or with the

authority of the Board are treated as having been undertaken by the NHFIC. *[Subclause 16(3)]*

## Board members

### *Membership*

3.7 The Board will comprise the Chair and a minimum of four members but no more than six other members. This is considered appropriate so that the Minister can appoint a Board with the breadth of skills, qualifications and experience required to oversee NHFIC's functions. *[Clause 17]*

3.8 The Minister must appoint one of the Board members as the Chair by written instrument. The instrument of appointment is not a legislative instrument under the *Legislation (Exemptions and Other Matters) Regulation 2015*. *[Clauses 17 and 19]*

3.9 The Minister can by written instrument also make an acting appointment of a Board member to be the Chair. This ensures that there is flexibility to have an alternative Board member appointed as the acting Chair as required, and supports the continued effective functioning of the Board. An acting appointment can be made for:

- the period of any vacancy in the office of Chair (including where the position has not previously been filled); or
- any period during which the Chair is absent from duty, is not in Australia or cannot otherwise perform the duties of the office.

### *[Clause 21]*

3.10 The Acts Interpretation Act (sections 33A and 33AB) contains provisions dealing with acting appointments that have effect in relation to acting appointments made under this Bill as follows:

- in the event that the occasion for the appointment has not arisen, or there was a defect or irregularity in connection with a person's appointment, or the appointment had ceased to have effect, a person's appointment to act under will not invalidate anything done by the person;
- an acting appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- the appointer may determine the terms and conditions of the appointment, including remuneration and allowances, and terminate the appointment at any time;



- where the appointment is to act in a vacant office, the appointee must not continue to act in the office for more than 12 months;
- where the appointee is acting in an office other than a vacant office and the office becomes vacant while the appointee is acting then, unless his or her instrument of appointment provides otherwise, the appointee may continue to act until the appointer otherwise directs, the vacancy is filled, or a period of 12 months from the day the vacancy ends, whichever happens first;
- the appointment ceases to have effect if the appointee resigns in writing directed to the appointer; and
- while the appointee is acting in the office, he or she has and may exercise all the powers, and is to perform all the functions and duties, of the holder of the office and this Act and any other legislation will apply in relation to the appointee as if the appointee were the holder of the office.

3.11 Board members are to be appointed by the Minister by written instrument, on a part-time basis. The instrument must set out the period, which must not be for more than five years, for which a Board member holds office. *[Subclause 18(1) and 20]*

3.12 A term of up to five years for NHFIC Board members is provided for two main reasons. Firstly, it provides capacity to stagger the appointment periods of board members to enable the transfer of corporate knowledge. Secondly, it encourages long-term planning and provides for continuity of management which is important given the investment related activities of the NHFIC may occur over a significant period, such as the issue of long-term bonds.

3.13 It should also be noted that members can be reappointed if the Minister considers it appropriate. Section 33AA of the Acts Interpretation Act provides that any power to appoint in legislation is treated as including a power to reappoint an office holder. *[Note to Clause 20]*

3.14 To ensure that Board members have relevant expertise, a person cannot be appointed as a Board member unless the Minister is satisfied that the person has appropriate qualifications, skills or experience in:

- banking and finance;
- law;
- housing, including social or affordable housing;
- infrastructure planning and financing;
- local government;

- public policy; or
- expertise prescribed by the rules made by the Minister under the rule-making power in Clause 58 of this Bill.

*[Subclause 18(2)]*

***Conditions of appointment***

3.15 A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of remuneration is made, the member is to be paid the remuneration that is prescribed by the rules. Allowances may be payable to Board members as prescribed solely under the rules. *[Subclauses 22(1) and (2)]*

3.16 Any rules that are prescribed for Board member remuneration are subject to the operation of the Remuneration Tribunal Act. *[Subclause 22(3)]*

3.17 The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines. In turn, the Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines. *[Subclauses 23(1) and (2)]*

3.18 The Chair must notify the Minister if the Chair grants another Board member leave of absence for a period that exceeds 3 months. This ensures that the Minister is informed of significant periods of leave of absence by Board members that are granted by the Chair. *[Subclause 23(3)]*

3.19 A Board member can resign their appointment by advising the Minister in writing of their resignation. The resignation has effect from the day it is received by the Minister or if the resignation specifies a later day, that later day. *[Clause 24]*

3.20 The Bill ensures that the Minister can terminate the appointment of any Board member in appropriate circumstances to ensure that good governance standards apply. The PGPA Act also contains rules that apply to terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials. Termination of appointment may occur under the Bill if the Board member:

- misbehaves;
- cannot perform their duties of office due to physical or mental incapacity;
- applies under the law for relief of bankrupt or insolvent debtors;
- compounds with their creditors;
- assigns their remuneration for the benefit of their creditors;

- does not attend (other than if on a leave of absence) three consecutive Board meetings; or
- has, in the Minister's assessment, demonstrated unsatisfactory performance for a significant period.

*[Clause 25]*

3.21 The Minister's assessment that a Board member's performance has been unsatisfactory for a significant period will depend on the circumstances, however unsatisfactory performance for a period of three months or more is likely to be sufficient for a Minister to exercise his or her powers to terminate the appointment of a Board member.

3.22 The Minister may also determine other terms and conditions upon which a Board member holds office. *[Clause 26]*

***Observer***

3.23 The Bill also provides scope for the appointment of a Commonwealth government official as an observer, on an exceptions and time-limited basis. A person appointed as observer is entitled to be notified of Board meetings and to attend and participate in those meetings as they choose, but may not participate in voting at such meetings. Not being a Board member, the presence of an observer at a meeting does not count towards the quorum requirement. The observer may also report to the Minister on matters relating to the operations of the NHFIC or the Board; and is entitled to relevant information for the purposes of taking part in Board meetings or to report to the Minister. *[Subclause 27(1)]*

3.24 The 2003 Uhrig review of Corporate Governance of Statutory Authorities and Office holders noted concerns with departmental appointments to Boards, as they may create conflicts of interests and compromise governance arrangements.

3.25 The capacity to appoint an observer strikes a balance to support appropriate Government oversight of NHFIC at critical times, while maintaining Board independence. It is particularly important when the Commonwealth is guaranteeing the NHFIC's liabilities, as a way of providing oversight of the Commonwealth's financial exposure. This position is intended to support Government visibility of decision making, particularly in exceptional circumstances such as the establishment phase of the NHFIC and/or during periods of financial market uncertainty. The Board would however remain the decision maker in all circumstances relating to the performance of the NHFIC's functions.

3.26 Any appointment of an observer must be time limited. An observer may be appointed by the Minister on a part-time basis for a period not exceeding six months (but may be re-appointed). As part of good practice, it is intended that the Minister will notify the Chair of the Board before making the appointment. The appointment must be made by

written instrument, and may be terminated by the Minister at any time. *[Subclauses 27(2) to (4)]*

3.27 The Minister has the power to grant an observer leave of absence on terms and conditions that the Minister considers appropriate. *[Subclause 27(5)]*

3.28 An observer can resign by written notice to the Minister, effective on the day it is received by the Minister (or such later day specified in the resignation). *[Subclause 27(6)]*

3.29 As an observer will be a Commonwealth official, he or she will be an official for the purposes of the PGPA Act while performing the functions of NHFIC observer. Accordingly, the observer is subject to duties including to exercise reasonable care and diligence, to act in good faith and for proper purpose, not to use the office to gain an advantage, and to disclose interests.

3.30 An observer would not be remunerated by the NHFIC.

## Meetings of the Board

3.31 The Board is required to hold meetings to ensure the efficient performance of its functions. *[Subclause 28(1)]*

3.32 The Chair has the power to convene a meeting at any time, but must convene:

- at least four meetings each calendar year; and
- a meeting within 30 days of receiving a request in writing from another Board member for a meeting.

*[Subclause 28(2)]*

3.33 The Chair must preside at all meetings at which he or she is present, and if the Chair is not present the other Board members present must appoint one of themselves to chair the meeting. *[Clause 29]*

3.34 A majority of Board members need to be present at a meeting of the Board to form a quorum. However if a Board member is required not to be present because of a material personal interest in a matter, and if when that member has left the meeting there is no longer a quorum, the remaining members present constitute a quorum for the purpose of any deliberation or decision in respect of the matter concerned. *[Clause 30; section 29 PGPA Act; Rule 15 PGPA Rule]*

3.35 A question arising at a Board meeting must be determined by a majority of the votes of the members present and voting at that meeting. However, the person presiding at the meeting of the Board (generally the Chair) has a deliberative vote and, if the votes are equal, a casting vote. This ensures that the Board has the capacity to decide matters that need to be determined at Board meetings. *[Clause 31]*

3.36 The Board may, subject to the other provisions of the Bill regarding Board meetings, conduct meetings as it considers appropriate. Further information about the ways in which Board members may participate in meetings is set out in section 33 of the Acts Interpretation Act. *[Clause 32]*

3.37 The Board must keep minutes of all its meetings to ensure that matters considered and decisions taken at meetings are properly recorded. *[Clause 33]*

3.38 The Board is treated as having made a decision at a meeting if:

- without meeting, a majority of the Board members entitled to vote on the proposed decision (and who would have been entitled to vote on it if the matter had been considered at a meeting) advise they agree with the decision;
- that agreement has been provided in accordance with any method determined by the Board for the making of decisions of that kind; and
- all the Board members were informed of the proposed decision (or reasonable efforts were made to inform them of it).

*[Subclauses 34(1), (2) and (3)]*

3.39 The Board must keep a record of decisions made that are taken without Board meetings. This ensures that both decisions at formal Board meetings and those made without a meeting are recorded. *[Subclause 34(4)]*

## **Reporting obligations of the Board**

3.40 Section 46 of the PGPA Act requires the Board to prepare annual reports and to provide them to the responsible Minister. Under the Bill, a NHFIC annual report for a period must include:

- details of changes to the Investment Mandate during the period (if any) and their impact on the operations of the NHFIC;
- for each type of financial support provided by the NHFIC during the period, a summary of:
  - the amount of that financial support; and
  - the risks and returns to the Commonwealth.

*[Clause 56]*

3.41 Under section 19 of the PGPA Act, the Board as accountable authority also has a duty to:

- keep the responsible Minister informed of the activities of the NHFIC;
- give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
- notify the responsible Minister as soon as practicable after it makes a significant decision in relation to the entity or any of its subsidiaries;
- give the responsible Minister reasonable notice if it becomes aware of any significant issue that may affect the entity or any of its subsidiaries;
- notify the responsible Minister as soon as practicable after it becomes aware of any significant issue that has affected the entity or any of its subsidiaries.

3.42 The Board must comply with a requirement to give the responsible Minister or the Finance Minister any reports, documents and information in relation to its activities within the time limits set by the Minister concerned.

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# **Chapter 4**

## **Chief Executive Officer, staff, consultants and committees**

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### **Summary of new law**

4.1 Division 1 of Part 4 of the Bill establishes the CEO of the NHFIC, including setting out:

- procedures for appointment and resignation;
- functions;
- remuneration;
- terms and conditions; and
- acting appointments.

4.2 Division 2 of Part 4 deals with the recruitment of staff and consultants and committees.

### **Detailed explanation of new law**

#### **CEO**

##### ***Establishment***

4.3 Division 1 of Part 4 of the Bill establishes the CEO of the NHFIC. *[Clause 35]*

##### ***Functions***

4.4 The CEO is responsible for the day to day administration of the NHFIC, and has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties. *[Subclauses 36(1) and (2)]*

4.5 The CEO is to act in accordance with policies and strategies determined by the Board, and in accordance with the Board's written directions to the CEO. The CEO must comply with such directions, which must not be inconsistent with any direction given to the Board under Division 2 of Part 2, about the performance of the CEO's duties. *[Subclauses 36(3), (4) and (5)]*

4.6 A direction by the Board to the CEO is not a legislative instrument within the meaning of section 8 of the Legislation Act. This is

appropriate because such directions are administrative in character, and facilitate the carrying out of the CEO's powers and functions without altering their scope or effect (*Legislation (Exemptions and Other Matters) Regulation 2015*, subsection 6(1)). [*Subclause 36(6)*]

***Appointment***

4.7 The CEO is to be appointed by the Board on a full time basis, by written instrument of appointment, and holds office for a period specified in the instrument (but not for a period of more than five years). The Board must not appoint a Board member as CEO. [*Clause 37*]

***Acting appointment***

4.8 The Board is empowered to appoint, by written instrument, a person other than a Board member to Act as CEO during a vacancy in the office (whether or not a CEO has previously been appointed), or during any period when the CEO is absent from duty or from Australia or is for any reason unable to perform the duties of CEO. [*Clause 38*]

4.9 Sections 33AB and 33A of the Acts Interpretation Act referred to in Chapter 3 above contain rules that apply to appointments that are made on an acting basis.

***Remuneration and allowances***

4.10 The CEO is to be paid remuneration that is determined by the Remuneration Tribunal, or, if no such determination has been made, the remuneration prescribed by rules made under section 58 of this Bill. The CEO is also to be paid allowances as set out in the rules made under section 58. The remuneration and allowances payable to the CEO are subject to the Remuneration Tribunal Act. [*Clause 39*]

***Leave of absence***

4.11 The CEO is entitled to the recreation leave entitlements determined by the Remuneration Tribunal, as well as such other leave entitlements (other than recreation leave) as granted by the Board. [*Clause 40*]

***Outside employment***

4.12 The CEO must not engage in paid work outside the duties of his or her office without the Chair's approval, and the Chair must notify the Minister of any such approval. [*Clause 41*]

***Other terms and conditions***

4.13 The CEO holds office on the terms and conditions determined by the Board, to the extent (if any) that such matters are not covered by this Act. [*Clause 42*]



### ***Resignation of CEO***

4.14 The CEO may resign his or her appointment by giving the Board a written resignation. Such 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. The Chair must notify the Minister of the CEO's resignation. *[Clause 43]*

### ***Termination of appointment of CEO***

- 4.15 The Board may terminate the appointment of the CEO:
- for misbehaviour; or
  - if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity; or
  - if the CEO:
    - becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
    - is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
    - engages, except with the Chair's approval, in paid work outside the duties of his or her office; or
    - fails, without reasonable excuse, to comply with section 29 of the PGPA Act (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
  - if the Board:
    - is satisfied that the performance of the CEO has been unsatisfactory for a significant period.

#### ***[Subclause 44(1)]***

4.16 The Board's assessment that the CEO's performance has been unsatisfactory for a significant period will depend on the circumstances, however unsatisfactory performance for a period of three months or more would generally be sufficient for the Board to exercise its powers to terminate the appointment of the CEO.

4.17 If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination. *[Subclause 44(2)]*

### **Staff and consultants**

4.18 Division 2 of Part 4 of the Bill provides for the NHFIC to employ staff and consultants.

### ***Staff***

4.19 The NHFIC may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers. An employee is to be employed on the terms and conditions that the NHFIC determines in writing. *[Subclauses 45(1) and (2)]*

4.20 In addition, the NHFIC may make arrangements for the services of officers or employees of the following to be made available to the NHFIC:

- the Commonwealth, a State or a Territory;
- an authority of the Commonwealth or of a State or Territory;
- any other organisation or body.

*[Subclause 45(3)]*

### ***Consultants***

4.21 The NHFIC may engage consultants, on the terms and conditions it determines, to assist in the performance of its functions.

*[Clause 46]*

## **Committees**

4.22 Division 3 of Part 4 of the Bill provides for the NHFIC Board to establish committees to advise or assist in the performance of its or the NHFIC's functions. *[Subclause 50(1)]*

### ***Constitution***

4.23 A committee may be constituted by Board members, non-Board members, or a combination of the two. *[Subclause 47(2)]*

### ***Terms of reference***

4.24 The Board may determine, a committee's terms of reference, the terms and conditions of appointment of the members of the committee, and the procedures to be followed by the committee. *[Subclause 47(3)]*

### ***Status of members***

4.25 The members of the committee (other than Board members) are not officials for the purposes of the PGPA Act. *[Subclause 47(4)]*

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# Chapter 5

## Finance

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### Summary of new law

5.1 Part 5 of the Bill sets out the arrangements for NHFIC's financial affairs in relation to:

- maintenance of adequate capital and reserves;
- payment of dividends to the Commonwealth;
- borrowings;
- guarantee by Commonwealth; and
- taxation.

### Detailed explanation of new law

#### Maintenance of adequate capital and reserves

5.2 The Board is required to ensure, according to sound commercial principles, that the capital and reserves of the NHFIC at any time are sufficient:

- to meet the likely liabilities of the NHFIC; and
- 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.

*[Subclause 48(1)]*

5.3 If, at any time, the Board determines:

- that the capital and reserves of the NHFIC are not sufficient to meet the likely liabilities and make the required provision; or
- 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 required provision;

the Board must, as soon as practicable, inform the Minister in writing of its determination and the reasons for that determination. *[Subclause 48(2)]*

## Payment of annual dividends to the Commonwealth

5.4 Within four months after the end of each financial year, the Board must make a recommendation to the Minister, in writing, as to whether the NHFIC will pay a specified dividend, or not pay a dividend, to the Commonwealth for that financial year. *[Subclause 49(1)]*

5.5 Within 30 days after receiving the recommendation of the Board, the Minister must give the NHFIC written notice either:

- approving the recommendation; or
- where the Board has recommended the payment of a dividend — directing the payment of a different specified dividend; or
- where the Board has recommended that no dividend be paid—directing the payment of a specified dividend.

*[Subclause 49(2)]*

5.6 When making a recommendation, approval or direction in relation to whether or what dividend is to be paid, the Board and the Minister must have regard to:

- policies of the Commonwealth Government, and the general policy of the NHFIC in relation to the performance of its functions; and
- such commercial considerations as the Board or the Minister, as the case may be, considers appropriate.

*[Subclause 49(3)]*

5.7 The Board may not recommend, and the Minister may not approve or direct, a dividend for a financial year exceeding the NHFIC's profit for that year. *[Subclauses 49(3) and (4)]*

5.8 The NHFIC must pay to the Commonwealth any dividend approved or directed by the Minister in respect of a financial year.

*[Subclause 49(5)]*

5.9 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 for the purpose of dividends. *[Subclause 49(6)]*

5.10 It is not envisaged that NHFIC will be in a position to recommend the payment of dividends in its initial establishment phase. Once the corporation has built adequate capital reserves, it is expected to consider paying dividends rather than further accumulating capital.

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## Borrowings

### *Borrowings from the Commonwealth*

5.11 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. *[Subclause 50(1)]*

### *Other borrowings*

5.12 The NHFIC has broad powers to borrow or raise money. It may:

- borrow money otherwise than from the Commonwealth; or
- raise money otherwise than by borrowing;

including by dealing with securities. *[Subclauses 50(2) and (3)]*

### *Security*

5.13 The NHFIC may give security over all or any of its assets:

- for the repayment of money and interest on its borrowings; or
- for the payment of money (including interest) it is liable to pay in respect of money raised other than by borrowing.

*[Subclause 50(4)]*

### *Limitation on borrowing*

5.14 The NHFIC must not borrow or raise money other than under the provisions referred to above. *[Subclause 50(5)]*

## Guarantee by Commonwealth

5.15 The due payment by the NHFIC of any money that becomes payable by it to a person other than the Commonwealth is guaranteed by the Commonwealth. *[Subclause 51(1)]*

5.16 The Treasurer may, by legislative instrument, make a determination revoking the guarantee in relation to money that becomes payable under a contract entered into on or after a particular date. The day on which such a determination comes into effect cannot be earlier than either 1 July 2023 or 60 days after the instrument is registered.

*[Subclauses 51(2) and (3)]*

### **Example 5.1**

NHFIC issues a 10 year bond on 1 January 2019. On 1 July 2024 the Treasurer makes a determination revoking the Commonwealth guarantee for monies payable by NHFIC under a contract entered into

on or after 30 August 2024. The determination is registered on the same day.

Holders of the 10 year bond issued on 1 January 2019 still have the benefit of the Commonwealth guarantee for monies owing under it, because these are payable under a contract entered into before the revocation takes effect.

Payments under a bond issued on or after 30 August 2024 would not be guaranteed by the Commonwealth under this example.

5.17 The intent of the legislated Commonwealth guarantee of NHFIC's liabilities is to support market confidence and strengthen its ability to improve housing outcomes. The guarantee was one of the recommendations of the Expert Panel of the Affordable Housing Implementation Taskforce, established to advise the Government on the viability of a bond aggregator.

5.18 The guarantee also recognises that the ability of CHPs to use their assets as security for loans is often complicated by State and Territory interests in the underlying assets. A guarantee will mitigate much of this uncertainty for investors, lowering borrowing costs for NHFIC that can then be passed through to eligible CHPs.

5.19 The Bill provides for the capacity for the guarantee to be potentially withdrawn in the future if it is no longer needed for new contracts. This would be dependent on both NHFIC achieving sufficient maturity and scale and the community housing sector taking on a larger-scale and more prominent role in sub-market rental housing including through partnerships with the private sector and institutional investors.

## **Exemption from taxation**

5.20 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. This means the NHFIC is exempt from income tax.  
*[Subclause 52(1), note to subclause 52(1)]*

5.21 The NHFIC is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.  
*[Subclause 52(2)]*

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# **Chapter 6**

## **Miscellaneous**

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### **Summary of new law**

6.1 Part 6 of the Bill sets out delegations, the requirement for a review of the operation of the Act, and the rule making power.

### **Detailed explanation of new law**

#### **Delegation by NHFIC**

6.2 To promote the efficient operation of the Act and to ensure timely administration, the NHFIC is empowered to delegate all or any of its functions under the Act, in writing under seal, to a Board member or to the CEO. *[Subclause 53(1)]*

6.3 The Board member or CEO to whom powers are delegated must comply with any directions of the NHFIC in exercising any powers or functions under the delegation. *[Subclause 53(2)]*

#### **Delegation by Board**

6.4 The Board may, in writing, delegate to a Board member or the CEO any of its powers or functions under this Act. *[Subclause 54(1)]*

6.5 In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board. *[Subclause 54(2)]*

#### **Delegation and subdelegation by CEO**

6.6 The CEO may, in writing, delegate to a senior member of the staff employed by the NHFIC any of the CEO's powers or functions under this Act. *[Subclause 55(1)]*

6.7 If the NHFIC or the Board delegates a power or function to the CEO, the CEO may, in writing, subdelegate the power or function to a senior member of the staff of the NHFIC. *[Clause 45 and subclauses 53(1) and 54(1)]*

6.8 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. *[Subclause 55(3)]*

6.9 Allowing the delegation of powers or functions to a senior staff who would undertake the tasks concerned is a normal administrative arrangement.

6.10 Sections 34AA, 34AB and 34A of the Acts Interpretation Act apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

*[Subclause 55(4)]*

## **Review of operation**

6.11 The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after the period of three years of its commencement and the persons undertaking the review must give the Minister a written report of the review. *[Subclauses 57(1) and (2)]*

6.12 The Minister must table a copy of the report of the review in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister. *[Subclause 57(3)]*

## **Rules**

6.13 The Minister may, by legislative instrument, make rules prescribing matters:

- required or permitted by this Act to be prescribed by the rules; or
- convenient to be prescribed for carrying out or giving effect to this Act.

*[Subclause 58(1)]*

6.14 The rules may not:

- create an offence or civil penalty;
- provide powers of:
  - arrest or detention; or
  - entry, search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act; or
- directly amend the text of the Act.

*[Subclause 58(2)]*



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# Chapter 7

## Consequential amendments

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### Outline of chapter

7.1 This Chapter sets out the consequential amendments to other legislation by the NHFIC Consequential Amendments and Transitional Provisions Bill.

### Detailed explanation of new law

7.2 The Bill amends Schedule 2 to the ADJR Act to provide an exemption from the requirement to provide reasons for decision under section 13 of that Act. *[Schedule 1, item 1, National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018, inserting paragraph (zd) into Schedule 2 to the Administrative Decisions (Judicial Review) Act 1997]*

7.3 This will ensure that the NHFIC is not required to provide reasons for decisions relating to its activities such as decisions to provide, or not to provide, financial or other assistance to particular entities. Information considered by NHFIC when making a decision is likely to be complex, commercially sensitive and/or provided in confidence. In order to produce a meaningful statement of reasons it would inevitably need to refer to such information. This exemption will ensure the efficient administration of the NHFIC and is consistent with the exemption afforded to the Export Finance and Insurance Corporation.

7.4 The Bill also exempts the NHFIC from the operation of the FOI Act in relation to documents in respect of its commercial activities. *[Schedule 1, item 2, National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018], inserting an item into Division 1 of Part II of Schedule 2 to the Freedom of Information Act 1982]*

7.5 This is similar to the exemption that applies on the commercial activities of the Export Finance Insurance Corporation, NBN Co and other entities, such as Indigenous Business Australia.

7.6 It is intended that the Investment Mandate will direct NHFIC in relation to the publication of information about its decisions (subject to commercial confidentiality).

## **Application and transitional provisions**

7.7 These amendments take effect at the same time as the *National Housing Finance and Investment Corporation Act 2018* commences.

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# **Chapter 8**

## **Statement of Compatibility with Human Rights**

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

***National Housing Finance and Investment Corporation Bill 2018 and National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018***

8.1 These Bills are 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 Bill**

8.2 The object of these Bills is to establish the National Housing Finance and Investment Corporation (NHFIC) to improve housing outcomes for Australians. This commitment was announced as part of the Government's *Reducing Pressure on Housing Affordability plan* in the 2017-18 Budget. The Bill to gives effect to the Government's commitment to establish a new corporate Commonwealth entity, the NHFIC.

8.3 The NHFIC will have broad functions that enable it to administer:

- a \$1 billion National Housing Infrastructure Facility which will help to finance critical infrastructure to increase the stock of housing, particularly affordable housing, and to bring forward the supply of such housing; and
- an Affordable Housing Bond Aggregator which will improve the efficiency of financing for Community Housing Providers (CHPs), enabling them to improve housing outcomes for their clients. CHPs are non-government organisations, generally not-for-profit organisations, which provide subsidised housing for people on a very low, low or moderate income or for people with additional needs.

8.4 The NHFIC will be governed by an independent, skills-based, part-time Board consisting of a Chair and between four and six other voting members, responsible for decision making and the efficient and effective performance of the NHFIC's functions. A non-voting observer

may also be appointed to attend and participate in Board meetings. The observer is a Ministerial appointed Commonwealth officer, whose appointment is made by exception and on a time-limited basis.

8.5 The Government will set its expectations about the performance of the NHFIC's functions in an Investment Mandate (a non-disallowable legislative instrument), which must be issued by the Minister. The Investment Mandate may include directions about such matters as strategies and policies which the Board must observe, decision-making criteria, and risk and return on investments. The Investment Mandate may not, however, direct the NHFIC in relation to specific investments.

8.6 The NHFIC will be subject to the requirements relating to corporate Commonwealth entities in the PGPA Act, including reporting requirements. The NHFIC will need to include certain additional detail in its annual report, including the particulars of any changes to the Investment Mandate and a summary of activities undertaken pursuant to its key function.

8.7 The operation of the primary Bill will be reviewed three years after its commencement.

8.8 The NHFIC Consequential and Transitional Provisions Bill makes consequential amendments to the ADJR Act and the FOI Act to support the operation of the NHFIC. These consequential amendments:

- Provide an exemption from the requirement to provide reasons for decision under section 13 of the ADJR Act. This will ensure that the NHFIC is not required to provide reasons for decisions relating to its activities such as decisions to provide, or not to provide, financial or other assistance to particular entities. Information considered by NHFIC when making a decision is likely to be complex, commercially sensitive and/or provided in confidence. In order to produce a meaningful statement of reasons it would inevitably need to refer to such information. This exemption will ensure the efficient administration of the NHFIC and is consistent with the exemption afforded to the Export Finance and Insurance Corporation.
- Provide an exemption for the NHFIC from the operation of the FOI Act in relation to documents in respect of its commercial activities. This ensures the NHFIC can protect commercially sensitive information, and is similar to the exemption that applies on the commercial activities of the Export Finance Insurance Corporation, NBN Co and other entities, such as Indigenous Business Australia. The

exemption makes it transparent in the FOI Act that the commercial activities of the NHFIC are not covered by that Act, and supports the integrity of the operations of the NHFIC.

8.9 It is intended that the Investment Mandate will direct NHFIC in relation to the publication of information about its decisions (subject to commercial confidentiality).

### **Human rights implications**

8.10 These Bills engage the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, recognised in Article 11 of the International Covenant on Economic, Social and Cultural Rights.

8.11 Improving housing outcomes for Australians, which is the object of these Bills, enhances these human rights.

### **Conclusion**

8.12 These Bills are compatible with human rights as it supports the right to adequate housing by advancing the improvement of housing outcomes.

8.13 These Bills do not raise any other human rights issues.