

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**National Housing Finance and  
Investment Corporation Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to establish the National Housing  
Finance and Investment Corporation, and for  
related purposes**



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**A Bill for an Act to establish the National Housing  
Finance and Investment Corporation, and for  
related purposes**

The Parliament of Australia enacts:

**Part 1—Preliminary**

**1 Short title**

*This Act is the National Housing Finance and Investment  
Corporation Act 2018.*

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**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**3 Object of this Act**

The object of this Act is to establish the National Housing Finance and Investment Corporation to improve housing outcomes for Australians by:

- (a) strengthening efforts to increase the supply of housing; and
- (b) encouraging investment in housing (particularly in the social or affordable housing sector); and
- (c) providing finance, grants or investments that complement, leverage or support Commonwealth, State or Territory activities relating to housing; and
- (d) contributing to the development of the scale, efficiency and effectiveness of the community housing sector in Australia.

#### 4 Simplified outline of this Act

The National Housing Finance and Investment Corporation is established to improve housing outcomes by making loans, investments and grants (within constitutional limits).

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

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

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

The Board must ensure that the NHFIC maintains commercially sound and sufficient levels of capital and reserves.

The NHFIC may pay a dividend to the Commonwealth, and may borrow money (supported by a Commonwealth guarantee).

#### 5 Definitions

In this Act:

**Board** means the Board of the NHFIC.

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

**CEO** means the Chief Executive Officer of the NHFIC.

**Chair** means the Chair of the Board.

**Commonwealth company** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**Commonwealth entity** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

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**Commonwealth officer** means a person who:

- (a) holds, or performs the duties of, an appointment, office or position under a law of the Commonwealth; or
- (b) is otherwise in the service of the Commonwealth.

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

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

**NHFIC** means the National Housing Finance and Investment Corporation.

**paid work** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

**registered community housing provider** means a community housing provider (however described) that is registered under a law of, or under a scheme administered by, a State or a Territory.

**rules** means rules made under section 58.

## 6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

## **Part 2—National Housing Finance and Investment Corporation**

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

#### **7 Establishment**

- (1) The National Housing Finance and Investment Corporation is established by this section.

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

- (2) The NHFIC:
- (a) is a body corporate; and
  - (b) must have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued.
- (3) The NHFIC's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

#### **8 Functions of the NHFIC**

- (1) The functions of the NHFIC are:
- (a) to make loans, investments and grants to improve, directly or indirectly, housing outcomes; and
  - (b) to determine terms and conditions for such loans, investments and grants; and
  - (c) to provide, to registered community housing providers, business advisory services and other assistance in capacity building; and
  - (d) any other functions conferred on the NHFIC by this Act or any other Commonwealth law; and

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- (e) to do anything incidental or conducive to the performance of the above functions.
- (2) Without limiting subsection (1), the functions of the NHFIC include:
  - (a) to grant financial assistance to States and Territories for the purposes of any of the matters mentioned in subsection (1); and
  - (b) to determine terms and conditions for the grants of financial assistance.
- (3) In performing its functions, the NHFIC must act in a proper, efficient and effective manner.

**9 Powers of the NHFIC**

- (1) The NHFIC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the NHFIC may:
  - (a) enter into arrangements and contracts with Commonwealth entities and Commonwealth companies to obtain services to assist in the performance of its functions; and
  - (b) enter into:
    - (i) arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements; or
    - (ii) arrangements having a similar purpose or effect.

Note: Section 59 of the *Public Governance, Performance and Accountability Act 2013* also gives the NHFIC the power to invest money that is not immediately required for the purposes of the NHFIC.

**10 Constitutional limits**

- (1) The NHFIC may perform its functions only:
  - (a) for purposes relating to a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (b) for purposes related to external affairs, including:

- (i) giving effect to the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, particularly Article 11 of that Covenant; or
- (ii) giving effect to another international agreement to which Australia is a party; or
- (iii) addressing matters of international concern; or
- (iv) by way of the performance of its functions in a place outside Australia; or
- (c) for purposes relating to the granting of financial assistance to which section 96 of the Constitution applies; or
- (d) for purposes relating to the collection of statistics; or
- (e) for purposes relating to trade or commerce:
  - (i) between Australia and places outside Australia; or
  - (ii) among the States; or
  - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (f) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (g) for purposes relating to people to which paragraph 51(xxvi) of the Constitution applies; or
- (h) for purposes relating to railway construction or extension to which paragraph 51(xxxiv) of the Constitution applies; or
- (i) by way of the provision of service, or financial assistance, to:
  - (i) the Commonwealth; or
  - (ii) an authority of the Commonwealth; orfor a purpose of the Commonwealth; or
- (j) for purposes relating to a Territory; or
- (k) for purposes relating to the implied power of the Parliament to make laws with respect to nationhood; or
- (l) for purposes relating to the executive power of the Commonwealth; or
- (m) for purposes relating to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

**Part 2** National Housing Finance and Investment Corporation

**Division 1** Establishment and functions

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Note: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (2) Paragraph (1)(a) applies in relation to a corporation to which paragraph 51(xx) of the Constitution applies only if the NHFIC has entered into an arrangement with the corporation that:
- (a) sets out the terms and conditions on which money may be payable to the corporation under the arrangement; and
  - (b) requires the corporation to comply with the terms and conditions.
- (3) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the corporation must repay amounts paid under the arrangement.

**11 NHFIC does not have privileges and immunities of the Crown**

The NHFIC does not have the privileges and immunities of the Crown in right of the Commonwealth.

## **Division 2—Investment Mandate**

### **12 Investment Mandate**

- (1) The Minister may, by legislative instrument, give the Board directions about the performance of the NHFIC's functions, and must give at least one such direction. The directions together constitute the *Investment Mandate*.

Note: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

- (2) In giving a direction, the Minister must have regard to the object of this Act and any other matters the Minister considers relevant.
- (3) In performing its functions, the NHFIC must take all reasonable steps to comply with the Investment Mandate.

### **13 Matters covered by Investment Mandate**

The Investment Mandate may include directions about the following:

- (a) strategies and policies to be followed for the effective performance of the NHFIC's functions;
- (b) decision-making criteria for the following:
  - (i) making loans, investments and grants;
  - (ii) granting financial assistance to States and Territories;
  - (iii) providing, to registered community housing providers, business advisory services and other assistance in capacity building;
- (c) limits on making loans, investments and grants, and granting financial assistance to States and Territories;
- (d) risk and return relating to NHFIC's investments;
- (e) any other matters the Minister thinks appropriate.

### **14 Limits on Investment Mandate**

The Minister must not give a direction under subsection 12(1):

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- (a) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Board:
  - (i) to make, or not to make, a particular loan, investment or grant; or
  - (ii) to grant, or not to grant, financial assistance to a State or Territory for a particular project; or
  - (iii) to take, or not to take, particular action relating to a particular loan, investment or grant; or
  - (iv) to take, or not to take, particular action relating to financial assistance granted to a State or Territory for a particular project; or
- (b) that is inconsistent with this Act (including the object of this Act).

## **Part 3—Board**

### **Division 1—Establishment and functions of the Board**

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

The Board of the NHFIC is established by this section.

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

- (1) The functions of the Board are:
  - (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the NHFIC; and
  - (b) to ensure the proper, efficient and effective performance of the NHFIC's functions; and
  - (c) any other functions conferred on the Board by this Act.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, the NHFIC by the Board, or with the authority of the Board, is taken to have been done by the NHFIC.

## **Division 2—Board members**

### **17 Membership**

The Board consists of:

- (a) the Chair; and
- (b) at least 4, and no more than 6, other members.

### **18 Appointment of Board members**

- (1) Board members are to be appointed by the Minister by written instrument, on a part-time basis.
- (2) A person is not eligible for appointment as a Board member unless the Minister is satisfied that the person has appropriate qualifications, skills or experience in one or more of the following:
  - (a) banking and finance;
  - (b) law;
  - (c) housing (including social or affordable housing);
  - (d) infrastructure planning and financing;
  - (e) local government;
  - (f) public policy;
  - (g) an area of expertise prescribed by the rules.

### **19 Chair**

The Minister must, by written instrument, appoint one Board member to be the Chair.

### **20 Term of appointment**

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: A Board member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

## 21 Acting appointments

- (1) The Minister may, by written instrument, appoint a Board member to act as the Chair:
  - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as a Board member:
  - (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a Board member:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## 22 Remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) A Board member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**23 Leave of absence**

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants another Board member leave of absence for a period that exceeds 3 months.

**24 Resignation**

- (1) A Board member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**25 Termination of appointment**

The Minister may terminate the appointment of a Board member:

- (a) for misbehaviour; or
- (b) if the Board member is unable to perform the duties of his or her office because of physical or mental incapacity; or
- (c) if the Board member:
  - (i) becomes bankrupt; or
  - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (d) if the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
- (e) if the Minister is satisfied that the performance of the Board member has been unsatisfactory for a significant period.

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

## 26 Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## 27 Observer

### *Role of the observer*

- (1) A person appointed under this section (the **observer**):
  - (a) is entitled to receive notice of meetings of the Board; and
  - (b) may attend any meeting of the Board and take such part in the proceedings, not including voting, as the observer thinks fit; and
  - (c) may report to the Minister on any matter relating to the operations of the NHFIC or the Board, and must make such a report to the Minister if the Minister requests a report on such a matter; and
  - (d) is entitled to access to such information held by, or under the control of, the NHFIC as the observer requests for the purposes of taking part in proceedings of the Board or reporting to the Minister.

### *Appointment of the observer*

- (2) The Minister may, by written instrument, appoint a Commonwealth officer to be the observer, on a part-time basis.
- (3) The observer holds office for the period specified in the instrument of appointment. The period must not exceed 6 months.

Note: The observer may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

**Part 3** Board

**Division 2** Board members

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- (4) The Minister may at any time terminate the appointment of the observer.

*Terms and conditions*

- (5) The Minister may grant leave of absence to the observer on the terms and conditions that the Minister determines.
- (6) The observer may resign his or her appointment by giving the Minister a written resignation. The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

## **Division 3—Meetings of the Board**

### **28 Convening meetings**

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
  - (a) may convene a meeting at any time; and
  - (b) must convene at least 4 meetings each calendar year; and
  - (c) must convene a meeting within 30 days after receiving a written request to do so from another Board member.

### **29 Presiding at meetings**

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

### **30 Quorum**

- (1) At a meeting of the Board, a quorum is constituted by a majority of Board members.
- (2) However, if:
  - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
  - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

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**31 Voting at meetings**

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at the meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

**32 Conduct of meetings**

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

**33 Minutes**

The Board must keep minutes of its meetings.

**34 Decisions without meetings**

- (1) The Board is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
  - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
  - (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would

not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

- (4) The Board must keep a record of decisions made in accordance with this section.

## **Part 4—Chief Executive Officer, staff and consultants and committees**

### **Division 1—Chief Executive Officer**

#### **35 Chief Executive Officer**

There is to be a Chief Executive Officer of the National Housing Finance and Investment Corporation.

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

- (1) The CEO is responsible for the day-to-day administration of the NHFIC.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with policies and strategies determined by the Board.
- (4) The Board may give written directions to the CEO, not inconsistent with any direction given to the Board under Division 2 of Part 2, about the performance of the CEO's duties.
- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.

#### **37 Appointment of CEO**

- (1) The CEO is to be appointed by the Board by written instrument, on a full-time basis.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

- (3) The Board must not appoint a Board member as the CEO.

### **38 Acting appointment as CEO**

The Board may, by written instrument, appoint a person (other than a Board member) to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

### **39 Remuneration of CEO**

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **40 Leave of absence of CEO**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.

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**41 Outside employment**

- (1) The CEO must not engage in paid work outside the duties of his or her office without the Chair's approval.
- (2) The Chair must notify the Minister of any approval given under subsection (1).

**42 Other terms and conditions**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

**43 Resignation of CEO**

- (1) The CEO may resign his or her appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.
- (3) The Chair must notify the Minister of the CEO's resignation.

**44 Termination of appointment of CEO**

- (1) The Board may terminate the appointment of the CEO:
  - (a) for misbehaviour; or
  - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity; or
  - (c) if the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (d) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

- (e) if the CEO engages, except with the Chair's approval, in paid work outside the duties of his or her office (see section 41 (outside employment)); or
  - (f) if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
  - (g) if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period.
- (2) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

## **Division 2—Staff and consultants**

### **45 Staff**

- (1) The NHFIC may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the NHFIC determines in writing.
- (3) The NHFIC may make arrangements for the services of officers or employees of the following to be made available to the NHFIC:
  - (a) the Commonwealth, a State or a Territory;
  - (b) an authority of the Commonwealth or of a State or Territory;
  - (c) any other organisation or body.

### **46 Consultants**

- (1) The NHFIC may engage consultants to assist in the performance of its functions.
- (2) The consultants are to be engaged on the terms and conditions that the NHFIC determines.

## **Division 3—Committees**

### **47 Committees**

- (1) The Board may establish committees to advise or assist in the performance of the Board's or the NHFIC's functions.
- (2) A committee may be constituted:
  - (a) wholly by Board members; or
  - (b) wholly by persons who are not Board members; or
  - (c) partly by Board members and partly by other persons.
- (3) The Board may determine, in relation to a committee established under this section:
  - (a) the committee's terms of reference; and
  - (b) the terms and conditions of appointment of the members of the committee; and
  - (c) the procedures to be followed by the committee.
- (4) The members of the committee (other than Board members) are not officials for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

## **Part 5—Finance**

### **48 Maintenance of adequate capital and reserves**

- (1) The Board is required to ensure, according to sound commercial principles, that the capital and reserves of the NHFIC at any time are sufficient:
  - (a) to meet the likely liabilities of the NHFIC; and
  - (b) to make adequate provision for default in the repayment of principal, or in the payment of interest or other charges, in connection with loans made by the NHFIC.
- (2) If, at any time, the Board determines:
  - (a) that the capital and reserves of the NHFIC are not sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1); or
  - (b) that there are reasonable grounds for believing that, at a time in the future, the capital and reserves of the NHFIC may not be sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1);the Board must, as soon as practicable, cause the Minister to be informed in writing of its determination and the reasons for that determination.

### **49 Payment of annual dividends to the Commonwealth**

- (1) The Board must, within 4 months after the end of each financial year, by written notice given to the Minister, recommend that the NHFIC pay a specified dividend, or not pay a dividend, to the Commonwealth for that financial year.
- (2) The Minister must, within 30 days after receiving the recommendation, by written notice given to the NHFIC:
  - (a) approve the recommendation; or
  - (b) if the Board has recommended the payment of a dividend—direct the payment of a different specified dividend; or

- (c) if the Board has recommended that no dividend be paid—direct the payment of a specified dividend.
- (3) Subject to subsections (4) and (5), in performing their functions under subsections (1) and (2), the Board and the Minister must have regard to:
  - (a) the policies of the Commonwealth Government, and the general policy of the NHFIC in relation to the performance of its functions; and
  - (b) such commercial considerations as the Board or the Minister, as the case may be, considers appropriate.
- (4) The NHFIC's dividend for a financial year must not exceed its profit for that year.
- (5) For each financial year in relation to which the Minister has approved a recommendation that a dividend be paid or has directed the payment of a dividend, the NHFIC must pay to the Commonwealth:
  - (a) if the Minister has approved a recommendation that a dividend be paid—the dividend specified in the recommendation; or
  - (b) if the Minister has directed that a dividend be paid or that a different dividend be paid—the dividend specified in the direction.
- (6) For the purposes of this section, the period beginning on the commencement of this Act and ending on 30 June 2018 is not to be taken to be a financial year.

## **50 Borrowings etc.**

### *Borrowings from the Commonwealth*

- (1) The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the NHFIC on such terms and conditions as the Finance Minister determines.

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*Other borrowings etc.*

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

*Security*

- (4) The NHFIC may give security over all or any of its assets:
  - (a) for the repayment by the NHFIC of money borrowed under subsection (1) or paragraph (2)(a) and the payment of interest on money so borrowed; or
  - (b) for the payment by the NHFIC of money (including interest) that the NHFIC is liable to pay in respect of money raised under paragraph (2)(b).

*Limitation on borrowing etc.*

- (5) The NHFIC must not borrow or raise money except under this section.

**51 Guarantee by Commonwealth**

- (1) Subject to subsection (2), the due payment by the NHFIC of any money that becomes payable by the NHFIC to a person other than the Commonwealth is guaranteed by the Commonwealth.
- (2) Subsection (1) does not apply in relation to money that becomes payable in relation to a contract entered into on or after the day (not earlier than 1 July 2023) determined under subsection (3).

Note: The guarantee will continue to apply in relation to contracts entered into before the determined day.

- (3) The Minister may, by legislative instrument, determine a day for the purposes of subsection (2). The day must not be a day occurring earlier than 60 days after the instrument is registered under the *Legislation Act 2003*.

## **52 Exemption from taxation**

- (1) For the purposes of section 50-25 of the *Income Tax Assessment Act 1997*, the NHFIC is taken to be a public authority constituted under an Australian law.

Note: This means the NHFIC is exempt from income tax.

- (2) The NHFIC is not subject to taxation under a law of a State or Territory, if the Commonwealth is not subject to the taxation.

## **Part 6—Miscellaneous**

### **53 Delegation by NHFIC**

- (1) The NHFIC may, in writing under its seal, delegate all or any of its powers or functions under this Act to:
  - (a) a Board member; or
  - (b) the CEO.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the NHFIC.

### **54 Delegation by Board**

- (1) The Board may, in writing, delegate to a Board member or the CEO any of its powers or functions under this Act.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board.

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

- (1) The CEO may, in writing, delegate to a senior member of the staff referred to in section 45 any of the CEO's powers or functions under this Act.
- (2) If the NHFIC or the Board delegates a power or function under subsection 53(1) or 54(1) to the CEO, the CEO may, in writing, subdelegate the power or function to a senior member of the staff referred to in section 45.
- (3) In exercising any powers or performing any functions under the delegation or subdelegation, the delegate or subdelegate must comply with any directions of the CEO.

- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

### **56 Matters to be included in annual reports**

The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following:

- (a) the particulars of any changes to the Investment Mandate during the period and their impact on the operations of the NHFIC;
- (b) in relation to each kind of financial support provided by the NHFIC during the period, a summary of:
  - (i) the amount of that kind of financial support; and
  - (ii) the risks and returns to the Commonwealth.

Note: Section 46 of the *Public Governance, Performance and Accountability Act 2013* requires the Board to prepare annual reports.

### **57 Review of operation of Act**

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after the period of 3 years beginning when this Act commences.
- (2) The persons undertaking the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

### **58 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.