

# EXPOSURE DRAFT



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## **National Housing Finance and Investment Corporation Investment Mandate Amendment (First Home Loan Deposit Scheme) Direction 2019**

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I, Michael Sukkar, the Minister for Housing and Assistant Treasurer, give this Direction under subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018*.

Dated

MICHAEL SUKKAR **DRAFT ONLY—NOT FOR SIGNATURE**  
Minister for Housing and Assistant Treasurer

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## 1 Name

This Direction is the *National Housing Finance and Investment Corporation Investment Mandate Amendment (First Home Loan Deposit Scheme) Direction 2019*.

## 2 Commencement

- (1) Each provision of this Direction 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
The whole of this Direction	The day after this Direction is registered.	

Note: This table relates only to the provisions of this Direction as originally made.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

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

## 3 Authority

This Direction is made under subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *National Housing Finance and Investment Corporation Investment Mandate Direction 2018*

#### 1 Section 4 (note)

After “(a) Board;”, insert “(aa) guarantee liabilities;”.

#### 2 Section 4

Insert:

*eligible first home buyer*—see section 29D.

*eligible lender*—see section 29B.

*eligible loan*—see section 29C.

*FHLDS*—see section 8A.

*major bank* means one of the following groups of entities, treated as a single entity:

- (a) the Australia and New Zealand Banking Group Limited (ACN 005 357 522) and its related bodies corporate;
- (b) the Commonwealth Bank of Australia (ACN 123 123 124) and its related bodies corporate;
- (c) National Australia Bank Limited (ACN 004 044 937) and its related bodies corporate;
- (d) Westpac Banking Corporation (ACN 007 457 141) and its related bodies corporate.

*price cap*—see section 29F.

*related body corporate* has the same meaning as in the *Corporations Act 2001*.

*residential property* has the same meaning as in the *National Consumer Credit Protection Act 2009*.

*value*, in relation to a residential property, means the value assessed by the eligible lender at the time a loan is entered into, in accordance with standard lending practice in the residential mortgage market.

#### 3 After section 8

Insert:

#### 8A Establishment and operation of First Home Loan Deposit Scheme

The NHFIC must establish and operate a scheme to issue guarantees to eligible lenders in relation to eligible loans, in accordance with Part 5A (the First Home Loan Deposit Scheme or *FHLDS*).

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## **8B Research into housing affordability in Australia**

The NHFIC must conduct research into housing affordability in Australia, in accordance with Part 5B.

## **4 Paragraph 9(1)(a)**

Omit “8”, substitute “8B”.

## **5 Section 10**

Repeal the section, substitute:

## **10 Application of commercial discipline**

Except as provided in this Direction, the NHFIC must apply commercial discipline when making financing decisions and decisions for the purposes of the FHLDS.

## **6 After Part 5**

Insert:

## **Part 5A—First Home Loan Deposit Scheme**

### **The First Home Loan Deposit Scheme**

The purpose of the FHLDS is to facilitate first home buyers entering into the housing market sooner. It does this by allowing the NHFIC to issue up to 10,000 guarantees each financial year for loans to first home buyers with a deposit of between 5 and 20 per cent of the property’s value.

## **Division 1—Eligibility**

### **29A Eligibility for guarantees**

The NHFIC must not issue a guarantee to an entity other than an eligible lender, in relation to an eligible loan.

### **29B Eligible lender**

- (1) An *eligible lender*, in relation to a guarantee issued during a particular financial year, is an entity approved by the NHFIC, for the purposes of this section, as an eligible lender for the financial year during which the NHFIC approved the issue of the guarantee.
- (2) The NHFIC must establish criteria and processes for the approval of entities as eligible lenders.
- (3) The criteria for the approval of entities as eligible lenders must include criteria which are directed at assessing all of the following matters:

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- (a) an entity's standards of customer care, including treatment of borrowers in financial hardship;
  - (b) the competitiveness of loan products offered by an entity, including interest rates and other fees;
  - (c) the quality of an entity's loan origination processes and the associated level of financial risk to the Commonwealth;
  - (d) the reputation of an entity;
  - (e) the extent to which approval of an entity would promote competition in lending markets and related markets;
  - (f) the extent to which the entities approved for a financial year, considered together, can undertake credit activities across Australia (including through other entities providing credit services).
- (4) The NHFIC must not approve more than 2 major banks as eligible lenders for a financial year.
- (5) In this section:

*credit activities* has the same meaning as in the *National Consumer Credit Protection Act 2009*.

*credit service* has the same meaning as in the *National Consumer Credit Protection Act 2009*.

## 29C Eligible loan

- (1) A loan is an *eligible loan* if:
- (a) subsection (2) or (4) applies; and
  - (b) any criteria and processes established by the NHFIC for the approval of eligible loans are satisfied.
- (2) This subsection applies to a loan for which all of the following are satisfied at the time a loan agreement is entered into:
- (a) the loan is made by an eligible lender;
  - (b) there are no more than two borrowers under the loan agreement;
  - (c) where there are two borrowers under the loan agreement—each borrower is the spouse or de facto partner of the other borrower;
  - (d) each borrower under the loan agreement is an eligible first home buyer;
  - (e) the loan is for the purchase of residential property;
  - (f) if the loan relates to the purchase of an interest in land on which a dwelling is not affixed, the loan also relates to the construction of a dwelling on the land;
  - (g) the value of the residential property does not exceed the price cap in the area in which the property is located;
  - (h) the residential property that is the subject of the loan is to be owner-occupied;
  - (i) the loan-to-value ratio is between 80 and 95 per cent;
  - (j) subject to subsection (3), the terms of the loan agreement require scheduled repayments of the principal of the loan for the full period of the agreement;

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- (k) the loan agreement has a term of no more than 30 years.
- (3) For paragraph (2)(j), if the loan relates both to the purchase of an interest in land on which a dwelling is not affixed and for the construction of a dwelling on the land, the loan may be an eligible loan even if the terms of the loan agreement permit interest-only repayments for a specified period.
- (4) This subsection applies to a loan if:
  - (a) the loan is for the sole purpose of fully satisfying the obligations of a borrower or borrowers under an existing loan (a *refinancing*); and
  - (b) the NHFIC has previously issued a guarantee under this Part relating to the existing loan; and
  - (c) no claim has been made on the guarantee; and
  - (d) the guarantee is in force at the time of the refinancing.

## 29D Eligible first home buyer

A person is an *eligible first home buyer* in relation to a loan if, at the time a loan agreement is entered into:

- (a) the person has never held:
  - (i) a freehold interest in real property in Australia; or
  - (ii) a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or
  - (iii) a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia; and
- (b) the person is at least 18 years of age and an Australian citizen; and
- (c) the person satisfies the income test.

## 29E Income test

A person satisfies the income test at the time of entering into a loan agreement if:

- (a) where there is more than one borrower under the loan agreement—the combined taxable income (within the meaning of the *Income Tax Assessment Act 1997*) of the borrowers in the preceding income year did not exceed \$200,000; or
- (b) otherwise—the taxable income of the person (within the meaning of the *Income Tax Assessment Act 1997*) in the preceding income year did not exceed \$125,000.

Note: Under paragraph 29C(2)(b), an eligible loan may not have more than two borrowers under the loan agreement.

## 29F Price cap

- (1) For the purposes of paragraph 29C(2)(g), the price cap for the area in which a residential property is located is the amount set out in the following table.

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Price Cap for an area		
Item	Area	Price cap
1	Australian Capital Territory	\$500,000
2	New South Wales—capital city and regional centre	\$700,000
3	New South Wales—other (including Jervis Bay and Norfolk Island)	\$450,000
4	Victoria—capital city and regional centre	\$600,000
5	Victoria—other	\$375,000
6	Queensland—capital city and regional centre	\$475,000
7	Queensland—other	\$400,000
8	Northern Territory	\$375,000
9	South Australia—capital city	\$400,000
10	South Australia—other	\$250,000
11	Western Australia—capital city	\$400,000
12	Western Australia—other (including Christmas Island and Cocos (Keeling) Islands)	\$300,000
13	Tasmania—capital city	\$400,000
14	Tasmania—other	\$300,000

- (2) As soon as practicable after the end of each 1 year period commencing on 1 January 2020, the NHFIC must recommend to the Minister what adjustments (if any) it considers should be made to the price caps.

Note: The NHFIC may provide recommendations to the Minister at other times, at its discretion.

- (3) In this section:

**capital city**, in relation to a State, means the Greater Capital City Statistical Area in that State, within the meaning of the Australian Statistical Geography Standard (ASGS): Volume 1 - Main Structure and Greater Capital City Statistical Areas, July 2016, published by the Australian Bureau of Statistics, as existing at the time this section commences (the **ASGS**).

**regional centre**, in relation to a State, means each of the following Statistical Area Level 4 areas in that State:

- (a) Gold Coast;
- (b) Sunshine Coast;
- (c) Newcastle and Lake Macquarie;
- (d) Illawarra;
- (e) Geelong;

within the meaning of the ASGS.



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## 29G NHFIC may rely on information

The NHFIC may rely on information supplied by an eligible lender, a borrower, or other third party, that has a relevant role in the issue and administration of a guarantee under this Part.

## Division 2—Requirements for guarantees

### 29H Form of guarantee

*When guarantee becomes payable*

- (1) A guarantee issued by the NHFIC may only cover a payment where there is a balance owing on the guaranteed loan following the application of the proceeds of sale by the lender that was as a consequence of the default by the borrower under the terms of the loan contract.

*Limit on amount of guarantee*

- (2) Where subsection (1) applies, the amount payable under a guarantee issued by the NHFIC is an amount equal to the lesser of:
  - (a) the money owed to the lender under the loan agreement after the proceeds of the sale of the residential property that is the subject of the loan have been applied; and
  - (b) the amount worked out using the following formula:

$$A - B$$

where:

*A* is 20 per cent of the value of the residential property that is the subject of the eligible loan.

*B* is the deposit paid by the borrower or borrowers under the loan agreement.

*Cessation of guarantee*

- (3) Subject to subsection (4), the terms of a guarantee issued by the NHFIC under this Part must provide for the guarantee to cease when the balance of the loan becomes less than 80 per cent of the value of the residential property.
- (4) However, subsection (3) does not require the guarantee to cease where the proceeds of the sale by the lender that was as a consequence of default by the borrower are applied against the loan resulting in the balance of the loan being 80 per cent or less than the value of the residential property.

### 29I Limit on guarantees in a financial year

- (1) The NHFIC must not issue more than 10,000 guarantees in a financial year.
- (2) The total number of guarantees issued to major banks in a financial year must not exceed 5,000.

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- (3) For the purposes of this section:
- (a) a guarantee is issued in the financial year during which its issue is approved by the NHFIC, even if the arrangement relating to the guarantee is entered into in a later financial year; and
  - (b) a guarantee issued in relation to a loan that satisfies subsection 29C(4) is disregarded.

## **29J NHFIC must not charge fees**

The NHFIC must not charge fees for the issue of a guarantee under this Part.

## **Division 3—Other matters**

### **29K Principles for the operation of the scheme**

- (1) The NHFIC must operate the FHLDS in a manner that seeks to:
- (a) maximise the integrity of the FHLDS; and
  - (b) prevent residential properties from being used other than as owner-occupied residences; and
  - (c) encourage and incentivise borrowers to repay loans as soon as possible; and
  - (d) ensure all eligible first home buyers have used the maximum amount of their savings as a deposit; and
  - (e) minimise the quantum of payouts under guarantees issued under the FHLDS, in accordance with industry best practice (including practices applied to loans with parental guarantees); and
  - (f) monitor the status of guaranteed loans to identify when there is a significant likelihood of a borrower defaulting on their obligations under a loan; and
  - (g) minimise the cost of guaranteed loans to borrowers.
- (2) Subsection (1) does not limit the powers of the NHFIC to administer the FHLDS in a responsible and commercial manner, consistently with the requirements of this Part.

### **29L Reporting**

As soon as practicable after the end of each successive 6 month period commencing on 1 January 2020, the NHFIC must report to the Minister on:

- (a) the status of each guarantee issued under the FHLDS; and
- (b) the operating costs of the FHLDS; and
- (c) the total value of guarantees issued under the FHLDS; and
- (d) any other information requested by the Minister.

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## Part 5B—Research into housing affordability in Australia

### Research into housing affordability in Australia

The NHFIC’s research function will support the monitoring of housing demand, supply and affordability in Australia. It will do this by highlighting current and potential future gaps between housing supply and demand, while also complementing existing housing related research.

### 29M Requirements relating to research

The NHFIC must:

- (a) conduct comprehensive research into housing demand, supply and affordability in Australia, including current and potential future gaps between housing supply and demand; and
- (b) complement existing research and reflect on the adequacy of construction rates.

### 29N Performance of research function

In undertaking research under this Part, the NHFIC may do any of the following:

- (a) undertake research on its own initiative;
- (b) undertake specific research requested by the Minister;
- (c) publish results of its research;
- (d) liaise with relevant stakeholders, including State and Territory bodies, Federal and State government agencies, research institutions, market participants and the housing sector.

### 7 Subsection 34(2) (definition of *total guaranteed liabilities of NHFIC*)

After “current liabilities of the NHFIC”, insert “(other than guarantee liabilities)”.