

EXPOSURE DRAFT

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Minister for Housing, Minister for Homelessness and Minister for Small Business

Help to Buy Act 2024

Help to Buy Program Directions 2024

Subsection 24(1) of the *Help to Buy Act 2024* (the Act) provides that the Minister may, by legislative instrument, give the Board of Housing Australia directions about the performance of Housing Australia's functions under the Act. The Board must also ensure Housing Australia complies with the requirements of the Act, the *Housing Australia Act 2018* (Housing Australia Act) and the *Housing Australia Investment Mandate Direction 2018* (Investment Mandate).

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

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

The purpose of the *Help to Buy Program Directions 2024* (the Instrument) is to direct Housing Australia in relation to the performance of Housing Australia's functions under the Act. In administering Help to Buy, the Board is subject to the requirements of the Act, the Housing Australia Act, and the Instrument.

The Instrument deals with a range of matters to ensure the effective operation of Help to Buy. This includes defining key terms, initial eligibility and ongoing participation requirements, entry, variation and exit of the program, monitoring of compliance, allocation of places in the program, and other administrative arrangements.

Access to home ownership for low and middle income Australians has been decreasing in recent decades. According to the Grattan Institute's 2022 *The Great Australian Nightmare* report, between 1981 and 2021, home ownership rates for 25-34 year olds in the two lowest household income quintiles fell from 57 per cent to 28 per cent. Similarly, for 45-54 year olds in the same two quintiles, home ownership rates have declined from 71 per cent to 53 per cent.

The key barriers to home ownership are saving for a deposit and servicing a loan. It has been increasingly difficult for homebuyers to save for a deposit and, coupled with the increased costs of servicing mortgages, this has made accessing home ownership increasingly challenging for low and middle income earners.

EXPOSURE DRAFT

Help to Buy is designed to improve housing outcomes for eligible Australians by reducing the upfront deposit hurdle and ongoing mortgage repayments associated with purchasing a home.

Under the program, Housing Australia provides eligible participants a Commonwealth equity contribution of up to 30 per cent of the purchase price of an existing home and up to 40 per cent of the purchase price of a new home.

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

The Instrument is exempt from the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act as a result of regulations made for the purposes of paragraph 54(2)(b) of the Act. Item 3 of the table in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides for class exemptions from sunseting if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to Housing Australia, and therefore is exempt from sunseting. Sunseting is not appropriate for the direction which is intended to remain in place until revoked by the Minister.

The Instrument is also exempt from disallowance under section 42 of the Legislation Act as a result of regulations made for the purposes of paragraph 44(2)(b) of that Act. Item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, provides for class exemptions from disallowance if the instrument is a direction by the Minister to any person or body. The Instrument is a direction from the Minister to Housing Australia, and therefore is exempt from disallowance. The exemption recognises that executive control is intended in this instance where a ministerial direction is made to Housing Australia.

The Instrument commences the day after registration.

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

Details of the *Help to Buy Program Directions 2024*

PART 1 – INTRODUCTION

Division 1 – Preliminary

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Help to Buy Program Directions 2024* (the Instrument).

Legislative references in this attachment are to the Instrument unless otherwise stated.

Section 2 – Commencement

The Instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 24(1) of the *Help to Buy Act 2024* (the Act).

Division 2 – Simplified outline of the Instrument

Simplified outline of the Instrument

Section 4 provides the simplified outline of the Instrument, which is a summary of the Instrument and a description of its purpose. This outline – in addition to sections 11, 23, 32 and 39 (simplified outlines of Parts 2 to 5) – helps guide readers to understand the substantive provisions and are not intended to be comprehensive.

Section 4 provides a summary of the five parts of the Instrument, being:

- Part 1 covers preliminary matters and definitions used in the Instrument;
- Part 2 addresses when Housing Australia may enter Help to Buy arrangements in the Territories and participating States, and whether the applicant and the property are eligible for Help to Buy;
- Part 3 deals with the participation requirements that Housing Australia must impose on participants in the program and how Housing Australia monitors and manages compliance with these ongoing obligations set out in Schedule 1, including dealing with non-compliance;
- Part 4 outlines when and how participants can exit the program including arrangements for deceased estates; and
- Part 5 provides Housing Australia with directions on the administrative aspects of the program to ensure the program's integrity and establish appropriate governance systems.

EXPOSURE DRAFT

Division 3 – Definitions

Definitions

Section 5, 6 and 10 of the Instrument creates a number of new definitions which are instrumental to Help to Buy, in addition to the definitions set out in the Act. These new definitions are:

- adequately insured – where the relevant property meets the insurance requirements specified in the arrangement when entering into an arrangement. Relevant properties must be adequately insured for the entirety of the arrangement to protect the Commonwealth share and the participant’s interest (for example, in the event of a natural disaster such as a bushfire or flood). Housing Australia cannot enter into an arrangement unless it is satisfied that the property, once purchased, will meet the insurance requirements;
- administrative costs – includes but is not limited to legal costs, conveyancing costs and stamp duty (where applicable);
- agreed percentage – signposted to section 16 (explained later in this Explanatory Statement);
- allocated – a place is allocated where it is made available for use for an arrangement in respect of property in a particular State or Territory under section 48 or 50;
- arrangement – refers to a Help to Buy arrangement (as defined in section 6 of the Act). This is a shared equity arrangement that Housing Australia, on behalf of the Commonwealth, enters into with an eligible purchaser of residential property located in a participating State or a Territory. The shared equity arrangement involves a contract with the eligible purchaser and Housing Australia that, on behalf of the Commonwealth:
 - contributes a portion of the purchase price for a residential property;
 - is entitled to a return on this contribution at the time of sale of the property based on the value of the relevant property; and
 - has security over the relevant property through a mortgage or other right relating to the property;
- Australian Defence Force – as defined in the *Defence Act 1903*;
- Australian Statistical Geography Standard – refers to the Australian Statistical Geography Standard (ASGS) Edition 3, July 2021 June 2026 (available on the Australian Bureau of Statistics website (<https://www.abs.gov.au>)). It is a classification of Australia into a hierarchy of statistical areas;
- capital city – is the Greater Capital City Statistical Area in a State or Territory as defined in the Australian Statistical Geography Standard;
- committed – a place is committed if:

EXPOSURE DRAFT

- an applicant or applicants have applied for an arrangement;
 - Housing Australia has not yet approved the application;
 - Housing Australia has decided that it is reasonably likely that the applicant, or applicants, will satisfy the applicant eligibility requirements, disregarding the financial capacity test; and
 - the applicant or applicants have obtained mortgage pre approval from a participating lender for funds they are likely to require to purchase the relevant property taking into account their deposit and the Commonwealth's contribution;
- Commonwealth company – as defined in section 89 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
 - Commonwealth entity – as defined in section 10 of the PGPA Act;
 - Commonwealth share – signposted to section 25 (explained later in the Explanatory Statement);
 - Commonwealth share percentage – signposted to paragraph 25(1)(b) (explained later in the Explanatory Statement);
 - credit activities – takes the same meaning as in the *National Consumer Credit Protection Act 2009*;
 - credit service – takes the same meaning as in the *National Consumer Credit Protection Act 2009*;
 - dependent child – an individual that is either a child of a parent or guardian under subsections 5(2) to (7) of the *Social Security Act 1991* or is living with a parent or guardian and is in receipt of a disability support pension under the *Social Security Act 1991*;
 - disqualifying property interest – a person holds a disqualifying property interest if the person holds a freehold interest in real property in Australia, a lease or company title interest in land in Australia, or a beneficial interest in any of these interests;
 - eligible applicant – signposted to section 17 (explained later in the Explanatory Statement);
 - eligible property – signposted to section 21 (explained later in the Explanatory Statement);
 - financial capacity test – for an applicant means the test in section 20;
 - hardship – includes but is not limited to financial hardship or hardship from events outside the participant's control;
 - income test – for an applicant for an arrangement is outlined in section 19;

EXPOSURE DRAFT

- Investment Mandate – as defined in section 5 of the *Housing Australia Act 2018* (Housing Australia Act). It refers to the legislative instrument made by the Minister to the Board of Housing Australia Board under the Housing Australia Act. This instrument is the *Housing Australia Investment Mandate Direction 2018*;
- joint income threshold – signposted to section 8 (explained later in the Explanatory Statement);
- lender – a person who carries on a business of making loans;
- mortgage requirements – signposted to section 22 (explained later in the Explanatory Statement);
- new home – a dwelling which meets the requirements of paragraph 40-75(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), excluding a dwelling that, prior to sale, was, or was made available for, rent or lease as commercial residential premises or residential premises (with commercial residential premises and residential premises defined in the GST Act);
- new home contract requirements – signposted to section 23 (explained later in the Explanatory Statement);
- participant – an individual who is a party to an arrangement. Where there are two parties (i.e. two individuals) to an arrangement, they are known as joint participants. The following applies in relation to references to a participant in the Instrument in the case of joint participants:
 - provision refers to a participant giving notice of a matter – one of the joint participants can give notice to Housing Australia on behalf of both participants;
 - provision refers to a participant taking an action (that in law, both participants must take jointly) – both participants must jointly take the action where needed (for example, joint participants could only sell the property by the participants acting jointly); and
 - all other references – each participant in the arrangement.
- participating lender – signposted to section 62 (explained later in the Explanatory Statement);
- participation requirements – signposted to section 28 and Schedule 1 (explained later in the Explanatory Statement);
- price cap – signposted to section 7 (explained later in the Explanatory Statement);
- place – where an arrangement is available to be entered into;
- population – as specified in the most recent release of the publication ‘National, state and territory population’ published by the Australian Statistician on the Australian Bureau of Statistics website, available on 30 June of the previous financial year;

EXPOSURE DRAFT

- purchase price – when referring to house and land packages or separate purchases of land and construction of a dwelling on that land, it is the sum of the land’s purchase price and the contract price to construct the dwelling on the land;
- regional centre – signposted to subsection 7(2) (explained later in the Explanatory Statement);
- relevant property – the residential property which is the subject of an arrangement;
- repayment – a payment made by a participant to decrease the Commonwealth share in relation to the relevant property;
- shared equity scheme – another scheme (outside of Help to Buy) where the Commonwealth, or a State or Territory contributes to the cost of acquiring a residential property, is entitled to a return on the contribution, and secures a return on that contribution by mortgage or other means;
- single – an individual who does not have a spouse or de facto partner;
- single income threshold – signposted to section 8 of the Instrument;
- single parent – a single individual with at least one dependent child;
- Statistical Area Level 4 area – as defined in the Australian Statistical Geography Standard;
- taxable income – as defined in the *Income Tax Assessment Act 1997*;
- the Act – *Help to Buy Act 2024*;
- timeframe requirements – signposted to section 24 (explained later in the Explanatory Statement); and
- used – where an application to enter into an arrangement is approved by Housing Australia.

Price caps

Section 7 of the Instrument sets out the residential property price caps that apply to the program. These price caps restrict the purchase price of the relevant property that may be purchased under Help to Buy. The intention of the price caps is to support applicants to purchase modest homes.

The table at subsection 7(1) contains the price caps that apply in each State as well as the Australian Capital Territory, Northern Territory, Jervis Bay Territory and Norfolk Island, and Christmas Island and Cocos (Keeling) Islands. The price caps have been set having regard to the price of residential property in the different property markets whilst also ensuring that the caps are easy for program applicants to understand. The price caps are also largely consistent with the price caps set for the First Home Guarantee, Family Home Guarantee and the Regional First Home Buyer Guarantee in the Investment Mandate.

EXPOSURE DRAFT

The States are divided into two categories: the first category is the capital city and regional centres, and the second category is the rest of the State. Each State has higher price caps in the capital city and regional centres, and lower caps for other regions, which is reflective of the housing market and differing price points based on location.

The Australian Capital Territory and the Northern Territory are not divided into categories. A single price cap applies to all residential property purchased within each territory.

For the territories of Jervis Bay Territory, Norfolk Island, the relevant price cap is \$550,000, while for Christmas Island and the Cocos (Keeling) Islands, it is \$400,000.

The geographic boundaries of the capital city of a State and the Northern Territory are those set out in the relevant Greater Capital City Statistical Area determined in accordance with Edition 3 of the *Australian Statistical Geography Standard (ASGS) Volume 1 – Main Structure and Greater Capital City Statistical Areas*. Further information about the ASGS is available on the Australian Bureau of Statistics' (ABS) website: www.abs.gov.au. This is consistent with definitions included in the *Housing Australia Investment Mandate Direction 2018* (Investment Mandate) but is updated to include a more recent version of the ASGS.

Regional centres with higher price caps in New South Wales, Victoria and Queensland are also outlined in the table at subsection 7(3) and are based on the Statistical Area Level 4 area set out in the 2021 edition of the ASGS. The regional centres were selected on the basis that they have significantly higher population levels which influence dwelling prices. The price caps for the regional centres are higher than other regional areas as median dwelling prices in these regional centres are typically significantly higher than other regional areas.

Single and joint income thresholds and indexing these income thresholds

The Instrument also includes the income thresholds for applicants and participants to be eligible for the program. Section 8 provides that, in the financial year, the income threshold for a single participant is \$90,000 and, for joint participants, the combined income threshold is \$120,000.

These thresholds are indexed in accordance with section 9. The intention of indexation is to ensure the income thresholds remain current throughout the life of the program.

PART 2 – ENTERING INTO HELP TO BUY ARRANGEMENTS

Division 1 – Introduction

Simplified outline of Part 2

The simplified outline of this Part, in section 11, provides a summary of the Part and describes its purpose. It is intended to assist readers to understand the substantive provisions and is not intended to be comprehensive. There are six Divisions in this Part (including Division 1):

- Division 2 sets out the overarching requirements for entry into Help to Buy arrangements;

EXPOSURE DRAFT

- Division 3 defines the class of individuals with whom Housing Australia can enter into Help to Buy arrangements;
- Division 4 defines the class of properties that can be purchased under a Help to Buy arrangement;
- Division 5 sets out the standards in relation to mortgages, contracts, and timeframes for the construction of new homes; and
- Division 6 covers the ‘Commonwealth share’ in a relevant property, and the circumstances in which the ‘Commonwealth share percentage’ can be adjusted.

Application of Part 2

Section 12 notes that the provisions in Part 2 only apply to the performance of Housing Australia’s functions under the Act in participating States and the Territories. Where a State is a cooperating State or a withdrawn State, the Act does not permit Housing Australia to enter into new arrangements in relation to properties in that State.

Division 2 – When can Housing Australia enter a Help to Buy arrangement?

Housing Australia can only enter arrangement where the Instrument permits

Section 13 states that Housing Australia is only able to enter into arrangements where this is permitted by the Instrument, and these arrangements must contain all necessary terms and conditions to ensure Housing Australia’s compliance with the Instrument. However, provided the arrangement’s terms and conditions are consistent with the Instrument, the Instrument does not limit what terms and conditions may be included in an arrangement. This includes matters which are incidental to the directions outlined in the Instrument, such as the form and detail of application forms or evidence that may need to be provided to justify an exception from eligibility criteria. These matters may be determined by Housing Australia and outlined to each participant as part of the arrangement.

Housing Australia may include standard mortgage obligations in its contractual arrangements with participants, given the Commonwealth’s interest in participants’ homes will be secured through a second-ranking mortgage. Examples of these mortgage obligations that could be included are:

- restrictions on dealing with the property, or lodging a caveat against the property, except as permitted;
- a right to obtain valuations of the property.

Housing Australia may enter arrangements with single or joint applicants

When Housing Australia may enter into an arrangement

Subsection 14(1) provides that Housing Australia may only enter into arrangements where the following steps are followed:

EXPOSURE DRAFT

- the applicant or applicants (for joint arrangements) apply for a place in the Help to Buy program in accordance with the procedures set out by Housing Australia;
- Housing Australia approves the application and this approval is still valid prior to the arrangement being entered; and
- entering the arrangement is consistent with the requirements for allocation of Help to Buy places in Division 2 of Part 5 of the Instrument.

For the avoidance of doubt, joint applications may include individuals in a recognised relationship (for example, a couple that is married or in a de-facto relationship) and individuals in alternative arrangements (for example, two siblings, a parent or guardian and child, or two friends).

Application approval is not valid if the approval has expired or been revoked. Note 1 to subsection 14(1) provides that section 15 covers circumstances in which Housing Australia may revoke application approval before entering an arrangement. Note 2 to subsection 14(1) clarifies that Division 2 of Part 5 affects the timing of when Housing Australia can enter Help to Buy arrangements in particular jurisdictions and provides for the expiry of application approvals in particular circumstances.

Subsection 14(2) outlines the requirements for an application for an arrangement. Applications must be in writing and, if Housing Australia has in writing published on its website an approved form, must be in the approved form. The approved form may specify information and documents that should accompany the form.

Subsection 14(3) provides that applications must be considered by Housing Australia in the order of the date of receipt, subject to all required information to support the application having been provided. This ensures that applications from later applicants are not unfairly considered first and that all applicants get a fair chance to be allocated a place and be considered for entry into the program based on timing of receipt of the applications. For example, if three applications were received one after the other. The first and third application received included all the required information, but the second application received did not include all required information. Housing Australia must consider the first application received then the third application received. The second application received will not be considered until all required information to support the application has been received.

When Housing Australia may approve an application to enter into an arrangement

Subsection 14(4) provides that the following criteria must exist at the time Housing Australia makes a decision to approve or reject an application:

- Housing Australia must be satisfied of all of the following –
 - the vendor of the relevant property will carry out arm's-length dealings with the applicant/s;
 - the mortgage requirements will be met by the settlement date;
 - the relevant property will be adequately insured once purchased;

EXPOSURE DRAFT

- the arrangement relates to the purchase of a whole property (exceptions apply);
- the applicant/s are eligible;
- the relevant property is eligible;
- approving the application is consistent with the requirements for allocation of Help to Buy places in Division 2 of Part 5; and
- for arrangements relating to new homes, Housing Australia must be satisfied that the new home contract requirements will be met by the settlement date and timeframe requirements will be met.

To avoid doubt, it is intended that ‘arm’s-length’ takes its ordinary meaning. This requires that the parties involved in the sale and purchase of the relevant property are unaffiliated and acting in their own interests.

The note to the subsection clarifies that Division 2 of Part 5 outlines when Housing Australia may approve applications in particular jurisdictions.

Circumstances in which Housing Australia may revoke approvals

Section 15 covers Housing Australia’s ability to revoke approvals to enter into Help to Buy arrangements.

Subsection 15(1) provides that Housing Australia may revoke an approval prior to entering the arrangement if any of the above criteria in subsection 14(4) cease to be satisfied. The note to the subsection clarifies that there are circumstances in which Housing Australia must revoke an approval and these circumstances are stated in section 40E. The second note clarifies that this subsection enables approvals to enter into arrangements to be revoked and does not cover situations after an arrangement has already been entered into.

Subsection 15(2) states that if a criterion is not satisfied but the arrangement has been entered into, then the approval cannot be revoked. However, the arrangement may provide Housing Australia with the power to terminate the arrangement because of certain breaches or in particular circumstances. Where the terms of the arrangement provide Housing Australia with this power, paragraph 15(2)(b) of the Instrument provides that section 15 does not limit the operation of these terms.

Extent of Commonwealth contribution – minimum and maximum contributions to purchase price

Subsection 16(1) outlines how much Housing Australia, on behalf of the Commonwealth, can contribute to the purchase price of the relevant property, when entering into a Help to Buy arrangement. For all dwellings purchased under the program, Housing Australia contributes a minimum of 5 per cent of the purchase price of the property. For existing dwellings, Housing Australia’s maximum contribution is 30 per cent of the purchase price of the property. For new homes, Housing Australia can contribute a maximum of

EXPOSURE DRAFT

40 per cent of the purchase price for the home (typically consisting of the contract price for the construction and purchase price for the land).

To ensure that all participants can avoid lenders' mortgage insurance (LMI), which is an additional cost passed onto homeowners who are required to borrow more than 80 per cent of the property's assessed value, Housing Australia must ensure that the Commonwealth's contribution, in addition to the participant's deposit, is at least 20 per cent of the assessed value. This requirement is imposed on Housing Australia in subsection 16(2). As an example, if the participant is contributing 5 per cent of the property price as a deposit (because this is as much as the participant can contribute in their personal and financial circumstances), Housing Australia on behalf of the Commonwealth must contribute at least 15 per cent of the assessed value.

Subsection 16(3) stipulates that the participant must contribute as much as possible for the deposit as can reasonably be required, taking into account their personal circumstances and financial capacity. Housing Australia must also take into account the amount the applicant has requested in their application. The subsection limits the size of the Commonwealth's equity contribution where the participant has clear capacity to put forward a larger deposit. Financial capacity must be considered, but is not determinative of the contribution limit – personal circumstances must also be considered. As an illustrative example, if two individual applicants have the same level of income, expenses and similar personal circumstances, but one of the applicants has significantly more in savings than the other, then that applicant would be expected to contribute more towards the deposit of the property. This would result in Housing Australia providing a larger contribution towards the purchase price for the applicant who had a smaller amount in savings.

In practice, subsections 16(2) and 16(3) mean that Housing Australia must typically expect to only contribute the amount necessary to avoid LMI and guarantee the participant can become a homeowner, whilst managing repayments. The agreed percentage that Housing Australia contributes is therefore ultimately based on the maximum percentage of the purchase price that the participant is able to contribute, taking into account the mortgage the participating lender is willing to offer the participant.

To avoid doubt, the note to subsection 16(3) clarifies that the agreed percentage that Housing Australia contributes must fall within the limits specified in subsection 16(1) at the time the Help to Buy arrangement is entered. However, the percentage may subsequently fall outside of the range in subsection 16(1) as it is possible to vary the percentage of the value of the relevant property to which the Commonwealth is entitled in accordance with subsections 25(3) and (4) on or after settlement.

Adjustments in the Commonwealth share

Section 25 provides that the value of the contribution made by Housing Australia on behalf of the Commonwealth, defined as the 'Commonwealth share', may be adjusted in the future in certain circumstances. Subsection 25(1) states that the Commonwealth share in the relevant property represents the return that the Commonwealth is entitled to under a Help to Buy arrangement in relation to the property. At any particular time, the Commonwealth share can also be expressed as a percentage of the value of the relevant property. This percentage is defined as the 'Commonwealth share percentage'. The Commonwealth share percentage at the time Housing Australia and the participant enters into the Help to Buy arrangement is the agreed percentage (as described in the preceding

EXPOSURE DRAFT

paragraph). The Commonwealth share percentage may be adjusted in accordance with subsections 25(3) and (4).

The note to subsection 25(1) clarifies that the precise monetary value of the Commonwealth share varies depending on the time at which it is calculated, even where the Commonwealth share percentage remains unchanged. If, over the life of an arrangement, there are no special circumstances or repayments made by the participant then the Commonwealth's share percentage is not adjusted in accordance with section 25 and remains the initial agreed percentage by Housing Australia. However, as the value of the relevant property changes with time, so does the precise monetary value of the Commonwealth share.

As an example, a participant purchased a property under Help to Buy with the property purchased for a purchase price of \$500,000 with the Commonwealth contributing \$100,000. The Commonwealth share percentage at the time the Help to Buy arrangement was entered (agreed percentage) was 20 per cent of the purchase price (value of the property upon entry into Help to Buy). A few years later, the property is valued at \$600,000 and the Commonwealth's share percentage remains unchanged. At this point in time, the Commonwealth share in the property is valued at \$120,000. As an alternative example, if the property was valued at \$400,000 a few years after it was purchased, then the Commonwealth share in the property would be valued at \$80,000.

Subsection 25(2) provides that Housing Australia must ensure that each arrangement provides for the Commonwealth share, the Commonwealth share percentage, and the ability for Housing Australia to increase or decrease the Commonwealth share and the Commonwealth share percentage in accordance with section 25. Housing Australia must ensure that the Commonwealth share and Commonwealth share percentage in each arrangement are updated when any such adjustments are made.

Subsection 25(3) requires Housing Australia to ensure that an arrangement enables Housing Australia, on or after settlement, to increase the Commonwealth share percentage without the Commonwealth making any additional financial contributions. The table in subsection 25(3) describes three circumstances where such an increase is permitted.

Table item 1 provides for the situation in which the value of the relevant property for the purpose of settlement, as assessed by the participating lender, is lower than the purchase price, ascertained when the Help to Buy arrangement is entered into. When assessing customers for a home loan, lenders typically value the property being purchased in order to calculate the loan to value ratio (LVR). In some scenarios, the participating lender may value the property at lower than its purchase price. In this circumstance, to ensure the Commonwealth's share is preserved, the Commonwealth share percentage may be increased so that the final Commonwealth share percentage is based on the initial monetary contribution of the Commonwealth as a proportion of the final valuation. The example in subsection 25(3) illustrates this as the Commonwealth's share percentage is calculated as \$150,000 divided by the final valuation of \$475,000, rather than the original calculation of \$150,000 divided by \$500,000. This adjustment increases the Commonwealth's share from 30 per cent to 31.58 per cent and ensures the Commonwealth does not suffer a loss in relation to its original contribution, while also ensuring the participant does not have to make an additional, potentially significant, contribution at short notice.

EXPOSURE DRAFT

Table item 2 in subsection 25(3) sets out circumstances that can result in an increase in the Commonwealth share percentage. This is where Housing Australia considers that the property's value has reduced, or is likely to reduce, as a result of a participant's negligence, fraudulent behaviour, or other unreasonable, deliberate or reckless act or omission. In this case, a valuation is carried out, and the Commonwealth share is increased in order to preserve what would have been the value of the Commonwealth share if not for the above mentioned act or omission.

This direction has been provided to ensure that, although the object of the Act is to improve housing outcomes for Australians, the Commonwealth can also protect its financial interests. Any increase in the Commonwealth share is assessed based on objective criteria by Housing Australia to ensure that it is reasonable and necessary to preserve the Commonwealth's financial interest.

The Commonwealth share percentage must be reduced by Housing Australia where the participant:

- is required to make repayments of the Commonwealth share due to a breach of ongoing conditions imposed on the participant (refer to section 36);
- willingly makes voluntary early repayments (refer to section 42); or
- makes qualifying home improvements which add value to the property (refer to section 60).

In these situations, the reduction in the Commonwealth share is mandatory as there have been repayments made directly by the participant to Housing Australia, or the participant has followed the necessary procedures and made home improvements at their own cost, which increase the property's value. Mandating the decrease in the Commonwealth share recognises that these circumstances necessitate a reduction in the Commonwealth's equity as the participant has taken steps to increase their own equity share in the property and is therefore entitled to a greater return when the property is sold.

Division 3 – Who is an eligible applicant?

Eligible applicant

Section 17 sets out that an applicant or joint applicants may only be approved by Housing Australia to participate in the Help to Buy program if at that time:

- they are an Australian citizen aged 18 years or over;
- they satisfy the income test set out in section 19:
 - where the applicant is an individual, their taxable income in the income year for their most recent income tax assessment preceding their application is less than or equal to the single income threshold; or
 - where the applicants are joint, their combined taxable income in the income year for their most recent income tax assessment preceding their application is less than or equal to the joint income threshold;

EXPOSURE DRAFT

- they satisfy the financial capacity test set out in section 20:
 - Housing Australia considers that based on the financial capacity of the applicant or joint applicants, which includes their mortgage serviceability and the value of their assets at the time and any other likely assistance, of a material nature, that may be provided by the Commonwealth, or a State or a Territory, it is unlikely that they could acquire the relevant property without assistance of the Help to Buy program.
 - As an illustrative example of the financial capacity test, joint applicants want to purchase a property under Help to Buy for a purchase price of \$600,000. They have a deposit of \$50,000 and a participating lender has assessed that they have a borrowing capacity of \$450,000. Housing Australia would consider that their combined deposit and borrowing capacity are insufficient to enable them to purchase the property in their own right, without the assistance of the Commonwealth's contribution under the Help to Buy program. In this scenario, the joint applicants would satisfy the financial capacity test;
- Housing Australia is satisfied that they will treat the relevant property as their principal place of residence;
- they are not also receiving assistance from a home-buyer guarantee that is funded or provided by a Commonwealth entity or company, a shared equity scheme, or State or Territory loan or guarantee to support home ownership (this excludes home buyer assistance such as first home owner grants or tax concessions, or the First Home Super Saver scheme);
- They do not hold a disqualifying property interest and Housing Australia is satisfied that does not section 18 apply ;
- Housing Australia is satisfied that they will provide a deposit of at least 2 per cent of the purchase price for the relevant property and cover any additional costs associated with purchasing the property; and
- Housing Australia is satisfied that they will be the only registered owners of the property upon settlement.

Exception to requirement not to hold interest in real estate

Section 18 provides that applicants may hold a disqualifying property interest in two circumstances.

- First, where the applicant is a single parent who holds a disqualifying property interest as a joint tenant or tenant in common for the relevant property but intends to become the sole registered owner of the relevant property through the Help to Buy program.
- Second, where the applicant is a single parent who holds a disqualifying property interest but intends to cease holding that interest within four weeks of becoming the registered owner of the relevant property under the Help to Buy program. For example, through the sale or disposal of the disqualifying property interest within the

EXPOSURE DRAFT

four week period. Ceasing to hold a disqualifying property interest means that settlement has occurred on that previous property.

These exceptions assist in cases where, due to a divorce or other relationship breakdown, single parents or legal guardians with at least one dependent child are able to retain the family home to maintain continuity and minimise disruption for the family or start fresh in a new location without requiring a rental period in between homes. The term single parent extends to a single person who is a legal guardian of a child as the child is a dependant child of the person.

This eligibility criteria ensures that only low and middle-income Australians who need assistance under the Help to Buy program can be considered as participants. This is balanced with the need to ensure that participants are required to contribute a minimum of two per cent to the deposit, not receive other government housing assistance (except where allowed under the Instrument), and treat the property as their principal place of residence, as opposed to an investment property. These factors ensure only Australians who genuinely require assistance to enter the housing market are approved as participants under the Help to Buy program.

Division 4 – What is an eligible property?

Eligible property

If a person is an eligible participant, the property they choose must also be eligible for the participant to be approved for entry into the program. Section 21 provides that a property is eligible if it is either an existing dwelling or a new home, and the purchase price does not exceed the relevant price cap for the location in which the property is based (see section 7 for price caps). To avoid doubt, the property must also be located in a Territory or a participating State.

Eligible properties are those where the person owns the dwelling, and the land the dwelling is affixed to (including through strata title). This means that new homes supported under the Help to Buy program include off-the-plan dwellings, house and land packages, land and separate contract to build home, and residential homes that have never been lived in. Existing dwellings supported under the program include residential houses, apartments and townhouses where people have previously lived in these dwellings. Examples of properties that are not eligible properties are caravans (including caravans in caravan parks) and accommodation in retirement villages.

Division 5 – Contract, mortgage and timeframe requirements

Mortgage requirements

Section 22 sets out the mortgage requirements for a proposed Help to Buy arrangement. The purchase of the property must be financed by a single mortgage with a participating lender. This does not preclude participants from splitting their mortgage with the participating lender into a variable rate loan and a fixed rate loan (or a combination of both), should they wish to do so. This also does not take into account the mortgage that secures the Commonwealth's share in the property, which the applicant (or joint

EXPOSURE DRAFT

applicants) must grant in favour of the Commonwealth. The applicant (or joint applicants) must also be the counterparties to the mortgage agreement. The applicant (or joint applicants) must be the only registered owner (or owners) of the property. The term of the mortgage must not exceed 30 years. The mortgage must be a variable or fixed rate loan (or a combination of both), and not a line of credit. The applicant (or joint applicants) must make scheduled payments of both the principal and interest throughout the life of the mortgage unless the interest-only payments are made during the construction of a new home, or in response to financial hardship.

New home contract requirements

Section 23 provides for additional requirements for a contract relating to the construction of a new home. These additional requirements reflect the differences between these dwellings and existing dwellings. These requirements are intended to support the integrity of the program. The additional requirements are that the construction contract must be a fixed-price contract that does not exceed the price cap for the area in which the property is being built; the builder must hold all necessary licences and registrations and insurances to perform the work (including insurance for the construction of the new dwelling); the contract must be entered at arm's-length; and the construction contract must require the builder to fully complete the dwelling; and the dwelling must be certified as fit for occupation.

Timeframe requirements

Section 24 establishes timeframes in which the construction of a new dwelling must occur. The provision differentiates off-the-plan dwellings from other newly constructed dwellings. Construction of an off-the-plan dwelling must be commenced before the parties enter into the contract for sale, and the settlement must be no later than 90 days after the application to enter into a Help to Buy arrangement is approved. The timeframe requirements are consistent with the timeframe requirements and treatment of off-the-plan dwellings under the Home Guarantee Scheme. The 90-day period for settlement requirement ensures that the property is substantially complete and allows reasonable time for the issuance of titles, for example, to enable settlement to occur.

For all other newly constructed dwellings, the construction of the dwelling must commence within 12 months of the day on which the applicant becomes the owner of the property to which the arrangement relates. This is referred to as the 'transfer date'. Further, the construction must be completed within 24 months of the transfer date.

These requirements seek to ensure that places for Help to Buy are not provided to an applicant or joint applicants where settlement of the purchase or construction of the dwelling will not be completed in a timely manner. However, subsection 24(2) provides that Housing Australia can adjust these timeframes if it is satisfied that it is necessary or appropriate to adjust them based on a consideration of the specific circumstances of the case. A circumstance that might give rise to an adjusted timeframe is unavoidable construction delays outside of the control of the purchaser. If Housing Australia agrees to adjust the timeframes, it must provide the applicant with written notice of its decision.

Division 6 – Securing Housing Australia's entitlement to a return

EXPOSURE DRAFT

Section 25 defines the ‘Commonwealth share’ in relation to a property purchased under the program. The Commonwealth share is the return to which the Commonwealth is entitled under the arrangement concerning that property. The Commonwealth share is expressed as a percentage of the value of the property from time to time. The percentage is defined as the ‘Commonwealth share percentage’. This provision is discussed in greater detail above.

PART 3 – PARTICIPATING IN THE HELP TO BUY PROGRAM

Division 1 – Introduction

Simplified outline of Part 3

The simplified outline of this Part, in section 26, provides a summary of the Part and describes its purpose. It is intended to assist readers to understand the substantive provisions and is not intended to be comprehensive.

Application of Part 3

Section 27 provides that the provisions in Part 3 only apply to the performance of Housing Australia’s functions under the Act in respect to:

- participating States and the Territories (see section 10 of the Act); and
- cooperating States (see section 15 of the Act).

Division 2 – Participation requirements

Arrangements must require compliance with participation requirements

Section 28 provides that Housing Australia must ensure that a Help to Buy arrangement requires each program participant to comply with the rules set in Schedule 1 to the Instrument for the period of the arrangement. To avoid doubt, these rules do not apply where the arrangement has been brought to an early end (for example, where the property has been sold by the participant or where the participant has voluntarily repaid the Commonwealth share in full). These rules are defined as the ‘participation requirements’.

Note 1 clarifies that the Instrument does not impose legal obligations on program participants and that the participation requirements will only have legal force by virtue of the arrangement. The participation requirements are intended to be reflected in Housing Australia’s contract with participants (i.e. the arrangement when it is entered into). Note 2 identifies that the participation requirements do not relate to the income thresholds but that Housing Australia is required to impose consequences where a participant exceeds the income threshold by virtue of Division 4 of Part 3 of the Instrument (see below for discussion of Division 4 of Part 3).

Exceptions to sale of existing property requirement

Section 28A provides that Housing Australia must ensure that an arrangement allows a participant to not comply with the participation requirement under clause 1 of schedule 1, which provides that a single parent must not continue to hold a disqualifying property interest more than four weeks after becoming the registered owner of a property under the

EXPOSURE DRAFT

Help to Buy Scheme. This would be on the grounds that the participant is experiencing hardship or on other compassionate grounds. In particular, Housing Australia can extend the four-week time period if they consider this appropriate considering the hardship or compassionate grounds of the participant. However, participants must still provide satisfactory evidence demonstrating the existence of acceptable hardship or compassionate grounds to enable Housing Australia to provide the extension to the period.

Exceptions to the principal place of residence requirement: all properties

Section 29 includes exceptions to the principal place of residence requirement within the participation requirements. These exceptions can apply to all properties – i.e. existing dwellings and new dwellings constructed. The exceptions allow Housing Australia to exempt a program participant from clause 3 of Schedule 1 to the Instrument, which requires a program participant to live at the property, when it is satisfied that it is impractical for the participant to meet that requirement. Circumstances that give rise to the exemption are:

- The program participant is a member of the Australian Defence Force (ADF) and is required to live in a different property due to a posting. Naval Reserve, Army Reserve, and Air Force Reserve members are not covered by this exemption.
- The program participant is required by their employer to relocate as part of their employment, and the participant has been employed by that employer for at least 12 months. Housing Australia may grant the exemption despite the participant having worked for the employer for less than 12 months if it is satisfied that the lesser period is appropriate, having regard to the nature of the ongoing employment relationship between the parties.
- The program participant, or a person for whom a participant exercises carer responsibilities, is suffering from a serious illness.
- Housing Australia can also exempt a participant for other compassionate reasons.

Subsection 29(2) allows Housing Australia to extend the period of the exemption in relation to ADF members for such period as it considers appropriate. Housing Australia may then extend that period.

Subsection 29(3) establishes limitations on the length of time that the exemption can be in place for participants other than ADF members. In the case of exempting non-compliance due to employment relocation, Housing Australia may extend the period by up to two further 12-month periods. In all other cases, Housing Australia may extend the period by one or more 12-month periods.

To manage the integrity of the program, subsection 29(4) prohibits Housing Australia from granting an exemption unless the participant has provided satisfactory evidence justifying their non-compliance. Further, subsection 29(5) allows Housing Australia to, at any time,

EXPOSURE DRAFT

require a participant to comply with the principal place of residence requirement, if it is satisfied that the reasons for non-compliance no longer apply.

Delayed application of principal place of residence requirement: new homes

Section 30 provides an exemption from the principal place of residence requirement for persons who have Help to Buy arrangements relating to the construction of new homes.

A participant does not breach clause 3 in Schedule 1 of the participation requirements if the property is unoccupied to facilitate construction taking place; the participant does not own the property that is their principal place of residence during the construction period; and the participant begins to treat the property as their principal place of residence within three months of the construction being completed. This is to encourage participants to move into their new properties as soon as possible.

Borrowing additional funds under a mortgage from participating lenders

Section 31 relates to clause 4 of Schedule 1 which prohibits a participant from borrowing additional funds under their current mortgage from their participating lender or taking out a new and larger mortgage with a participating lender to discharge the mortgage with their current participating lender unless they notify Housing Australia. Subsection 31(1) requires Housing Australia to ensure that arrangements provide that participants may only borrow additional funds from a participating lender (that is, increase the size of their mortgage) for the purpose of:

- making a repayment to reduce the Commonwealth share; or
- maintenance and capital expenditure on the property (including home improvements).

The intent of this requirement is to support participants repay the Commonwealth share, if their circumstances permit. Where participants have increased financial capacity and are seeking to increase their mortgage, they should prioritise repaying the Commonwealth share.

Note 1 to the provision reminds readers that there are other limits on borrowing additional funds from participating lenders in clause 5 of Schedule 1.

Note 2 to the provision clarifies that a participant can take out a new mortgage with a participating lender, or with their current participating lender, if refinancing does not result in a larger mortgage.

Division 3 – Monitoring participants' compliance

Housing Australia must monitor participants' compliance

Section 32 requires Housing Australia to monitor participants' compliance with the arrangement for the duration of the arrangement.

Housing Australia must conduct five-yearly reviews

Section 33 imposes an additional requirement for Housing Australia to conduct a review of each arrangement every five years. The timing of the five-year review is based on when the

EXPOSURE DRAFT

arrangement was entered into. As part of this review, in addition to determining whether a participant met the participation requirements, Housing Australia must determine whether a single participant's taxable income exceeded the single income threshold (see section 8) for each of the two most recent income years preceding the review where an income tax assessment has been given to the participant by the Commissioner of Taxation.

Similarly, for joint participants, Housing Australia must determine whether the joint applicant's combined taxable income exceeded the joint income threshold (see section 8) for each of the two most recent income years preceding the review where an income tax assessment has been given to the participants by the Commissioner of Taxation. The requirement to consider the taxable income for the two most recent income tax assessments balances maintaining the integrity of the program while acknowledging that a participant's taxable income can vary year-to-year, depending on their personal circumstances. This affords greater fairness to program participants as they will not be considered in breach of the arrangement if they exceed the relevant income threshold in one of the financial years being considered.

Housing Australia must review arrangement where mortgage with a participating lender is discharged

Section 34 requires Housing Australia to review the arrangement when a participant/s discharges their mortgage with their participating lender. Specifically, Housing Australia must determine, within a reasonable time, whether the participant/s has met the participation requirements, and whether the participant/s should be required to undergo the assessment and repayment process (see section 36). Housing Australia is not required to undertake this review if the participant (or participants) have repaid the Commonwealth share in full or discharged the mortgage by refinancing with another participating lender.

Division 4 – Managing participants' compliance

How Housing Australia is to respond where review identifies potential non-compliance

Subsection 35(1) requires Housing Australia to take action in accordance with section 36 if, upon undertaking a review (under sections 33 or 34), it is satisfied that a participant's or joint participants' taxable income in the two financial years preceding the review exceeded the relevant income thresholds outlined in section 33.

Subsection 35(2) further provides Housing Australia with the power to take action in accordance with section 36 if it is satisfied that the participant has, at any time, not met a participation requirement, and it considers it appropriate to take action under the arrangement in accordance with section 36.

Subsection 35(3) allows Housing Australia to make provision in an arrangement to impose other compliance measures, except to the extent that the other compliance measure or measures would be inconsistent with the Instrument.

Housing Australia may require repayment and terminate arrangement

Section 36 supports the integrity of Help to Buy by providing a process to manage the exit of participants from the program, where they become ineligible and their financial capacity

EXPOSURE DRAFT

permits. This process provides two different pathways, depending on the size of the Commonwealth share.

Assessment of capacity to repay Commonwealth share

Participants must obtain an assessment of their capacity to repay the Commonwealth share, and provide this assessment to Housing Australia when:

- Housing Australia is satisfied that the participant has gone over the income thresholds; or
- Housing Australia is satisfied that the participant has breached one or more of the participation requirements, and Housing Australia considers it appropriate for the participant to obtain an assessment;
- Housing Australia considers it appropriate when the participant has discharged their mortgage with a participating lender; and
- Housing Australia requires the participant to come back for subsequent assessments under the circumstances specified at paragraph (1)(d) or subsections (5), (6), (9) or (12) of section 36.

Participants can obtain this assessment from their current participating lender or another participating lender.

Under subsection 36(2), it is intended that the lender makes the following assessment:

- Where the Commonwealth's share is greater than 5 per cent of the value of the property, the lender assesses either that the participant –
 - has the capacity to repay a minimum amount of 5 per cent of the property value (as assessed at the time of the assessment); or
 - does not have the capacity to repay a minimum amount of 5 per cent of the property value (as assessed at the time of the assessment).
- Where the Commonwealth's share is equal to or less than 5 per cent of the value of the property, the lender assesses either that the participant –
 - has the capacity to repay the Commonwealth share of the property value (as assessed at the time of the assessment) in full; or
 - does not have the capacity to repay the Commonwealth share of the property value (as assessed at the time of the assessment) in full.

Housing Australia has the ability to determine when an assessment should occur.

Period for further assessment

EXPOSURE DRAFT

Under subsection 36(3), Housing Australia has flexibility in determining when participants must obtain subsequent assessments of their capacity to make a repayment. In determining the frequency of assessments, Housing Australia must consider:

- the participant's personal circumstances and financial capacity; and
- the reason or reasons the participant was most recently required to obtain an assessment.
 - For example, if the participant exceeded the income threshold by a significant amount, it is expected that Housing Australia would require the participant to obtain another assessment sooner compared to a participant who exceeds the threshold by a small amount.

Housing Australia cannot require a participant to obtain a new assessment within one year of the last assessment if the assessment is required due to subsections 36(5), (6), (9) or (12).

Housing Australia to require repayment of Commonwealth share

Every arrangement that Housing Australia enters into must require a participant to repay the Commonwealth share in full or in part in any of the situations outlined below.

Commonwealth share greater than 5% of value of the property

Where the Commonwealth's share is **greater than 5 per cent** of the value of the property and the lender assesses that the participant **has the capacity to repay** a minimum amount of 5 per cent of the property value (as assessed at the time of the assessment), and Housing Australia is satisfied that the assessment has been properly made:

- Housing Australia must require the participant to repay a minimum amount of 5 per cent of the property value (as assessed at the time of the assessment and rounded to the nearest \$1,000) within 90 days of the date the lender's assessment was completed.
 - The participant could repay an amount of more than '5 per cent of the property value' if the participant chooses voluntarily to do this (the participant only needs to pay a minimum of '5 per cent of the property value').
 - Participants will not be required by Housing Australia to make the repayment if doing so would mean that they need to pay LMI, but are permitted to do so if they wish (as outlined in subsection 36(7)).
- Once a participant makes a repayment, Housing Australia is to recalculate the Commonwealth's share of the relevant property. Where the Commonwealth share is greater than 0 per cent, Housing Australia must direct a participant to obtain another assessment from a participating lender in a particular timeframe (set at Housing Australia's discretion – further information above in subsection 36(3)). Where the Commonwealth share is 0 per cent, Housing Australia must terminate the Help to Buy arrangement.

EXPOSURE DRAFT

Where the Commonwealth's share is **greater than 5 per cent** of the value of the property and the lender assesses that the participant **does not have the capacity to repay** a minimum amount of 5 per cent of the property value (as assessed at the time of the assessment), and Housing Australia is satisfied that assessment has been properly made, Housing Australia must require the participant to obtain another assessment from a participating lender in a particular timeframe (set at Housing Australia's discretion – further information above in subsection 36(3)). For clarity, in this scenario, the participant does not need to make a repayment.

Commonwealth share equal to or less than 5% of value of property

Where the Commonwealth's share is **equal to or less than 5 per cent** of the value of the property, the lender assesses that the participant **has the capacity to repay** the Commonwealth share of the property value (as assessed at the time of the assessment) in full, and Housing Australia is satisfied that assessment has been properly made:

- Housing Australia must require the participant to repay the Commonwealth share (as assessed at the time of the assessment) in full within 90 days of the date the lender's assessment was completed; and
 - To avoid doubt, participants will not be required by Housing Australia to make the repayment, if doing so would mean that they need to pay LMI, but are permitted to do so if they wish.
- Once a participant repays the Commonwealth share in full, Housing Australia must terminate the Help to Buy arrangement.

Where the Commonwealth's share is **equal to or less than 5 per cent** of the value of the property and the lender assesses that the participant **does not have the capacity** to repay the Commonwealth share of the property value (as assessed at the time of the assessment) in full, and Housing Australia is satisfied that assessment has been properly made. Housing Australia must require the participant to obtain another assessment from a participating lender in a particular timeframe (set at Housing Australia's discretion – further information above at subsection 36(3)). For clarity, in this scenario, the participant does not need to make a repayment.

Housing Australia may not require repayment

Under subsections 36(11) and (12), Housing Australia may temporarily not enforce requiring a participant to make a repayment if Housing Australia is satisfied it is reasonable given the circumstances, which Housing Australia can determine while considering the following matters in making this decision:

- the participant's personal circumstances and financial capacity; and
- the reason or reasons the participant was most recently required to obtain an assessment.

EXPOSURE DRAFT

- For example, if the participant exceeded the income threshold, it is expected that Housing Australia is more likely to waive the requirement if a participant's income had exceeded the income threshold by a small amount, compared to if the participant's income had exceeded the threshold by a significant amount.

Under subsection 36(12), where Housing Australia does not enforce a requirement for a participant to repay, it must require the participant to obtain a further assessment from a participating lender of their capacity to repay the Commonwealth share within 12 months, subject to Housing Australia's ability to alter the period for further assessment under subsection 36(3). Information about the timing of the new assessment is provided in subsection 36(3), but it cannot be within one year of the last assessment.

Division 5 – Varying arrangements

The purpose of Division 5 is to allow Housing Australia to vary certain aspects of a shared equity arrangement with a participant or joint participants.

Section 37 allows Housing Australia to add or remove joint participants to any arrangement. However, an arrangement cannot have more than two participants or have all of the original participants removed. This provides flexibility to enable an arrangement to continue despite participants changing personal circumstances (for example, a single participant marries or enters into a de-facto relationship, and the new partner seeks to join the arrangement).

Under subsection 37(1), Housing Australia cannot vary an arrangement so that there are more than two participants. Under subsection 37(2), any additional joint participants must also satisfy the eligibility criteria to ensure the integrity of the program.

Where an arrangement is varied to remove a participant, thus leaving a single participant, Housing Australia must be satisfied that a participating lender has determined that the single participant is able to meet their obligations under the mortgage with the lender. Housing Australia may also vary an arrangement to remove a participant if it is necessary to do so to comply with a court order.

Subsection 37(4) provides that these eligibility assessments do not apply if an arrangement needs to be altered due to the death of a participant. This circumstance is covered by section 44 of the Instrument.

If a program participant varies a construction contract, or enters into a replacement construction contract, Housing Australia cannot contribute more than 40 per cent of the original purchase price. However, if Housing Australia initially agreed to contribute an amount less than 40 per cent to the original contract, it is permitted to contribute additional amounts to the varied or replacement contract provided its total contribution (initial plus additional contribution) does not exceed 40 per cent of the original purchase price.

- For example, if Housing Australia agreed to support a participant by providing 35 per cent of the purchase price of \$500,000, which is \$175,000, but the construction contract is subsequently varied and the purchase price is now \$600,000, Housing Australia is permitted to contribute an additional amount of up to \$25,000. In this case, Housing Australia's total contribution would be \$200,000, which is 40 per cent of the original \$500,000 purchase price.

EXPOSURE DRAFT

- This means that a participant may be required to pay lenders' mortgage insurance, should the change in valuation result in the Commonwealth's contribution plus the participant's deposit being less than 20 per cent of the property's value.

Division 6 – Terminating arrangements in specified circumstances

Section 39 requires Housing Australia to ensure that the arrangements with participants allow it to terminate arrangements in particular circumstances.

Subsection 39(3) provides that the circumstances in subsections 39(1) and (2) are not exhaustive and Housing Australia can include other terms and conditions in a Help to Buy arrangement to terminate the arrangement. For the avoidance of doubt, section 39 does not require Housing Australia to terminate an arrangement where one of the circumstances listed in section 39 occurs, only that Housing Australia must ensure that the arrangements with participants can be terminated if one of the listed circumstances occur.

The specific termination grounds that Housing Australia must ensure are in Help to Buy arrangements are:

- Before the settlement date, Housing Australia must ensure that a Help to Buy arrangement can be terminated if:
 - A participant is not an eligible applicant (under section 17 of the Instrument) as a result of a change of circumstances (paragraph 39(1)(a)). For example, Housing Australia identifies that a participant holds a disqualifying property interest before the settlement date. In such a case, Housing Australia must ensure that the contractual arrangements allow it to terminate the Help to Buy arrangement prior to this date.
 - Housing Australia is no longer satisfied that the mortgage requirements (under section 22 of the Instrument) or new home contract requirements (under section 23 of the Instrument) will be met by the settlement date (paragraph 39(1)(b)). For example, the contract for a construction of a new home has not been entered on an arm's-length basis. In such a case, Housing Australia must ensure that the contractual arrangements allow it to terminate the Help to Buy arrangement prior to the settlement date.
- At any time, Housing Australia must ensure that a Help to Buy arrangement can be terminated if:
 - Housing Australia is no longer satisfied that the timeframe requirements (see section 24 of the Instrument) will be met, or if those timeframe requirements have not been met. For example, Housing Australia has an arrangement with a participant who has purchased a house and land package. The participant became the registered proprietor of the land on 1 July 2025 (transfer date). However, more than 12 months have lapsed since the transfer date and construction of the dwelling has not yet commenced. In such a case, Housing Australia must be able to terminate the Help to Buy arrangement. It is important to note that subsection 24(2) provides Housing Australia with the power to

EXPOSURE DRAFT

extend the timeframe requirements, where it is satisfied it is necessary or appropriate to do so.

- Paragraph 39(2)(c) further requires Housing Australia to ensure that a Help to Buy arrangement can be terminated at any time if Division 2 of Part 5 would require the Help to Buy arrangement to be terminated. Subsection 52(2) in Division 2 of Part 5 sets out the actions required when a State ceases to be a participating State. Paragraph 52(2)(b) provides that Housing Australia must terminate a Help to Buy arrangement where Housing Australia entered the arrangement in relation to a property located in the State, but settlement has not been completed at the withdrawal date (that is, the date on which the State ceased to be a participating State).

PART 4 – EXITING THE HELP TO BUY PROGRAM

Division 1 – Introduction

The simplified outline of this Part, in section 40, provides a summary of the Part and describes its purpose. The Part covers the manner in which participants exit the program. However, readers should rely on substantive provisions as the outline is not intended to be comprehensive.

Section 41 provides that the provisions in Part 4 only apply to the performance of Housing Australia's functions under the Act in respect to:

- participating States and the Territories (section 10 of the Act); and
- cooperating States (section 15 of the Act).

Division 2 – Exiting the program

Housing Australia must allow voluntary early repayments

Subsection 42(1) provides that Housing Australia is responsible for ensuring that every Help to Buy arrangement permits a participant to make one or more voluntary early repayments, where each repayment amount would:

- (rounded to the nearest \$1,000) decrease the Commonwealth share percentage by at least 5 per cent of the value of the relevant property as at the time of the repayment (for example from 30 per cent to 25 per cent of the value of the property); or
- fully repay the Commonwealth share (as valued at the time of repayment).

As explained in the note to subsection 42(1), repayment is defined as a payment made by a participant in a Help to Buy arrangement to lower the Commonwealth share in respect of the relevant property (see section 5 of the Instrument).

The note further clarifies that section 25 defines Commonwealth share, and section 58 provides how Housing Australia ascertains the value of a relevant property. In accordance

EXPOSURE DRAFT

with sections 25 and 58, Housing Australia must value the relevant property where the participant wants to make a voluntary repayment.

Accordingly, subsection 42(2) provides that Housing Australia must ensure that every Help to Buy arrangement contains terms and conditions that permit Housing Australia to require the participant to pay the cost of obtaining any valuation, and any other administrative costs associated with the repayment.

Housing Australia must allow the relevant property to be sold

Section 43 provides that Housing Australia must ensure that every Help to Buy arrangement allows the participant to sell the property, at any time, subject to the following conditions:

- the participant must provide Housing Australia written notice of the sale immediately after the parties enter into the sales contract;
- Housing Australia is satisfied that the contract of sale has been entered into on an arm's length basis; and
- the participant must bear the costs of obtaining any valuation, and any other administrative costs associated with the sale.

Arm's length basis should be construed in terms of its ordinary meaning, being a transaction involving unaffiliated parties that are acting independently and in their own interests.

Options for estate arrangements

Section 44 sets out how Housing Australia is to manage Help to Buy arrangements where participants in a Help to Buy arrangement have died.

Where a sole participant has died or both participants (or one or both joint tenants or tenants in common) have died, and one or more persons other than the surviving participant inherit the deceased participant's interest in the property, subsections 44(5) provides that Housing Australia must recover the Commonwealth share (as valued at the time it is recovered) within:

- two years of the date of the last participant's death (or the sole participant's death); or
- a longer period that Housing Australia considers reasonable, for dealing with and assisting participants experiencing hardship.

The recovery of the Commonwealth share within a reasonable period of a participant's death ensures that the benefit of the Commonwealth's equity interest in the dwelling does not continue to be available for an extended time for subsequent owners of the property. The initial limit of two years aligns with the capital gains tax exemption that beneficiaries receive upon inheriting a principal place of residence.

EXPOSURE DRAFT

For the avoidance of doubt, subsection 13(2) obliges Housing Australia to ensure that terms and conditions are contained in a Help to Buy arrangement that allow it to comply with the requirements of the Instrument. This includes ensuring that the terms and conditions permit it to comply with the requirements in subsection 44(1).

Subsections 44(2) and (4) include an exception to the requirement to recover the Commonwealth share upon the death of participants. This is where:

- the beneficiary otherwise referred to as a successor (a beneficiary of the estate of one or both of the deceased participants) or the beneficiaries (two beneficiaries jointly) inherit the property;
- each beneficiaries applies to be accepted as a participant in the Help to Buy arrangement where the application is in the manner and form required by Housing Australia;
- the following requirements (see section 17 regarding eligible applicants) are met by each beneficiary at the time of the application –
 - the beneficiaries are an Australian citizen aged 18 years or over;
 - the beneficiaries satisfy the income test set out in section 19:
 - : where there is one beneficiary, their taxable income for the income year of their last income tax assessment preceding the lodgement of their application is less than or equal to the single income threshold;
 - : where there are two beneficiaries, their combined taxable income for the income year of their last income tax assessment preceding the lodgement of their application is less than or equal to the joint income threshold;
 - the beneficiaries satisfy the financial capacity test set out in section 20:
 - : Housing Australia considers that based on the beneficiary's (or beneficiaries') financial capacity, which includes their mortgage serviceability and the value of their assets at the time, it is unlikely that they could acquire the relevant property without assistance of the Help to Buy program; will live in the relevant property as their principal place of residence;
 - the beneficiaries are not receiving assistance from a home-buyer guarantee that is funded or provided by a Commonwealth entity or company, a shared equity scheme, or State or Territory loan or guarantee to support home ownership (this excludes home buyer assistance such as first home owner grants or tax concessions, or the First Home Super Saver scheme); and
 - the beneficiaries do not hold a disqualifying property interest (see section 18 for exceptions); and
- Housing Australia agrees to substitute each beneficiary as a party to, and participant in, the Help to Buy arrangement in relation to the inherited property.

EXPOSURE DRAFT

In this case the Commonwealth share is not recovered and the beneficiary or beneficiaries become participants in the Help to Buy arrangement instead of the deceased prior participants. The beneficiaries must bear the administrative costs of the substitution. There is still a limit of two participants in the program with respect to one property. This is because administering the program with multiple beneficiaries inheriting one side of the Help to Buy place could become unwieldy and complex.

Where a participant (who owns the property with another participant as tenants in common) has died and the surviving participant inherits the deceased participant's interest in the property, the surviving participant becomes the sole participant in the arrangement.

Subsection 44(6) provides that the beneficiary must pay any other administrative costs associated with their substitution as participants in lieu of the deceased person or persons.

PART 5 – MISCELLANEOUS

Division 1 – Introduction

The simplified outline Part 5, in section 45, provides a summary of the Part and describes its purpose. Part 5 sets out the allocation of Help to Buy places across the participating jurisdictions. The Part also covers miscellaneous matters relevant to the administration of the program, including Housing Australia's ability to charge fees under Help to Buy arrangements. However, readers should rely on substantive provisions as the outline is not intended to be comprehensive.

The provisions in Part 5 are relevant to the performance of Housing Australia's functions under the Act in respect to participating States and the Territories (see section 10 of the Act). Some of these provisions are also relevant to the performance of Housing Australia's functions under the Act in respect to cooperating States (see section 15 of the Act).

Division 2 – Allocating Help to Buy places

Division 2 provides directions for the allocation of places in the Help to Buy program.

Section 46 of the Instrument provides that Division 2 applies to the performance of Housing Australia's functions in relation to the Territories and participating States. This is consistent with Housing Australia being unable to allocate places in the Help to Buy program in states that are cooperating States or withdrawn States.

Allocation in the first year of the program

Subsection 48(1) establishes that there are 10,000 places available in the 2024-25 financial year. Subsection 48(2) provides that places are allocated between participating States and the Territories according to the following framework:

- each participating State and all Territories are allocated a number of places on 1 July 2024; and

EXPOSURE DRAFT

- each State that is not a participating State on 1 July 2024 but becomes a participating State before 1 March 2025 is allocated a number of places on the day it becomes a participating State.

The note to subsection 48(2) clarifies that the section operates subject to section 52, which prevents places from being allocated in certain circumstances once a participating State has given notice of its intention to cease participating.

Subsection 48(3) outlines the formula for determining the allocation of places for a participating State and all Territories in the first financial year of the program – that being the 2024-25 financial year. The formula is:

$$10,000 \times \frac{\textit{population of Territory or participating State for the financial year}}{\textit{population of Australia for the financial year}}$$

If the result of the formula is not a whole number, the number is rounded down to the nearest whole number. For example, where the population of a participating State or Territory is 2.5 million and the total population of Australia is 25 million, the participating State or territory would receive $10,000 \times \frac{2,500,000}{25,000,000} = 1,000$ places in the first year of the Help to Buy program.

Section 49 deals with committing and using places in the Help to Buy program in the first financial year of the program. Subsection 49(1) provides that once a place (which is defined in section 47 to be the opportunity to enter into an arrangement) has been allocated to a particular State or Territory, Housing Australia may, on or after the allocation date, commit or use (which note 1 clarifies refers to Housing Australia approving an application to enter into an arrangement) the place for an arrangement in respect of property in that State at any time before 1 March 2025. This enables Housing Australia to complete its allocation per the formula in subsection 48(3) for places for participating States and all the Territories.

However, in the event that a place remains unallocated or uncommitted on 1 March 2025, subsection 49(2) allows Housing Australia to commit or use the place for any arrangement in respect of property in any participating State or any Territory before the end of the first year of the program. This maximises the opportunity to utilise all 10,000 places in the first year of the program.

Despite this, if not all places are committed in the first year of the program, subsection 49(3) provides that the place is uncommitted at the end of 30 June 2025, and that place is to be treated as an unused place for the next financial year for the purposes of subparagraph 50(1)(b)(i). This further ensures the greatest opportunity to utilise all 10,000 places.

Subsection 49(4) provides for the circumstance where a place is committed but the arrangement between the program participant and Housing Australia is not entered into before the end of 30 June 2025. In this scenario, paragraph 49(4)(a) allows Housing Australia to use the place and enter into an arrangement in respect of the place at any time before the end of 30 June 2026. Paragraph 49(4)(b) provides for the situation where the

EXPOSURE DRAFT

relevant place is not used before the end of 30 June 2026. In that case, the place is treated as an unused place for the next financial year for the purposes of subparagraph 50(1)(b)(i). Again, this maximises the opportunity to utilise all 10,000 places in the first year of the program.

Allocation of places in subsequent years of the program

Section 50 provides for allocating places in subsequent years of the program – i.e. after the 2024-25 financial year. Subsection 50(1) identifies that 10,000 places are available in each financial year after the first year of the program. Additionally, if there are unused places from previous financial years of the program all of those unused places are rolled over and added to the 10,000. Consequently, there will be at least 10,000 places available in each financial year after the first year of the program.

Subsection 50(2) establishes the allocation of places between participating States and the Territories. As with the allocations for the first year of the program, each participating State and all Territories are allocated a number of places on 1 July of the relevant financial year. Subsection 50(3) contains the formula that provides for the annual number of places for participating States and all the Territories. The formula is the same as in subsection 40B(3), it is:

$$\text{annual number of places} \times \frac{\text{population of Territory or participating State for the financial year}}{\text{population of all Territories and participating States for the financial year}}$$

As in subsection 48(3), if the result is not a whole number, the result is rounded down to the nearest whole number. For example, where 100 places have been rolled over from a previous year, the population of a participating State or Territory is 2 million and the total population of Australia is 25 million, but the total population of all States participating in the program and the Territories is only 10 million, the participating State or territory will receive $10,100 \times \frac{2,000,000}{10,000,000} = 2,020$ places in subsequent years of the Help to Buy program.

Subsection 50(4) provides that the maximum number of places that can be allocated under the Help to Buy program is 40,000 places. To avoid doubt, the subsection provides that the annual number of places for a financial year is to be reduced so that the total number of used places, over all financial years, does not exceed 40,000 places. As an illustrative example, say that 30,001 places were used in the first three financial years. In this case, only 999 places could be allocated in the fourth financial year.

Section 51 provides for committing and using places in the subsequent years of the program. As in subsection 49(1), subsection 51(1) provides that once a place has been allocated to a particular State or Territory under subsection 50(2), Housing Australia may, on or after the allocation date, commit or use the place for an arrangement in respect of property in that State or Territory at any time before 1 March of the relevant financial year.

Subsection 51(2) deals with circumstances where a place is unallocated as of 1 March of the relevant financial year due to the calculations in subsection 50(3) producing results that are not whole numbers and are therefore rounded down. In such circumstances, Housing

EXPOSURE DRAFT

Australia may commit or use that place in any participating State or Territory before the end of the financial year. The Note clarifies why places may be unallocated.

Subsection 51(3) deals with the circumstance where a place remains uncommitted as of 1 March of the relevant financial year. As in subsection 49(2), Housing Australia may commit or use that place in any participating State or any Territory before the end of the financial year.

Subsection 51(4) mirrors subsection 49(3) in that it provides that if any places remains uncommitted on 30 June of the relevant financial year, that place is to be treated as an unused place— that is, rolled over to the following financial year.

Subsection 51(5) states that where a place is committed, an arrangement need not be entered into before the end of the relevant financial year. Paragraph 51(5)(a) provides that Housing Australia may use the place, and enter into an arrangement in respect of the place at any time before the end of 30 June of the next financial year.

However, paragraph 51(5)(b) provides that, at the end of the next financial year, the place may no longer be used, and an arrangement may no longer be entered in respect of the place, and the place is to be treated as an unused place for the next financial year. Note 1 clarifies that this enables the unused place to be rolled over. Note 2 reminds readers that Housing Australia’s ability to enter into arrangements is subject to paragraph 14(1)(c), which provides that Housing Australia may only enter into an arrangement where Division 2 of Part 5 allows.

Where a State intends to cease being a participating State

Section 52 of the Instrument covers the situation where a participating State gives notice that it intends to stop being a participating State. In these circumstances, no further places can be allocated to the relevant State after the date Housing Australia becomes aware that notice has been given. However, paragraph 52(1)(b) enables Housing Australia to still use a place for an arrangement, or enter into arrangement, in the relevant State if the following circumstances apply:

- Housing Australia had committed the place before the date of Housing Australia becoming aware that notice was given; and
- the relevant State has not ceased to be a participating State as of the date the place is used or the arrangement is entered into.

The note to section 52 refers the reader to subsection 35(4) of the Act, which provides for the circumstances in which a State stops being a participating State, and reiterates that the Act prevents Housing Australia from entering into an arrangement in a State that is no longer a participating State.

Subsection 52(2) provides that Housing Australia cannot use a place in a State that was a participating State from the date upon which that relevant State ceased being a participating State. This is referred to in paragraph 52(2)(a) as the ‘withdrawal day’. This prohibition applies even if Housing Australia had committed the place before the withdrawal day. In the scenario where Housing Australia has entered into an arrangement

EXPOSURE DRAFT

in the relevant State but settlement has not been completed as of the withdrawal day, Housing Australia must terminate the arrangement.

If Housing Australia is required to terminate an arrangement, thus not using the place, subsection 52(3) allows Housing Australia to commit or use that place in a Territory or any other participating State at any time between 1 March in the financial year in which the relevant State provided notice of its intent to cease being a participating State and the end of that financial year. Subsections 52(4) and (5) provides that subsections 51(4) and (5), which relate to rolling over unused places in subsequent years, apply, and that section 52 applies despite anything in sections 48 or 50. This means that opportunities to access the Help to Buy program are maintained.

Managing places where purchase does not settle

Subsections 53(1) and (2) provide for Housing Australia's obligations where a place has been committed but the settlement does not occur because the participating lender has withdrawn their mortgage approval prior to settlement of the purchase of the relevant property, or fails for any other reason. In addition, Housing Australia must also be satisfied that the participating lender, or another participating lender will not enter into a mortgage over the relevant property within a reasonable time. In such circumstances, these obligations are that:

- Housing Australia must not approve an application to enter into an arrangement in respect of that place;
- if Housing Australia has provided approval but an arrangement has not been entered, Housing Australia must revoke the approval;
- Housing Australia must not enter into an arrangement in respect of the place (whether or not an approval has already been granted); and
- if an arrangement has already been entered into, Housing Australia must terminate the arrangement.

Subsection 53(3) allows Housing Australia to commit or use the place for an arrangement in a Territory or participating State at any time between 1 March in the financial year in which the withdrawal or failure occurred and the end of that financial year. Subsection 53(4) provides that subsections 51(4) and (5), which relate to rolling over unused places in subsequent years, apply. This means that opportunities to access the Help to Buy program are maintained.

Division 3 – Adminstrating the Help to Buy program

Subdivision 1 – Application of this Division

Section 54 provides that the provisions in Division 3 to Part 5 only apply to the performance of Housing Australia's functions under the Act in respect to:

- participating States and the Territories (section 10 of the Act); and

EXPOSURE DRAFT

- cooperating States (section 15 of the Act).

Subdivision 2 – Financial matters

Indexation

Sections 55 and 56 outline how the threshold for home improvements will be dealt with under the program. The \$20,000 threshold minimum amount is the minimum amount that improvements must cost to allow a home owner's equity share to be recalculated is indexed to the Consumer Price Index. This is to ensure that the real value of the threshold does not decline over time. A \$20,000 threshold similarly applies that requires notification to Housing Australia for property damage.

Fees

Under the rules for the Home Guarantee Scheme in section 29J of the *Housing Australia Investment Mandate Direction 2018*, Housing Australia is not entitled to charge a fee for issuing a guarantee. To align the Help to Buy program with the Home Guarantee Scheme, Housing Australia is also not entitled to charge a fee for an equity contribution other than a valuation fee or other costs related to obtaining the valuation. This ensures that the equity contributions and financier loans are provided to eligible participants at the lowest possible cost to maximise the benefits to homebuyers from Help to Buy.

However, Housing Australia may also pass on to an applicant or participant the compliance costs or costs associated with enforcing an arrangement. It is intended that participants will be responsible for paying the mortgage registration fees for both the participating lender and Housing Australia.

For the avoidance of doubt, participants will not be charged interest or rent on the Commonwealth share. However, Housing Australia is not prevented from seeking payment of the Commonwealth's share.

Valuation

The purpose of section 58 is to ensure that where valuations are required to support Housing Australia's administration of the program, they are conducted by appropriately qualified independent experts who operate at arm's length to applicants, participants. This approach avoids the Instrument specifying specific classes of valuers and the regulatory framework in each jurisdiction or being dependent on professional body standards which might vary from time to time while leveraging appropriate professional expertise.

Timing of financial contributions (section 59)

Section 59 deals with when Housing Australia must pay the Commonwealth's contribution to support participants to purchase or build homes. For new homes, Housing Australia must pay the Commonwealth's contribution at the time of settlement of the land, and also at the time of each construction progress payment. For these homes, the contribution will be determined based on the percentage Housing Australia has agreed to provide under an arrangement. For example, if Housing Australia agrees to provide 40 per cent of the purchase price under an arrangement relating to a house and land package, it

EXPOSURE DRAFT

would pay 40 per cent of the purchase price of the land at the settlement date, followed by 40 per cent of the value of each progress payment in the course of the construction.

For all other homes, including existing homes and off-the-plan dwellings, Housing Australia must pay its contribution upon settlement.

Home improvements (section 60)

Participants are able to make any home improvements (i.e. renovations) to the program property at their own expense. This is to ensure participants retain freedom to maintain and improve their property as they see fit. As these home improvements are at the participant's expense, it is intended that they will receive the sole benefit of any increase in property value because of the improvement. This ensures that participants have the flexibility to renovate properties like other home owners. If these home improvements result in an increase in property value, owners are solely entitled to receive the benefits on exit of the program.

The circumstances in subsection 60(2) must be met for Housing Australia to reduce the Commonwealth share percentage and make any necessary amendments to the arrangement, or contracts, or agreements relating to the arrangement. These circumstances are that the participant notifies Housing Australia of the improvements; the improvements cost more than the threshold (\$20,000 on program commencement, to be indexed annually in accordance with sections 55 and 56); the participant obtained any necessary approvals; and the property is valued before and after the home improvements take place disregarding the impacts of other factors like market movements, repairs or maintenance.

For example:

A participant wants to renovate their home, in which the Commonwealth share percentage is 30 per cent. The participant notifies Housing Australia and obtains a pre-valuation of the property before they commence renovations. This valuation finds that the participant's property is worth \$500,000, meaning the Commonwealth's share is worth \$150,000.

After obtaining any necessary approvals from their local planning authority, the participant spends \$25,000 on renovations (above the threshold in paragraph 60 (3)(b)), and soon after the renovations, obtains a further valuation of the property. This valuation finds that the participant's property is now worth \$540,000.

The participant provides their pre- and post-valuations to Housing Australia, that recalculates the Commonwealth share percentage from 30 per cent to 27.8 per cent (i.e. Commonwealth's share is $\$150,000 / \$540,000$). This maintains the value of the Commonwealth share, as at that date, at \$150,000, and ensures that the Commonwealth is not entitled any part of the \$40,000 increase in the value of the relevant property arising from the improvements funded by the participant.

Notification by the participant is a necessary part of the home improvement process as it informs Housing Australia that a valuation must be conducted, and ensures that any increase in property value is promptly addressed by reducing Housing Australia's equity

EXPOSURE DRAFT

share and increases the participant's equity share. The costs of the valuation are borne by the participant.

To avoid doubt, the note to subsection 60(2) provides that if the cost of the home improvements is less than \$20,000, the Commonwealth will share in any resultant increase in property value.

Sometimes home improvements are conducted in stages, and so subsection 60(3) clarifies that a continuous series of separate improvements carried out over a period of up to 12 months is to be treated as one set of improvements. For example, if a participant purchases a property in the first year of the program and made two separate improvements, costing each \$15,000, one after the other within up to a 12 month period, then this would be treated as one set of improvements and therefore reach the \$20,000 threshold.

Subdivision 3 – Governance

Housing Australia must have an internal complaints review mechanism

Section 61 requires Housing Australia to set up and maintain an internal complaints review mechanism. The mechanism should allow applicants and participants to make complaints about actions taken or decisions made by Housing Australia under the Instrument or a Help to Buy arrangement. Among other things, reviewable actions or decisions could include Housing Australia's decision to reject an application to enter into a Help to Buy arrangement, Housing Australia's decision to revoke approval for an application (before an arrangement is entered), Housing Australia withdrawing an exemption granted to a participant from the principal place of residence requirement, and Housing Australia terminating a Help to Buy arrangement. The mechanism should further allow Housing Australia to consider and respond to each complaint. Ensuring that actions and decisions are reviewed internally by Housing Australia allows reviews to be cost-effective, quick and accessible for applicants and participants. The mechanism should assist with safeguarding the integrity of the program.

Housing Australia must establish arrangements for approving participating lenders

Subsection 62(1) defines a 'participating lender' as an entity that holds a current written approval from Housing Australia to provide mortgages in relation to Help to Buy arrangements. Only a participating lender can provide a mortgage to a participant to assist the participant to purchase a property under the Help to Buy program.

The Government expects that the approval of lenders as participating lenders will involve commercial negotiations between Housing Australia and lenders to ensure that the objectives of the Help to Buy program and the Government's expectations for the operation of the program are achieved.

Under subsection 62(2), in approving participating lenders and in revoking approvals of lenders as participating lenders, Housing Australia can determine the criteria and processes it adopts to approve participating lenders and revoke approvals. However, this ability to establish the criteria and processes is subject to paragraphs 62(2)(a) to 62(2)(h), which requires Housing Australia to take into account all of the following criteria to ensure that the Help to Buy program operates in accordance with the Government's expectations:

EXPOSURE DRAFT

- a lender's standard of customer care, including their treatment of borrowers in financial hardship;
- the competitiveness of mortgage products offered by a lender for the purposes of the Help to Buy program, including interest rates and other fees;
- the quality of a lender's loan origination processes (including the quality of distribution origination channels for loans (e.g. mortgage brokers)) and the associated level of financial risk to the Commonwealth;
- the reputation of the lender—informed by, for example, the lender's appropriate treatment of customers, and any offences, breaches, and conduct matters that may materially adversely impact on the lender's standing in the community;
- the extent to which the decision to approve a lender as a participating lender will promote competition in lending markets and related markets—including, for example, by reference to the pricing of the products offered by the lender in the markets in which it operates;
- the extent to which all the lenders approved as participating lenders when considered together can undertake credit activities (including through other entities providing credit services) across Australia;
- whether the lender holds all the licences and approvals required to provide mortgages in relation with the Help to Buy arrangements; and
- the lender's capacity to work with Housing Australia over the life of Help to Buy arrangements and the Help to Buy program—as Help to Buy arrangements and the Help to Buy program may be operational for a long period of time, Housing Australia must assess the lender's ability to work alongside Housing Australia in providing mortgages to participants and overseeing participants in the program (including determining whether a participant has capacity to repay the Commonwealth share).

Housing Australia may rely on information

Under section 63 Housing Australia can rely on information, provided to it directly or indirectly by a participant, participating lender, or any other person or third party (for example, a mortgage broker) in administering the Help to Buy Program. This reliance is limited to information that Housing Australia reasonably believes to be accurate.

How Housing Australia must manage arrangements where participant is experiencing hardship

Section 64 outlines how Housing Australia must establish policies and procedures for dealing with participants in hardship circumstances. To ensure Housing Australia is able to exercise judgement in determining the most appropriate course of action for participants experiencing hardship, Housing Australia must consider individual circumstances when administering the program.

EXPOSURE DRAFT

The intention of section 64 is to enable Housing Australia to address issues of hardship through its internal policies and procedures, and its contractual arrangements with participants. This recognises there are exceptional circumstances where it is appropriate for participants to not be required to comply with obligations under the Help to Buy program.

For example, if a participant no longer receives assessable income and they have no primary mortgage remaining with a participating lender, Housing Australia could cancel the review process required at section 32, if it was Housing Australia's opinion that the participant should be excused from that process.

As another example, Housing Australia could also postpone the five-yearly review for a participant experiencing a natural disaster such as a bushfire or flood, if Housing Australia considers it reasonable given the circumstances.

Another example where Housing Australia could exercise its hardship power under section 64, is if a participant needs to borrow additional funds against their mortgage in order to fund essential medical treatment they or their dependents require.

Principles for operation of the Help to Buy program

Section 65 provides principles under which Housing Australia must operate the Help to Buy program. This is consistent with current practice for the Home Guarantee Scheme, where Housing Australia is guided by principles listed in section 29K of the Investment Mandate.

The Government expects Housing Australia to administer the Help to Buy program with integrity; to promote the object of the program which is to improve housing outcomes for Australians by assisting low and middle-income individuals to buy homes; and in a manner consistent with the Help to Buy Intergovernmental Agreement. Housing Australia is subject to the *Public Governance, Performance and Accountability Act 2013* which requires it to achieve value for money in its operational expenses.

The Government also expects Housing Australia to administer the program in a manner designed to effectively manage risks associated with the program, including by managing the risk of fraud and non-compliance in relation to arrangements and other agreements; to give applicants as much flexibility as possible in their choice of home, and in decisions relating to the relevant property; to ensure that the program is consistent with the industry and community standards and expectations that exist at the time Housing Australia is acting; and encourage participants to repay the Commonwealth share as early as their financial circumstances permit; to protect the Commonwealth's financial interest from loss; and raise awareness and educate interested parties about the program.

SCHEDULE 1 – PARTICIPATION REQUIREMENTS

Section 28 of the Instrument directs Housing Australia to ensure that the terms and conditions of Help to Buy arrangements oblige participants to comply with participation requirements noted in Schedule 1. To avoid doubt, Schedule 1 does not impose any legal obligations on participants directly as the Instrument is a direction to Housing Australia.

EXPOSURE DRAFT

Imposing ongoing obligations on participants supports the integrity of the program and ensures that funding is provided to Australians who are most in need of housing assistance.

If a participant breaches any of the requirements, they may be required by Housing Australia to undergo the assessment and repayment process under section 36. This will ensure that integrity of the program is maintained and the program continues to be targeted to the intended demographic of low and middle-income Australians.

Sale of existing property (clause 1)

Clause 1 applies to single parents and single legal guardians and limits the length of time they can hold a disqualifying property interest after becoming the registered owner of the Help to Buy property to four weeks. This is to allow simultaneous settlement. For example, settlement of the sale of the family home in which the single parent or legal guardian had an interest, and settlement of the purchase of the new Help to Buy property by the single parent or legal guardian on their own can occur concurrently. Once the single parent or legal guardian has settled on the purchase of the Help to Buy property, they have four weeks to settle on the sale of the other property. As noted above in section 28A, Housing Australia can extend the four-week period if it considers that this is reasonable in the circumstances and the participant is experiencing hardship or on other compassionate grounds.

The intended policy outcome is that a single parent or legal guardian will not need to find temporary accommodation after the family home (in which the single parent or legal guardian has an interest) is sold to then be eligible to access Help to Buy. Where the family home is being sold, and the single parent or legal guardian has an interest in it, this interest should not preclude a single parent or legal guardian from applying for a Help to Buy arrangement.

Registered ownership of the property (clause 2)

Clause 2 requires a participant to remain the only registered owner of the property. In the case of joint participants, both joint participants must remain the only registered owners of the property. The only exception to this requirement is provided by section 44 of the Instrument which applies where a deceased participant's interest in the property is inherited by a beneficiary of the estate of the deceased or the surviving participant.

Principal place of residence, leasing and business (clauses 3, 9 and 10)

The purpose of the Help to Buy program is to support home ownership of residential property. Therefore clauses 3, 9 and 10 ensure that the program's scope is limited to owner occupiers, rather than enabling participants to buy for income earning or business purposes, or as an investment property.

Clause 10 is not intended to include working from a home office for an employee or business owner that meets the eligibility requirements. However, using the property as a place of business or place of conducting a commercial activity, including registering the property as a place of business, would not be permitted.

Further mortgages over property (clause 4)

EXPOSURE DRAFT

Section 21 of the Instrument sets out the mortgage requirements in relation to a Help to Buy arrangement. The Instrument provides that a shared equity arrangement will be structured with two mortgages over the property. These are the first mortgage that a participant takes with a participating lender and the second mortgage (in favour of Housing Australia) that secures the Commonwealth share in the property. Housing Australia must require that a participant does not take out any further mortgages over the property. Housing Australia will set out this requirement in the terms and conditions of each arrangement.

This requirement means that a participant can only hold a single mortgage with a participating lender at any time. To avoid doubt, a participant is able to discharge their mortgage with their current participating lender by taking out a new mortgage with a participating lender. Additionally, the requirement does not prevent a participant from refinancing with a non-participating lender, if in the process of refinancing, the participant repays the Commonwealth share in full.

Borrowing additional funds (clause 5)

Housing Australia must impose limits on borrowing additional funds from a participating lender. Participants are required to notify Housing Australia if they wish to borrow additional funds under their mortgage with their participating lender; or take a new and larger mortgage with a new participating lender to discharge their mortgage with their current participating lender.

To avoid doubt, the note to subsection 5(1) provides that Housing Australia must ensure that a Help to Buy arrangement allows a participant to increase the size of their mortgage only where the proposed increase is for a specified purpose (as set out in section 31).

This provision is not intended to place limits on the participant's ability to borrow additional funds from a lender on non-mortgage types of debt (for example, a credit card, a personal loan or a car loan).

Assistance from other relevant schemes and acquiring a disqualifying property interest (clauses 6 and 7)

If a participant receives assistance from other schemes or acquires a disqualifying property interest then they will no longer be eligible for the Help to Buy program. The other schemes are outlined in clause 6(a), (b) and (c). Disqualifying property interest is defined in section 5. These prohibitions ensure that the program is appropriately targeted and meets its objectives of supporting those who cannot otherwise access homeownership by other means. There is a grace period of two years if a participant inherits a disqualifying property interest as a beneficiary of a deceased estate.

Property maintenance (clause 8)

Housing Australia must require a participant to maintain their property to an adequate standard. This is to ensure the property is fit for occupation. Housing Australia is to specify the adequate standard to which the property must be maintained in the terms and

EXPOSURE DRAFT

conditions of each arrangement. Subject to the terms and conditions, maintenance activities could include cleaning, garbage disposal, pest control and repairs.

Insurance (clause 11)

It is important that a participant maintain adequate insurance over the relevant property to protect their interest and the Commonwealth's interest in the property. Participants are required to keep the relevant property adequately insured over the life of the program and provide evidence to Housing Australia of their insurance arrangements each year. Insurance requirements are intended to be flexible and therefore contained within the contractual arrangement with Housing Australia, which can be adjusted over time.

Ongoing costs (clause 12)

Participants are responsible for ongoing costs associated with the property. Housing Australia must oblige a participant to ensure all ongoing costs (such as council rates, strata fees and utility bills) are paid. The terms and conditions of Help to Buy arrangements will impose this requirement on participants.

Change of circumstances (clause 13)

The proposed list of change in circumstances that participants are required to report to Housing Australia assists Housing Australia to be aware of whether participants continue to be compliant with the requirements of the program. Housing Australia would be expected to consider the change of circumstances and administer the arrangement in line with the principles outlined at section 65. This may include varying or terminating the arrangement, subject to its powers under Part 3 of the Program Directions.

There is a notification timeframe of 90 days from when the participant became aware, or should have become aware, of the relevant event. A participant must give notice to Housing Australia in a form approved by Housing Australia.

Vary or enter new construction contracts (clause 14)

The ability to make an amended contract enables changes to the original contract where the participant decides to make a change during the construction process which impacts the contract price (e.g. installing a different kitchen). However, this is still subject to limits listed in clause 14(1), including that the varied contract would result in the construction of substantially the same dwelling as the original contract, and the varied purchase price will not exceed the price cap.

Replacement or new construction contracts are available where Housing Australia is satisfied that the original contract has been terminated for reasons outside of the participant's control, or that it is otherwise appropriate for the participant to terminate the original contract given the circumstances (as outlined in clause 14(2)(a)) and the list of conditions is met from clause 14(2)(b) to (g).

Prior to amending or replacing the original contract, the participant must notify Housing Australia so it can assess whether the varied or replacement contract is eligible

EXPOSURE DRAFT

(for example, it falls under the price caps, and there are no changes to the construction timeframe). The notice period is 21 days before the contract variation is executed or the original contract was terminated. Where it is not possible for a participant to give the 21 days' notice, the participant must give notice as early as possible in the circumstances.