

EXPOSURE DRAFT

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Issued by authority of the Minister for Housing and Minister for Homelessness

Housing Australia Act 2018

Housing Australia Investment Mandate Amendment (2024 Measures No. 2) Direction 2024

Subsection 12(1) of the *Housing Australia Act 2018* (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. The Board is subject to the requirements of the Act and the *Housing Australia Investment Mandate Direction 2018* (the Investment Mandate).

The 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 (previously, the National Housing Finance and Investment Corporation) commenced operation on 30 June 2018 and is dedicated to improving housing outcomes. It performs this role through its financing, guarantee and capacity building functions.

Housing Australia's activities, among others, include the operation of the National Housing Infrastructure Facility (NHIF). The NHIF is a facility which seeks to overcome impediments to the provision of housing that are due to the lack of necessary infrastructure and to increase the availability of social and affordable housing. Under the NHIF, finance, in the form of grants and concessional loans, is available for eligible housing-enabling infrastructure projects and social or affordable housing projects that would not otherwise have proceeded, or that would only have proceeded at a much later date or with a lesser impact on new social or affordable housing.

The purpose of the *Housing Australia Investment Mandate Amendment (2024 Measures No. 2) Direction 2024* (the Instrument) is to amend the Investment Mandate to direct Housing Australia to target an additional \$1.0 billion in funding allocated to the NHIF to support crisis and transitional housing for women, children, or youth who are experiencing family and domestic violence or experiencing, or at particular risk of, homelessness (noting the two elements can be interrelated). This broadens the remit of the NHIF to allow it to be used to directly finance crisis and transitional housing projects targeted at the aforementioned cohorts as part of its capacity to finance social or affordable housing projects.

This expanded remit will help address the crisis and transitional housing or homelessness challenges currently facing women, children, and youth experiencing family and domestic violence or experiencing, or at particular risk of, homelessness by supporting the creation of new crisis and transitional housing. This recognises the importance of access to safe, and adequate housing to improve the health and wellbeing of individuals and families.

Funds appropriated for the NHIF are housed in the Permanent Fund. Given the \$1.0 billion allocated to the NHIF is to be used for crisis and transitional housing only, the Instrument modifies the structure of the Permanent Fund so that it consists of two sub-funds. One sub-fund is designated for financing housing-enabling infrastructure projects and social or

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affordable housing projects (other than crisis and transitional housing projects). The other sub-fund is for crisis and transitional housing projects only. The additional \$1.0 billion allocated to the NHIF is held in the sub-fund for crisis and transitional housing projects. The balance of the funds allocated to the NHIF is held in the sub-fund for housing-enabling infrastructure projects and social or affordable housing projects (other than crisis and transitional housing).

The Instrument amends the Investment Mandate to require that Housing Australia must reinvest residual earnings from the \$1.0 billion earmarked for crisis and transitional housing back into the sub-fund for crisis and transitional housing projects. Further, from the 2024-25 financial year onwards, Housing Australia must reinvest any additional interest earned or accumulated from the sub-fund for housing-enabling infrastructure projects and social or affordable housing projects (other than crisis and transitional housing) back into that sub-fund. Additionally, the returned earnings for each sub-fund can only be used to make loans and grants in relation to projects to which the sub-fund relates, and the purposes mentioned in paragraphs 9(1)(b) and (c) of the Investment Mandate, which allow Housing Australia to make investments in accordance with section 59 of the *Public Governance, Performance and Accountability Act 2013* or for incidental purposes, which includes meeting the operating costs of the NHIF in respect of the relevant sub-fund.

The Instrument specifies that the \$1.0 billion allocated to the NHIF for crisis and transitional housing is to be made available to the states and territories on the following basis:

- no more than \$25.0 million is to be payable for new crisis and transitional housing in each of the Australian Capital Territory, the Northern Territory and Tasmania (i.e. \$75.0 million in total across the three jurisdictions); and
- no more than \$925.0 million is to be payable for new crisis and transitional housing in New South Wales, Victoria, South Australia, Western Australia and Queensland, with this funding to be apportioned between these jurisdictions on a per capita basis with Housing Australia to have regard to the *National, state and territory population*, published by the Australian Statistician in September 2023 in determining the per capita basis apportionments.

This method of allocations will only be in effect for 12 months starting a month after the commencement of the Instrument. After this period has elapsed, Housing Australia can allocate any remaining available funds to crisis and transitional housing projects in any State or Territory unrestricted by the specified allocations set out above.

The Instrument is exempt from the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 54(2)(b) of that Act. Item 3 of the table under 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.

The Instrument is subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. This section provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or

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transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of subparagraph 48A(2)(a)(i), the Instrument automatically repeals on the day after the commencement of the Instrument which results in the amendment of the Investment Mandate. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument.

As a direction from the Minister to Housing Australia, the Instrument is also exempt from disallowance under section 42 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 44(2)(b) of that Act. Item 2 of the table under 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 Government considers it appropriate that the Instrument is not subject to disallowance. The exemption recognises that executive control is intended in this instance where a ministerial direction is made to Housing Australia. Accordingly, no statement of compatibility with human rights is required under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The Instrument commenced on the day after registration.

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

Details of the *Housing Australia Investment Mandate Amendment (2024 Measures No. 2) Direction 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Housing Australia Investment Mandate Amendment (2024 Measures No. 2) Direction 2024* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commenced on the day after registration.

Section 3 – Authority

This section provides that the Instrument is made under the *Housing Australia Act 2018* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedule to this instrument are amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Legislative references in this attachment are to the *Housing Australia Investment Mandate Direction 2018* (the Investment Mandate) unless otherwise stated.

Expansion of the National Housing Infrastructure Facility to finance crisis and transitional housing for women, children, and youth experiencing family domestic violence or homelessness (or at particular risk of homelessness)

The Instrument amends the Investment Mandate to direct Housing Australia to finance crisis and transitional housing for women, children, or youth experiencing family domestic violence or homelessness (or at particular risk of homelessness) through the National Housing Infrastructure Facility (NHIF). Crisis and transitional housing is a subset of social housing and thus a type of social or affordable housing project, which is an existing category of project that can be funded through the NHIF (the other being a housing-enabling infrastructure project).

National Housing Infrastructure Facility

Item 1 of the Instrument inserts a number of definitions in section 4 to support the NHIF's expanded operations. They are:

- 'child' – the amendment provides that the term refers to a person aged under 16;
- 'crisis and transitional housing' – the amendment includes a signpost to subsection 21A(4);

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- ‘crisis and transitional housing project’ – the amendment inserts a signpost to subsection 21A(5);
- ‘family and domestic violence’ – the amendment includes a signpost to subsection 21A(6);
- ‘family member’ – the amendment inserts a signpost to subsection 21A(7);
- ‘woman’ – the amendment makes clear that the term refers to a person whose gender identity (within the meaning of the *Sex Discrimination Act 1984*) is female; and
- ‘youth’ – the amendment provides that the term means a person aged between 16 and 24.

Meaning of crisis and transitional housing projects

Item 7 inserts new subsections 21A(4) to (7) to define ‘crisis and transitional housing’, ‘crisis and transitional housing project’, ‘family and domestic violence’ and ‘family member’.

- Subsection 21A(4) defines ‘crisis and transitional housing’ as short-term housing provided for women, children or youth who are experiencing family and domestic violence or homelessness, or at particular risk of homelessness. This definition captures housing that is provided solely to women, children or youth who are experiencing family and domestic violence or homelessness, or at particular risk of homelessness, and includes any combination of these cohorts.
- Subsection 21A(5) provides that a ‘crisis and transitional housing project’ is a social or affordable housing project that would provide new crisis and transitional housing (as defined under subsection 21A(4)). To avoid doubt, a crisis and transitional housing project could also provide other types of new housing as long as the project provided crisis and transitional housing. In such circumstances, funding is to be provided on the basis of the proportion of new crisis and transitional housing in the broader housing project. This is consistent with how funding operates under the Housing Australia Future Fund Facility and the National Housing Accord Facility (see Parts 4A and 4B of the Investment Mandate).
- Under subsection 21A(6), a person experiences ‘family and domestic violence’ if the person is subjected to violent, threatening or other abusive behaviour by a family member, where such behaviour seeks to coerce or control the person, and causes the person to suffer harm or to be fearful.
- Under subsection 21A(7), a ‘family member’ of a person includes (but is not limited to) someone who is:
 - the person’s spouse or partner who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple;
 - the person’s child, parent, grandparent or sibling;
 - the child, parent, grandparent or sibling of the person’s spouse or partner; and

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- related to the person according to Aboriginal or Torres Strait Islander kinship rules.

Crisis and transitional housing not counted towards Housing Australia’s minimum housing target

Section 10A provides that in performing its financing function, Housing Australia must take all reasonable steps to make loans or grants, or enter into contracts to make loans or grants, in order to make available a minimum of 1,200 applicable dwellings in each State and Territory within five years from 9 December 2023. The minimum target may be reached through Housing Australia programs which support the creation of social housing, affordable housing, or housing that addresses an acute housing need (including through the NHIF).

Item 2 adds a new subsection 10A(4) to make clear that a dwelling that is or will be crisis and transitional housing is not an applicable dwelling. In other words, dwellings that are or will be crisis and transitional housing cannot be counted towards the minimum 1,200 applicable dwellings target in subsection 10A(1).

Eligible projects under the NHIF

As a social or affordable housing project that would provide crisis or transitional housing, a crisis and transitional housing project is an eligible project under subparagraph 23(a)(ii) of the Investment Mandate that can be financed under the NHIF, if it:

- would be unlikely to proceed; or
- would be likely to proceed only at a much later date, or with a lesser impact on new social or affordable housing without support under the NHIF.

This requires Housing Australia to consider the extent to which the NHIF assistance would accelerate or increase the supply of social or affordable housing.

Eligible project proponents for crisis and transitional housing projects

- Section 22A outlines the project proponents (i.e., the entity responsible for a project) eligible for NHIF financing for social or affordable housing projects. As crisis and transitional housing is a type of social or affordable housing project, these eligible project proponents are able to receive financing under the NHIF for a crisis and transitional housing project. The eligible project proponents are a:
- State or Territory, including a State or Territory agency representing the State or Territory such as a government owned corporation but not a utility provider; or
- local governing body; or
- local government-owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the local governing body); or
- State government-owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the State); or

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- Territory government-owned corporation that is a constitutional corporation and not a utility provider (but not necessarily an emanation of the Territory); or
- registered community housing provider that is a constitutional corporation; or
- social or affordable housing special purpose vehicle that is a constitutional corporation.

If the project proponent is a local governing body, the project may only be financed through a grant of financial assistance to a State or Territory.

An entity is a social or affordable housing special purpose vehicle if it has a purpose of undertaking social or affordable housing projects, and at least one of its members is an eligible proponent project for social or affordable housing projects (other than a social or affordable housing special purpose vehicle).

Financing mechanisms for eligible crisis and transitional housing projects

The Instrument does not amend subsections 24(1) to (5). Housing Australia may finance crisis and transitional housing projects under the NHIF using the same mechanisms (i.e., loans, grants, and certain loan concessions) subject to the same requirements as those for housing-enabling infrastructure projects and social or affordable housing projects.

Criteria for financing decisions and concessions for eligible crisis and transitional housing projects

- Housing Australia must have regard to the same matters when making financing decisions in relation to crisis and transitional housing projects as it does for social or affordable housing projects. These are listed in sections 25 and 26.

Reporting mechanism for eligible crisis and transitional housing projects

- Housing Australia must comply with the quarterly reporting requirements in section 28A. Item 9 amends section 28A to require that the quarterly report must include the relative amounts of social, affordable and other housing that would be provided by a social or affordable housing project (other than a crisis and transitional housing project), and the relative amounts of crisis and transitional and other housing that would be provided by a crisis and transitional housing project.

Financing through the Permanent Fund

The Instrument amends Division 3 of Part 2 to modify the structure of the Permanent Fund to support the allocation of \$1.0 billion for crisis and transitional housing projects only while allocating the balance of funds provided to the NHIF for housing-enabling infrastructure projects and social or affordable housing projects (other than crisis or transitional housing).

Item 3 of the Instrument repeals section 13 and inserts a new section 13 which:

- requires Housing Australia to establish the Permanent Fund for the purposes of Part 4 of the Instrument (i.e., financing eligible NHIF projects). The substance of this obligation has remained the same (the new subsection 13(1));

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- establishes two sub-funds within the Permanent Fund:
 - one for the purpose of financing housing-enabling infrastructure projects and social or affordable housing projects (other than crisis and transitional housing projects); and
 - another for the purpose of financing crisis and transitional housing projects (the new paragraphs 13(2)(a) and (b));
- requires Housing Australia to ensure all assets and liabilities of the Permanent Fund are allocated to these two new sub-funds on the basis of their purpose (the new subsection 13(2));
- requires the Board of Housing Australia (the Board) to allocate each amount appropriated by the Parliament for a purpose of the NHIF to the sub-fund to which that purpose relates. If any amounts are appropriated for a purpose relating to both sub-funds, the Board must reasonably apportion the amounts between the two sub-funds (the new subsection 13(3)) and
- stipulates that each sub-fund should consist, at any time, of:
 - the amounts of any current loans made under Part 4 in relation to projects to which the sub-fund relates;
 - any amounts allocated to the sub-fund for the purposes of making loans under Part 4 in relation to the projects to which the sub-fund relates; and
 - any returns on these two amounts (the new subsection 13(4)).

Item 4 amends subsection 14(2) so that the minimum target of the Permanent Fund at a particular time is now the sum of amounts allocated to these two new sub-funds of the Permanent Fund.

Reinvesting residual earnings from the Permanent Fund

As part of the Item 3 amendments to the Investment Mandate relating to the operation of the Permanent Fund, the Instrument inserts paragraph 13(5)(a) which provides that any returns on the following amounts are to be paid back to the relevant sub-fund:

- the assets and liabilities of the sub-fund; and
- any amount appropriated by the Parliament for a purpose of the NHIF which is allocated to the relevant sub-fund.

Paragraph 13(5)(b) requires that, once paid back to the relevant sub-fund, Housing Australia may only use these reinvested returns:

- to make loans and grants in relation to projects to which the sub-fund relates; and
- for the purposes listed in paragraphs 9(1)(b) (making investments) and 9(1)(c) (incidental purposes, which include meeting operating costs of the NHIF in respect of that sub-fund).

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Overall funding cap and initial apportionment of funding

Item 6 inserts a new subsection 15(3) which caps the total value of amounts payable by Housing Australia as grants in relation to crisis and transitional housing projects at \$700.0 million.

Item 10 inserts a new section 28AB which directs Housing Australia on how it should make available the \$1.0 billion allocated to the NHIF for eligible crisis and transitional housing projects. Under a new subsection 28AB(1):

- Housing Australia is to apportion the funding for new crisis and transitional housing on the basis of the State or Territory in which the new housing would be located, as follows:
 - no more than \$25.0 million is available for the new housing in each of the Australian Capital Territory, the Northern Territory and Tasmania;
 - no more than a total of \$925.0 million is available for the new housing in all States other than Tasmania, apportioned between them on a per capita basis.
- Housing Australia is to have regard, under a new subsection 28AB(2), to the *National, state and territory population*, published by the Australian Statistician in September 2023 in determining the per capita basis apportionments. Further information about that publication is available on the Australian Bureau of Statistics' website: www.abs.gov.au.
- Under a new subsection 28AB(3), the apportioned amounts are available for new housing in the states and territories for 12 months starting a month after the commencement of the Instrument, after which, they cease to be so available. Housing Australia is then able to make financing decisions in relation to crisis and transitional housing projects in accordance with section 25 (which requires Housing Australia to have regard to certain matters in making these decisions) and without regard to the State or Territory in which the new housing would be located.

Further minor amendments

Item 5 makes a minor editorial amendment to subsection 15(1) to ensure consistency and clarity in the Instrument. The minor amendment reflects that the grants referred to in this subsection refers to grants made for housing-enabling infrastructure projects.

Item 8 corrects a minor typographic error in subsection 24(6).

Application of amendments

- The Instrument inserts subsection 42(1) into Division 7. The new subsection stipulates that the amendments in Schedule 1 to the Instrument apply in relation to applications for the making of a loan or grant on or after the commencement of that Schedule.

A new subsection 42(2) requires Housing Australia to allocate all assets and liabilities of the Permanent Fund (as they existed before the commencement of Schedule 1 to the

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Instrument) to each of the sub-funds as specified in the newly inserted subsection 13(2), as soon as practicable after the commencement of that Schedule.