

EXPOSURE DRAFT



EXPOSURE DRAFT

Help to Buy Program Directions 2024

I, Julie Collins, Minister for Housing, Minister for Homelessness, and Minister for Small Business, make the following directions.

Dated 2024

Julie Collins **[DRAFT ONLY—NOT FOR SIGNATURE]**

Minister for Housing

Minister for Homelessness

Minister for Small Business

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Introduction **Part 1**
Preliminary **Division 1**

Section 1

Part 1—Introduction

Division 1—Preliminary

1 Name

This instrument is the *Help to Buy Program Directions 2024*.

2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Help to Buy Act 2024*.

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Part 1 Introduction

Division 2 Simplified outline

Section 4

Division 2—Simplified outline

4 Simplified outline of this instrument

This instrument gives directions to the Board about the performance of certain functions of Housing Australia under the Act. Housing Australia must take all reasonable steps to comply with these directions when performing those functions.

This instrument has 5 Parts. Part 1 deals with preliminary matters, including the definitions of key terms.

Part 2 deals with entry into Help to Buy arrangements. The provisions in Part 2 are only relevant to the performance of Housing Australia's functions in relation to the Territories and participating States. They set out the circumstances in which Housing Australia may enter into a Help to Buy arrangement, including by specifying the persons and properties in respect of which Housing Australia may enter into such arrangements.

Part 3 deals with participation in the Help to Buy program. The provisions in Part 3 are relevant to the performance of Housing Australia's functions in relation to the Territories, and both participating and cooperating States. Among other things, Part 3 provides for the conditions of participation in Help to Buy arrangements and the consequences of failing to comply with them.

Part 4 sets out the means by which a person can end a Help to Buy arrangement early. Part 4 is relevant to the performance of Housing Australia's functions in relation to the Territories, and both participating and cooperating States. It provides, among other things, for Housing Australia to accept voluntary early repayments, and for arrangements to end upon the sale of the relevant property (subject to certain exceptions), and covers arrangements for deceased estates of participants.

Part 5 deals with miscellaneous matters, such as Housing Australia's ability to charge fees in relation to arrangements, the approval of participating lenders, and the making of improvements to relevant properties. Part 5 is relevant to the performance of Housing Australia's functions in relation to the Territories, and both participating and cooperating States.

Division 3—Definitions

5 Definitions

Note: Expressions have the same meaning in this instrument as in the *Help to Buy Act 2024* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

adequately insured: see section 6.

administrative costs include legal costs, conveyancing costs and stamp duty, where applicable.

agreed percentage: see section 16.

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 means a Help to Buy arrangement.

Australian Defence Force has the same meaning as in the *Defence Act 1903*.

Australian Statistical Geography Standard means the Australian Statistical Geography Standard (ASGS) Edition 3, July 2021-June 2026: A classification of Australia into a hierarchy of statistical areas for the publication and analysis of official statistics and other data.

Note: The Standard could, in 2024, be viewed on the Australian Bureau of Statistics website (<https://www.abs.gov.au>).

capital city, of a State or the Northern Territory, is the Greater Capital City Statistical Area (within the meaning of the Australian Statistical Geography Standard) in that State or Territory.

committed: a place is ***committed*** where:

- (a) an applicant or applicants have applied for an arrangement; and
- (b) Housing Australia has not yet approved the application under subsection 14(3); and
- (c) Housing Australia has decided that it is reasonably likely that the applicant, or applicants, will satisfy paragraph 14(4)(c) (eligibility), disregarding the financial capacity test; and
- (d) the applicant or applicants have obtained mortgage pre-approval from a participating lender for such funds as they are likely to require in order to purchase the relevant property (when combined with their deposit and the Commonwealth's contribution).

Commonwealth company has the meaning given by section 89 of the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth entity has the meaning given by section 10 of the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth share: see section 25.

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Part 1 Introduction

Division 3 Definitions

Section 5

Commonwealth share percentage: see paragraph 25(1)(b).

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

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

dependent child: an individual is a dependent child of a second individual (the **adult**) if:

- (a) the adult is a natural or adoptive parent or a legal guardian of the child; and
- (b) either:
 - (i) the individual is a dependent child of the adult within the meaning of subsections 5(2) to (7) of the *Social Security Act 1991*; or
 - (ii) the individual lives with the adult and is in receipt of a disability support pension within the meaning of the *Social Security Act 1991*.

disqualifying property interest: a person holds a **disqualifying property interest** if they hold:

- (a) a freehold interest in real property in Australia; or
- (b) a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or
- (c) a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia;

including a beneficial interest in any of the above.

eligible applicant: see section 17.

eligible property: see section 21.

financial capacity test, in relation to an applicant for an arrangement: see section 20.

hardship includes financial hardship, and hardship resulting from events beyond a participant's control.

income test, in relation to an applicant for an arrangement: see section 19.

Investment Mandate has the same meaning as in the *Housing Australia Act 2018*.

joint income threshold: see section 8.

lender means a person who carries on a business of making loans.

mortgage requirements: see section 22.

new home means a dwelling that meets the requirements of paragraph 40-75(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*, other than a dwelling that, prior to sale, has been rented or leased, or made available for rental or lease, as commercial residential premises or residential premises (as those terms are defined in that Act).

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new home contract requirements: see section 23.

participant: see section 10.

participating lender: see section 62.

participation requirements: see section 28 and Schedule 1.

price cap: see section 7.

place means the opportunity to enter into an arrangement.

population of a State or Territory, or of Australia, for a particular financial year, means the population specified in the most recent release by the Australian Statistician in the publication, *National, state and territory population*, available on 30 June of the preceding financial year.

Note: In 2024, this publication could be found on the Australian Bureau of Statistics website, <https://www.abs.gov.au/>.

purchase price, in relation to:

- (a) a house and land package; or
- (b) separate arrangements for the purchase of land and the construction of a dwelling on that land;

means the sum of the purchase price for the land and the contract price for the construction of a dwelling on that land.

regional centre: see subsection 7(2).

relevant property means the residential property that is, or is to be, the subject of an arrangement.

repayment means a payment made by a participant in an arrangement to reduce the Commonwealth share in respect of the relevant property.

shared equity scheme means a scheme (other than an arrangement) in relation to a residential property is an arrangement or contract with one or more individuals under which the Commonwealth, or a State or Territory:

- (a) contributes (including by means of a loan) part of the cost of the individual or individuals acquiring the residential property; and
- (b) is entitled to a return on that contribution worked out, in whole or in part, by reference to the value of the residential property at one or more times; and
- (c) secures that entitlement by means of a mortgage or other right relating to the residential property.

single, in relation to an individual, is an individual who does not have a spouse or de facto partner.

single income threshold: see section 8.

single parent means a single individual who has at least one dependent child.

Note: A single parent includes someone who has legal guardianship of a child: see definition of 'dependent child'.

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Part 1 Introduction

Division 3 Definitions

Section 6

Statistical Area Level 4 area has the same meaning as in the Australian Statistical Geography Standard.

taxable income has the meaning given by the *Income Tax Assessment Act 1997*.

the Act means the *Help to Buy Act 2024*.

timeframe requirements: see section 24.

used: a place is **used** when Housing Australia approves an application to enter into an arrangement with a participant or joint participants in respect of the place (whether or not the arrangement is actually entered into at that time).

6 Definition of *adequately insured*

Where an arrangement has been entered into in respect of a relevant property, the property is **adequately insured** at a particular time if:

- (a) the arrangement specifies insurance requirements; and
- (b) those requirements are met at that time.

Note 1: Housing Australia cannot enter into an arrangement in respect of a relevant property unless it is satisfied that the property, once purchased, will be adequately insured: see paragraph 14(3)(g).

Note 2: A participant must keep the relevant property adequately insured across the life of an arrangement: see section 28 and clause 11 of Schedule 1.

7 Price caps

Price caps

- (1) The **price cap** for the area in which a property is located is the amount set out in the following table.

Note: The price caps are relevant to a number of provisions of this instrument, including paragraph 21(b). Paragraph 21(b) provides that a property is only an ‘eligible property’ for the purposes of a proposed arrangement if the purchase price does not exceed the price cap for the area in which the property is located.

Price cap for an area		
Item	Area	Price cap
1	New South Wales—capital city and regional centre	\$950,000
2	New South Wales—other	\$750,000
3	Victoria—capital city and regional centre	\$850,000
4	Victoria—other	\$650,000
5	Queensland—capital city and regional centre	\$700,000
6	Queensland—other	\$550,000
7	Western Australia—capital city	\$600,000
8	Western Australia—other	\$450,000
9	South Australia—capital city	\$600,000
10	South Australia—other	\$450,000
11	Tasmania—capital city	\$600,000

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Price cap for an area		
Item	Area	Price cap
12	Tasmania—other	\$450,000
13	Australian Capital Territory	\$750,000
14	Northern Territory	\$600,000
15	Jervis Bay Territory and Norfolk Island	\$550,000
16	Christmas Island and Cocos (Keeling) Islands	\$400,000

Price caps—meaning of regional centre

- (2) A **regional centre** for a State specified in an item in the following table is one of the Statistical Area Level 4 areas specified in that item.

Item	State	Regional Centre
1	New South Wales	Newcastle and Lake Macquarie Illawarra Central Coast Mid-North Coast Coffs Harbour – Grafton Richmond – Tweed
2	Victoria	Geelong
3	Queensland	Gold Coast Sunshine Coast

8 Single and joint income thresholds

- (1) The **single income threshold** for a financial year is \$90,000, as indexed in accordance with section 9.
- (2) The **joint income threshold** for a financial year is \$120,000, as indexed in accordance with section 9.

9 Indexing the income thresholds

- (1) An amount mentioned in section 8 is to be indexed on the first day of each financial year starting on or after 1 July 2025 by multiplying it by its indexation factor for 1 June in the preceding financial year.
- (2) The indexation factor for 1 June in a financial year is the number worked out as follows:

Method statement

Step 1. Add:

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Part 1 Introduction

Division 3 Definitions

Section 10

	<ul style="list-style-type: none">(a) the index number for the quarter ending on 31 March in that financial year; and(b) the index numbers for the 3 quarters that immediately preceded that quarter.
Step 2. Add:	<ul style="list-style-type: none">(a) the index number for the quarter ending on 31 March in the immediately preceding financial year; and(b) the index numbers for the 3 quarters that immediately preceded that quarter.
Step 3.	The <i>indexation factor</i> for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.

- (3) The indexation factor is to be worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more.
- (4) The ***index number*** for a quarter is the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) number published by the Australian Statistician in respect of that quarter.
- (5) An amount mentioned in section 8, after indexation, must be rounded to the nearest \$1,000.

10 References to participants

- (1) ***Participant*** means an individual who is party to an arrangement.
- (2) Where a provision of this instrument applies in respect of an arrangement with joint participants:
 - (a) in relation to a provision referring to a participant giving notice of a matter—Housing Australia is to allow one of the participants to give notice of the matter on behalf of both participants; and
 - (b) in relation to a provision referring to a participant taking an action that, in law, both participants would need to take jointly—a reference to a participant is a reference to both participants acting jointly; and
 - (c) in other cases—a reference to a participant is a reference to each participant in the arrangement.

Example: Clause 14 of Schedule 1, read with section 28, requires Housing Australia to ensure that a participant must give notice to Housing Australia before a contract for the construction of a new home is varied. Where the relevant arrangement is with two participants jointly, one of the participants may give notice of the matter on behalf of both.

The effect of section 43 is that a participant must be allowed to sell the relevant property. Where the arrangement is with two participants who jointly own the property, that property could only be sold by the participants acting jointly.

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Part 2—Entering into Help to Buy arrangements

Division 1—Introduction

11 Simplified outline

This Part contains directions regarding the circumstances in which Housing Australia can enter into arrangements. The directions in this Part are only relevant to the performance of Housing Australia’s functions in relation to the Territories and participating States.

Housing Australia may only enter into a Help to Buy arrangement in accordance with this instrument. Division 2 of this Part sets out overarching requirements relating to entry into arrangements, including requirements around the persons and properties in respect of which arrangements can be entered into. It also sets limits on the amount that Housing Australia can contribute on behalf of the Commonwealth to the purchase of a relevant property.

Division 3 of this Part defines the class of individuals with whom Housing Australia can enter into arrangements, while Division 4 of this Part defines the class of properties that can be purchased under an arrangement. Division 5 of this Part sets out standards in relation to mortgages, and to contracts and timeframes for the construction of new homes. Finally, Division 6 of this Part deals with the “Commonwealth share” in a relevant property, and the circumstances in which the “Commonwealth share percentage” can be adjusted.

12 Application of this Part

This Part:

- (a) applies to the performance of Housing Australia’s functions in relation to the Territories and participating States (under subparagraph 24(1)(a)(i) of the Act); and
- (b) does *not* apply to the performance of Housing Australia’s functions in relation to cooperating States.

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Part 2 Entering into Help to Buy arrangements

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

Section 13

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

13 Housing Australia can only enter into arrangements where this instrument permits

- (1) Housing Australia must not enter into an arrangement other than in accordance with this instrument.
- (2) Housing Australia must ensure that each arrangement contains such terms and conditions as are necessary to enable it to comply with the requirements of this instrument.
- (3) This instrument does *not* limit the terms and conditions that Housing Australia may include in an arrangement, except to the extent that those terms and conditions are directly inconsistent with this instrument.

Example 1: Division 2 of Part 3 deals with the “participation requirements” that Housing Australia must include in arrangements. This does not prevent Housing Australia from also including other participation requirements unless they are directly inconsistent with this instrument.

Example 2: If the effect of a provision of this instrument is that an arrangement must require a person to give notice of a particular matter to Housing Australia. This instrument does not prevent the arrangement from specifying the timeframe within which that notice must be given, or requiring the person to give other kinds of notices to Housing Australia, unless it would be inconsistent with this instrument.

14 Housing Australia may enter into arrangements with single or joint applicants

When Housing Australia may enter into an arrangement

- (1) Housing Australia may enter into an arrangement in relation to a property with an individual, or 2 individuals jointly, where:
 - (a) the individual (the **applicant**), or individuals jointly (each being an **applicant**), apply for an arrangement in accordance with subsection (2); and
 - (b) Housing Australia has approved the application under subsection (4), and the approval has not expired or been revoked before the arrangement is entered into; and
 - (c) entering into the arrangement would not be contrary to Division 2 of Part 5.

Note 1: See section 15 for the circumstances in which Housing Australia may revoke an approval before entering into an arrangement.

Note 2: Division 2 of Part 5 affects when Housing Australia may enter into arrangements in respect of properties in particular jurisdictions. It also provides for the expiry of approvals in certain circumstances.

- (2) An application for an arrangement must be:
 - (a) in writing; and
 - (b) if Housing Australia has approved, in writing, and published on its website, the manner and form for an application—made in that manner and form; and

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Entering into Help to Buy arrangements **Part 2**
When can Housing Australia enter into a Help to Buy arrangement? **Division 2**

Section 15

- (c) accompanied by the information or documents required by any such approved form.
- (3) Housing Australia must commence consideration of applications in the order in which Housing Australia receives each application that complies with subsection (2).

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

- (4) Housing Australia may approve an application to enter into an arrangement where, at the time it decides the application:
- (a) Housing Australia is satisfied that the dealings with the vendor of the relevant property will be carried out on an arm's-length basis; and
 - (b) the arrangement would relate to the purchase of the whole of the relevant property, except where subsection 18(1) applies; and
 - (c) the applicant, or each applicant, is an eligible applicant (see section 17); and
 - (d) the relevant property is an eligible property (section 21); and
 - (e) Housing Australia is satisfied that the mortgage requirements will be met by the settlement date (see section 22); and
 - (f) where the arrangement relates to the construction of a new home—Housing Australia is satisfied that:
 - (i) the new home contract requirements will be met by the settlement date (see section 23); and
 - (ii) the timeframe requirements will be met (see section 24); and
 - (g) Housing Australia is satisfied that the property, once purchased, will be adequately insured (see section 6); and
 - (h) approving the application would not be contrary to Division 2 of Part 5.

Note: Division 2 of Part 5 affects when Housing Australia may approve applications in respect of properties in particular jurisdictions.

15 Circumstances in which Housing Australia may revoke approvals

- (1) Housing Australia may revoke an approval before entering into an arrangement if a criterion in subsection 14(4) ceases to be satisfied before the arrangement is entered into.

Note 1: See section 53 for the circumstances in which Housing Australia *must* revoke an approval.

Note 2: This section deals with revoking *approvals* to enter into arrangements. Approvals stop being relevant once an arrangement is entered into as arrangements are contractual in nature and can only be terminated in accordance with their terms. Division 6 of Part 3 requires Housing Australia to ensure arrangements allow it to terminate the arrangement in certain circumstances.

- (2) To avoid doubt:
- (a) an approval cannot be revoked once an arrangement has been entered into; and
 - (b) this section does *not* limit Housing Australia's power to terminate an arrangement in accordance with the terms of that arrangement.

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Part 2 Entering into Help to Buy arrangements

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

Section 16

16 Minimum and maximum contributions to purchase price

- (1) Where Housing Australia enters into an arrangement, the Commonwealth's contribution to the purchase price must fall within the limits set out in the following table:

Housing Australia contribution		
Property type	Minimum contribution	Maximum contribution
Existing dwelling	5% of purchase price	30% of purchase price
New home	5% of purchase price	40% of purchase price

Note: The remainder of the purchase price will be supplied by the applicant's deposit and funding from a participating lender secured by way of a mortgage.

- (2) Further to subsection (1), Housing Australia must *not* contribute, on behalf of the Commonwealth, less than the amount required to ensure that its contribution and the applicant's deposit will together equal at least 20% of the value of the property as assessed by the participating lender mentioned in paragraph 21(1)(a).

Note: If Housing Australia's contribution and the applicant's deposit together equal at least 20% of the value of the property, the applicant will not need to bear the cost of lenders' mortgage insurance.

Example: If the applicant is contributing 5% of the assessed value as a deposit, Housing Australia's minimum contribution amount would be 15% of the assessed value.

- (3) Housing Australia must determine the percentage that the Commonwealth will contribute (the ***agreed percentage***), taking into account:
- (a) the percentage (if any) that an applicant has requested in their application; and
 - (b) the principle that an applicant must contribute as large a deposit as can reasonably be required in light of their personal circumstances and financial capacity.

Note: The agreed percentage must fall within the limits set out in subsection (1) at the time the arrangement is entered into. However, on or after settlement, 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). Accordingly, that percentage might subsequently fall outside of the ranges in subsection (1) of this section.

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Division 3—Who is an eligible applicant?

17 Who is an eligible applicant?

An applicant is an *eligible applicant*, at a particular time, if:

- (a) they are an Australian citizen of at least 18 years of age at that time; and
- (b) the income test (section 19) and the financial capacity test (section 20) are satisfied in relation to the applicant at that time; and
- (c) Housing Australia is satisfied that the applicant will comply with the principal place of residence requirement (clause 4 of Schedule 1); and
- (d) the applicant is *not* receiving assistance from one or more of the following:
 - (i) a home-buyer guarantee provided by a Commonwealth entity or Commonwealth company;
 - (ii) a shared equity scheme;
 - (iii) a loan or guarantee provided by or on behalf of a State or Territory to support home ownership; and
- (e) except where Housing Australia is satisfied that section 18 applies—the applicant does not hold a disqualifying property interest at that time; and
- (f) Housing Australia is satisfied that the applicant will, either individually or jointly with another applicant:
 - (i) provide a deposit of at least 2% of the purchase price of the relevant property; and
 - (ii) cover all additional costs (such as conveyancing costs, legal costs and stamp duty) associated with the purchase of the property; and
- (g) Housing Australia is satisfied that the applicant or joint applicants will, upon settlement, be the only registered owners of the property.

Note: Paragraph (d) does not extend to home buyer assistance in other forms, such as first home owner grants or tax concessions, or the First Home Super Saver scheme.

18 Exception to requirement not to hold interest in real estate

Exception—single parent or guardian buying out existing property

- (1) This section applies where the applicant:
 - (a) is a single parent; and
 - (b) holds a disqualifying property interest as a joint tenant or tenant in common in the property to which the proposed arrangement relates; and
 - (c) intends to become the sole registered owner of that property with the assistance of the arrangement.

Exception—simultaneous purchase of the property and sale of existing property

- (2) This section also applies where the applicant:
 - (a) is a single parent; and
 - (b) holds a disqualifying property interest; and
 - (c) intends to cease to hold that interest within 4 weeks of the applicant becoming the registered owner of the property to be purchased with the assistance of the arrangement.

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Part 2 Entering into Help to Buy arrangements

Division 3 Who is an eligible applicant?

Section 19

19 Income test for single and joint applicants

The *income test* is satisfied in relation to an applicant for an arrangement if:

- (a) where the applicant will be the only party to the arrangement—the single income threshold for the financial year in which they applied for the arrangement is greater than or equal to the applicant’s taxable income for the most recent income year (within the meaning of the *Income Tax Assessment Act 1936*) for which the Commissioner of Taxation has given the applicant a notice of assessment; or
- (b) where the applicant will be party to the arrangement jointly with another person—the joint income threshold for the financial year in which they applied for the arrangement is greater than or equal to the combined taxable incomes of the applicants, calculated using the taxable income for each of the applicant’s most recent income year (within the meaning of the *Income Tax Assessment Act 1936*) for which the Commissioner of Taxation has given the applicant a notice of assessment.

20 Financial capacity test for single and joint applicants

The *financial capacity test* is satisfied in relation to an applicant or joint applicants for an arrangement if Housing Australia is of the opinion that it is unlikely that the applicant, or both applicants together, could acquire the relevant property at that time without the assistance of the arrangement, having regard to the value of their assets (including assets that an applicant owns jointly with another person) and any other likely assistance, of a material nature, that may be provided by the Commonwealth, a State or a Territory.

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Entering into Help to Buy arrangements **Part 2**

What is an eligible property? **Division 4**

Section 21

Division 4—What is an eligible property?

21 What is an eligible property?

A property is an *eligible property* if:

- (a) it is an existing dwelling or a new home; and
- (b) the purchase price does not exceed the price cap for the area in which the property is located (see section 7).

EXPOSURE DRAFT

Part 2 Entering into Help to Buy arrangements

Division 5 Contract, mortgage and timeframe requirements

Section 22

Division 5—Contract, mortgage and timeframe requirements

22 Requirements relating to mortgages

- (1) The *mortgage requirements* in relation to a proposed arrangement are as follows:
 - (a) the purchase of the relevant property is financed by a single mortgage with a participating lender (disregarding the mortgage securing the Commonwealth share); and
 - (b) the following requirements will be satisfied in relation to the mortgage with the participating lender:
 - (i) the applicant or joint applicants are the only counterparties to the mortgage agreement; and
 - (ii) the term of the mortgage does not exceed 30 years; and
 - (iii) the mortgage is a variable or fixed rate loan, or a combination of both (and not a line of credit); and
 - (iv) subject to subsection (2), the mortgage agreement requires scheduled payments of both principal and interest for the full period of the agreement; and
 - (c) the applicant or joint applicants have granted a second mortgage over the relevant property in favour of the Commonwealth.
- (2) The mortgage agreement may provide for interest-only payments to be made in one or more of the following circumstances:
 - (a) where the arrangement relates to the construction of a new home—while that home is being constructed;
 - (b) while an applicant is experiencing hardship.

23 New home contract requirements

The *new home contract requirements*, in relation to a contract for the construction of a new home, are that the applicant or joint applicants have entered into a contract that meets all the following requirements:

- (a) the contract is a fixed-price contract under which the purchase price does not exceed the price cap for the area in which the property is located;
- (b) the contract is with a builder who holds all the licences and registrations required by law in order to perform the work required by the contract in the relevant jurisdiction;
- (c) the required insurance policies are in place in relation to the construction of the new home as required by law;
- (d) the contract is entered into on an arm's-length basis;
- (e) the contract requires the builder to construct a fully completed dwelling on the land, up to and including the point at which the home is certified as fit for occupation.

24 Timeframe requirements

- (1) Subject to subsection (2), the *timeframe requirements* for an arrangement relating to the construction of a new home are as follows:
-

EXPOSURE DRAFT

Entering into Help to Buy arrangements **Part 2**
Contract, mortgage and timeframe requirements **Division 5**

Section 24

- (a) for the purchase of an off-the-plan dwelling:
 - (i) the construction of the dwelling must commence before the parties enter into the contract of sale; and
 - (ii) the settlement date must be no later than 90 days after the application to enter into the arrangement is approved;
 - (b) in all other cases:
 - (i) the construction of the dwelling must commence within 12 months of the day on which the applicant becomes the registered owner of the property to which the arrangement relates (the *transfer date*); and
 - (ii) the construction must be completed within 24 months of the transfer date.
- (2) If Housing Australia is satisfied that it is necessary or appropriate to adjust the timeframes in subsection (1) in relation to a particular case, in response to the circumstances of the case, then the *timeframe requirements* are the requirements specified by Housing Australia by notice given to the applicant in writing.

EXPOSURE DRAFT

Part 2 Entering into Help to Buy arrangements

Division 6 Securing Housing Australia's entitlement to a return

Section 25

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

25 The *Commonwealth share* and *Commonwealth share percentage*

- (1) The *Commonwealth share*, in relation to a relevant property:
 - (a) means the return to which the Commonwealth is entitled under the arrangement in respect of that property; and
 - (b) is expressed as a percentage of the value of the relevant property from time to time, where the percentage (the *Commonwealth share percentage*) is:
 - (i) unless adjusted as set out in subsections (3) and (4)—the agreed percentage (see section 16); and
 - (ii) if adjusted as set out in subsections (3) and (4)—the agreed percentage as adjusted.

Note: Because the value of the relevant property will change from time to time, the precise monetary value of the Commonwealth share will also vary depending on the time at which it is calculated. This will be the case even if the Commonwealth share percentage itself has not been adjusted.

Example: If the Commonwealth share is 20% of the value of a relevant property, and the property, at a particular time, is valued at \$600,000, the monetary value of the Commonwealth share at that time is \$120,000.

- (2) Housing Australia must ensure that each arrangement provides for the Commonwealth share and Commonwealth share percentage to be determined and adjusted in accordance with this section.

Note: The definition of 'shared equity arrangement' in subsection 7(1) of the Act allows return entitlements to be worked out either in whole or in part by reference to the value of the relevant property at one or more times. The effect of this section is that an arrangement must create a return entitlement that is worked out *wholly* by reference to the value of the relevant property.

Adjustments to the Commonwealth share percentage

- (3) Housing Australia must ensure that each arrangement must allow Housing Australia, on or after settlement, to increase the Commonwealth share percentage without making further financial contributions:
 - (a) in the circumstances mentioned in each item of the following table (as described in column 1 of the table); and
 - (b) as set out in the relevant item of the table (column 2 of the table).

	Column 1	Column 2
Item	Circumstances	Amount by which percentage may be increased
1	Where the value of the relevant property, as assessed by the participating lender for the purpose of settlement, is lower than the purchase price	To a percentage that preserves what would have been the value of the Commonwealth share on the date of settlement, had the value of the property at that date been equal to the purchase price
2	Where Housing Australia considers that a participant's negligence,	To a percentage that preserves what would have been the value of the

EXPOSURE DRAFT

Entering into Help to Buy arrangements **Part 2**
Securing Housing Australia's entitlement to a return **Division 6**

Section 25

	Column 1	Column 2
Item	Circumstances	Amount by which percentage may be increased
	fraudulent behaviour, or other unreasonable deliberate or reckless act or omission, has reduced, or is likely to reduce, the value of the relevant property	Commonwealth share but for the act or omission

Example: For item 1, the Commonwealth contributes 30% of the purchase price of a relevant property (this being the agreed percentage). The purchase price is \$500,000, so the Commonwealth's contribution is \$150,000. The Commonwealth share, immediately before settlement, is 30% of the value of the relevant property at that time.

However, the property is valued at \$475,000 for the purpose of settlement. This would reduce the value of the Commonwealth share at that time to \$142,500, based on the original percentage return of 30%. The arrangement is to permit the Commonwealth share to be increased to 31.58% of the value of the property at settlement so that, as at the settlement date, the value of the Commonwealth share is preserved at \$150,000.

- (4) Housing Australia must ensure that each arrangement must enable Housing Australia to reduce the Commonwealth share percentage:
- (a) to reflect a repayment mentioned in section 36 or 42; or
 - (b) in the circumstances mentioned in section 60 (home improvements).

EXPOSURE DRAFT

Part 3 Participating in the Help to Buy program

Division 1 Introduction

Section 26

Part 3—Participating in the Help to Buy program

Division 1—Introduction

26 Simplified outline

This Part deals with participation in the Help to Buy program. The provisions in this Part are relevant to the performance of Housing Australia’s functions in relation to the Territories, and participating and cooperating States.

Division 2 of Part 3, working with Schedule 1, deals with the conditions of participation in an arrangement. Division 3 of Part 3 requires Housing Australia to take certain steps to monitor compliance with those conditions, and Division 4 of Part 3 defines how Housing Australia is to respond where a person ceases to comply with the conditions.

Participants are not bound by the conditions of participation by force of this instrument. Rather, Housing Australia is to ensure that its arrangements with participants enable it to take the steps set out in Division 4 where a person ceases to meet those conditions.

Division 5 of Part 3 sets out the circumstances in which Housing Australia may vary the participants in an arrangement.

Finally, Division 6 of Part 3 requires Housing Australia to ensure arrangements allow it to terminate the arrangement in certain circumstances.

27 Application of this Part

This Part applies to the performance of Housing Australia’s functions in relation to:

- (a) the Territories, and participating States (under subparagraph 24(1)(a)(i) of the Act); and
- (b) cooperating States (under subparagraph 24(1)(a)(ii) of the Act).

EXPOSURE DRAFT

Division 2—Participation requirements

28 Arrangements must require compliance with participation requirements

- (1) Housing Australia must ensure that each arrangement requires a participant to comply with the participation requirements specified in Schedule 1 for the duration of the arrangement.
- (2) Those requirements, as set out in each arrangement, are the *participation requirements*.
- (3) To avoid doubt, the participation requirements are to apply to a participant only during the life of the arrangement and are not to apply where the arrangement has been brought to an end early (for example, voluntary early repayment of the Commonwealth share in full or on the sale of the relevant property).

Note 1: These requirements have legal force by virtue of an arrangement. This instrument does not impose obligations on participants directly.

Note 2: There is no participation requirement relating to the income thresholds. However, Division 4 of Part 3 requires Housing Australia to take certain actions where a participant exceeds the income threshold at a particular time.

28A Exceptions to sale of existing property requirement

- (1) Housing Australia must ensure that each arrangement, where relevant, provides that the participant is *not* required to comply with the participation requirement outlined in clause 1 of Schedule 1 (the *sale of existing property requirement*) if Housing Australia is satisfied that it is impracticable for the participant to meet that requirement:
 - (a) because the participant is experiencing hardship; or
 - (b) on other compassionate grounds.
- (2) Housing Australia may:
 - (a) allow the participant not to comply with the sale of existing property requirement for such a period as Housing Australia considers appropriate; and
 - (b) extend that period.
- (3) Housing Australia must not allow a participant to not comply with the sale of existing property requirement unless the participant has provided satisfactory evidence justifying the non-compliance.

29 Exceptions to principal place of residence requirement: all properties

- (1) Housing Australia must ensure that each arrangement provides that a participant is *not* required to comply with the participation requirement outlined in clause 3 of Schedule 1 (the *principal place of residence requirement*) if Housing Australia is satisfied that it is impracticable for the participant to meet that requirement:
 - (a) because of a posting required in the course of a person performing their duties as a member of the Australian Defence Force, other than as a member of the Naval Reserve, the Army Reserve or the Air Force Reserve (within the meaning of the *Defence Act 1903*); or

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Part 3 Participating in the Help to Buy program

Division 2 Participation requirements

Section 30

- (b) because a participant's employer has required them to relocate, in circumstances where the person has been employed by that employer for:
 - (i) at least 12 months; or
 - (ii) a lesser period, where Housing Australia is satisfied that a lesser period is appropriate having regard to the nature of the ongoing employment relationship between the parties; or
 - (c) because a participant, or a person for whom a participant exercises carer responsibilities, is suffering from a serious illness; or
 - (d) on other compassionate grounds.
- (2) Housing Australia may:
- (a) allow the participant not to comply with the principal place of residence requirement under paragraph (1)(a) for such a period as Housing Australia considers appropriate; and
 - (b) extend that period.
- (3) The period of allowed non-compliance under paragraph (1)(b), (c) or (d) must not be longer than 12 months. However, Housing Australia, where it considers it appropriate to do so:
- (a) in relation to a situation covered by paragraph (1)(b)—may extend the period by up to 2 further 12-month periods; and
 - (b) in relation to a situation covered by paragraph (1)(c) or (d)—may extend the period by one or more 12-month periods.
- (4) Housing Australia must not allow a participant to not comply with the principal place of residence requirement unless the participant has provided satisfactory evidence justifying the non-compliance.
- (5) Housing Australia may at any time, if satisfied that the reasons for which non-compliance was allowed no longer apply, require the participant to comply with the principal place of residence requirement.

30 Delayed application of principal place of residence requirement: new homes

Where an arrangement relates to the construction of a new home, Housing Australia must ensure that the arrangement provides that a participant does not breach the participation requirement outlined in clause 3 of Schedule 1 by failing to treat the relevant property as their principal place of residence between the commencement of the arrangement and the date mentioned in paragraph (c) of this section if:

- (a) the participant does not occupy the relevant property because construction of the new home is being carried out; and
- (b) the participant does not own the property that is their principal place of residence during the construction period; and
- (c) the participant begins to treat the relevant property as their principal place of residence within 3 months of the construction being completed.

EXPOSURE DRAFT

Participating in the Help to Buy program **Part 3**
Participation requirements **Division 2**

Section 31

31 Borrowing additional funds under a mortgage from participating lenders

- (1) Housing Australia must ensure that each arrangement provides that a participant may only borrow additional funds from a participating lender for the purpose of:
- (a) making a payment to reduce the Commonwealth share in respect of the relevant property; or
 - (b) maintenance or capital expenditure in respect of the relevant property (including home improvements).

Note 1: For other limits on borrowing additional funds from participating lenders, see clause 5 of Schedule 1.

Note 2: A participant can always take out a new mortgage with a participating lender, or with their current participating lender, if the refinancing does not result in a larger mortgage.

EXPOSURE DRAFT

Part 3 Participating in the Help to Buy program

Division 3 Monitoring participants' compliance

Section 32

Division 3—Monitoring participants' compliance

32 Housing Australia must monitor participant compliance

Housing Australia must monitor each participant's compliance with the participation requirements throughout the life of an arrangement.

33 Housing Australia must conduct 5-yearly reviews

Without limiting section 32, Housing Australia must, for each arrangement, conduct a review at least every 5 years to determine:

- (a) for a sole participant—whether the participant's taxable income:
 - (i) for the most recent income year (within the meaning of the *Income Tax Assessment Act 1936*) for which the Commissioner of Taxation has given the participant a notice of assessment—exceeded the single income threshold for the financial year in which the review is undertaken; and
 - (ii) for the income year immediately preceding the most recent income year for which the Commissioner of Taxation has given the participant a notice of assessment—exceeded the single income threshold for the financial year preceding the year in which the review is undertaken; and
- (b) for joint participants—whether the participants' combined taxable incomes:
 - (i) calculated by adding together the taxable income of each participant for the most recent income year for which the Commissioner of Taxation has given each of the participants a notice of assessment—exceeded the joint income threshold for the financial year in which the review is undertaken; and
 - (ii) calculated by adding together the taxable income of each participant for the income year immediately preceding the most recent income year for which the Commissioner of Taxation has given each of the participants a notice of assessment—exceeded the joint income threshold for the financial year preceding the year in which the review is undertaken; and
- (c) whether each participant has met the participation requirements.

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

Upon a participant discharging their mortgage with a participating lender, Housing Australia must, within a reasonable time, review the arrangement in order to determine:

- (a) whether each participant has met the participation requirements; and
- (b) whether the participant or joint participants should be required to undergo the process set out in section 36.

unless:

- (c) the participant has also repaid the Commonwealth share in full; or

EXPOSURE DRAFT

Participating in the Help to Buy program **Part 3**
Monitoring participants' compliance **Division 3**

Section 34

- (d) the participant has taken out a new mortgage with another participating lender in order to discharge their mortgage with their current participating lender.

EXPOSURE DRAFT

Part 3 Participating in the Help to Buy program

Division 4 Managing participants' compliance

Section 35

Division 4—Managing participants' compliance

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

- (1) Housing Australia must take action under an arrangement in accordance with section 36 where, after conducting a review mentioned in section 33 or 34, Housing Australia is satisfied that:
 - (a) for a sole participant—the participant's taxable income during the periods mentioned in paragraph 33(a) exceeded the thresholds mentioned in that paragraph; and
 - (b) for joint participants—the participants' combined taxable income during the periods mentioned in paragraph 33(b) exceeded the thresholds mentioned in that paragraph.
- (2) Where Housing Australia is satisfied that a participant has, at any time, not met a participation requirement, it may take action under the arrangement to undergo the process set out in with section 36 if it considers it appropriate to do so.

Note: Subsection 13(2) requires Housing Australia to ensure that each arrangement contains such terms and conditions as are necessary to enable Housing Australia to comply with the requirements of this instrument.
- (3) This section does *not* prevent Housing Australia from making provision in an arrangement for the imposition of other measures relating to compliance, except to the extent that those provisions are directly inconsistent with this instrument.

36 Housing Australia may require repayment and terminate arrangement

Assessment of capacity to repay Commonwealth share

- (1) Housing Australia must ensure that each arrangement requires a participant to obtain, and provide to Housing Australia, an assessment from a participating lender of their capacity to repay the Commonwealth share in respect of the relevant property (as valued at the time of the assessment):
 - (a) where Housing Australia determines, under paragraph 34(b), that the participant or joint participants should be required to undergo the process set out in this section; or
 - (b) in the circumstances mentioned in subsection 35(1); or
 - (c) where Housing Australia considers it appropriate, under subsection 35(2), to take action under an arrangement to undergo the process set out in this section; or
 - (d) where a further assessment is required under subsection (5), (6), (9) or (12) of this section.

Note: See section 10 for how this section applies to joint participants.
- (2) An assessment must:
 - (a) if the Commonwealth share is greater than 5% of the value of the property (as at the time of the assessment)—assess whether the participant does, or does not, have the capacity to repay a minimum amount of 5% of that property value; and

EXPOSURE DRAFT

Participating in the Help to Buy program **Part 3**
Managing participants' compliance **Division 4**

Section 36

- (b) if the Commonwealth share is equal to or less than 5% of the property value (as at the time of the assessment)—assess whether the participant does, or does not, have the capacity to repay the Commonwealth share of that property value in full.
 - (c) be obtained within the period determined by Housing Australia.
- (3) In determining the period under paragraph (2)(c), Housing Australia must:
- (a) consider the participant's personal circumstances and financial capacity; and
 - (b) consider the reason, or reasons, the participant was required to obtain an assessment of their capacity to repay the Commonwealth share in respect of the relevant property (including the reason, or reasons, for a previous assessment where the assessment is a further assessment); and
 - (c) where the assessment is required because of subsection (5), (6), (9) or (12)—set a period that starts not less than 12 months after the previous assessment.

Example: If Housing Australia has dealt with an arrangement under this section because the participant's taxable income exceeded the threshold for section 33, Housing Australia would consider the extent which the participant's taxable income exceeded the threshold.

Arrangements to allow Housing Australia to require repayment of Commonwealth share

- (4) Housing Australia must ensure that each arrangement allows Housing Australia to require a participant to repay the Commonwealth share in full or in part in the situations specified in this section.

Commonwealth share greater than 5% of value of property

- (5) Where:
- (a) Housing Australia receives an assessment under subsection (1); and
 - (b) the Commonwealth share in respect of the relevant property is greater than 5% of the value of the property (as at the time of the assessment); and
 - (c) the participating lender assessed that the participant has the capacity to repay a minimum amount of 5% of that property value; and
 - (d) Housing Australia is satisfied that the assessment was properly made;
- Housing Australia, under the arrangement:
- (e) must require the participant to repay that minimum amount (rounded to the nearest \$1,000) within 90 days of the date of the assessment; and
 - (f) may allow the participant to repay more than the minimum amount; and
 - (g) where the Commonwealth share percentage of the relevant property, re-calculated by Housing Australia to reflect a payment mentioned in paragraph (d) or (e) (as applicable), is greater than 0%—must require a further assessment under subsection (1) to be undertaken; and
 - (h) where the Commonwealth share percentage of the relevant property, calculated by Housing Australia to reflect a payment mentioned in paragraph (d) or (e) (as applicable), is 0%—must terminate the arrangement.

EXPOSURE DRAFT

Part 3 Participating in the Help to Buy program

Division 4 Managing participants' compliance

Section 36

- (6) Where:
- (a) Housing Australia receives an assessment under subsection (1); and
 - (b) the participating lender has assessed that the participant does not have the capacity to repay the minimum amount mentioned in paragraph (2)(a); and
 - (c) Housing Australia is satisfied that assessment was properly made;
- Housing Australia must require a further assessment under subsection (1) .

Example: If Housing Australia is satisfied with an assessment that a participant does not have the capacity to repay the minimum amount, the participant need not make a repayment but will be required to obtain another assessment at a later time determined by Housing Australia.

- (7) Despite paragraph (5)(e), Housing Australia must *not* require, but may allow, a participant to make a repayment to an extent that the repayment would render the participant liable to bear the cost of lenders' mortgage insurance.

Note: The participant may become liable to bear the cost of lenders' mortgage insurance if, for example, they borrow further funds from their participating lender in order to repay the Commonwealth share, and this results in them borrowing more than a certain percentage of the property's value from that lender.

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

- (8) Where:
- (a) Housing Australia receives an assessment under subsection (1); and
 - (b) the Commonwealth share in respect of the relevant property is equal to or less than 5% of the value of the property (as at the time of the assessment); and
 - (c) the participating lender has assessed that the participant has the capacity to repay the Commonwealth share of that value in full; and
 - (d) Housing Australia is satisfied that the assessment was properly made;
- Housing Australia, under the arrangement:
- (e) must require the participant to repay the Commonwealth share in full within 90 days from the time the assessment is made; and
 - (f) terminate the arrangement when the repayment in full has been made.

- (9) If:
- (a) the participating lender has assessed that the participant does not have the capacity to repay the Commonwealth share of the value in full as mentioned in paragraph (2)(b); and
 - (b) Housing Australia is satisfied that the assessment was properly made;
- Housing Australia must require a further assessment under subsection (1).

Example: If Housing Australia is satisfied with an assessment that a participant does not have the capacity to repay the Commonwealth share in full, the participant need not make a repayment but will be required to obtain another assessment at a later time determined by Housing Australia.

Note: The participant may repay the Commonwealth share by, for example, borrowing further funds from their participating lender, or using their own savings or assets.

- (10) Despite paragraph (8)(e), Housing Australia must *not* require, but may allow, a participant to repay the Commonwealth share in full even if this would render the participant liable to bear the cost of lenders' mortgage insurance.

EXPOSURE DRAFT

Participating in the Help to Buy program **Part 3**
Managing participants' compliance **Division 4**

Section 36

Note: The participant may become liable to bear the cost of lenders' mortgage insurance if, for example, they borrow further funds from their participating lender in order to repay the Commonwealth share, and this results in them borrowing more than a certain percentage of the property's value from that lender.

Housing Australia may not seek repayment in certain circumstances

- (11) Housing Australia may choose not to enforce a requirement for a participant to repay an amount as set out in this section if Housing Australia considers it reasonable in the circumstances after considering:
- (a) the participant's personal circumstances and financial capacity; and
 - (b) the reason, or reasons, the participant was required to obtain an assessment of their capacity to repay the Commonwealth share in respect of the relevant property.

Example: If Housing Australia has dealt with an arrangement under this section because the participant's taxable income exceeded the threshold for section 33, Housing Australia would consider the extent which the participant's taxable income exceeded the threshold.

- (12) Where Housing Australia chooses not to enforce a requirement for a participant to repay an amount as set out in this section, Housing Australia must require a further assessment under subsection (1).

EXPOSURE DRAFT

Part 3 Participating in the Help to Buy program

Division 5 Varying arrangements

Section 37

Division 5—Varying arrangements

37 Varying the participants in an arrangement

- (1) Housing Australia must not vary an arrangement:
 - (a) so that there are more than 2 participants; or
 - (b) to remove all of the original participants.
- (2) Housing Australia may only vary an arrangement so as to add a participant where Housing Australia is satisfied that:
 - (a) the new participant is an eligible applicant (see section 17), subject to the following qualifications:
 - (i) where the variation occurs after the parties enter into the contract of sale, but on or before the settlement date—subparagraph 17(f)(i) does not apply; and
 - (ii) where the variation occurs after the settlement date—paragraph 17(f) does not apply; and
 - (b) any transactions with the vendor or builder that involve the participant would be conducted on an arm's length basis.
- (3) Housing Australia must not vary an arrangement so as to remove a participant unless it is satisfied that:
 - (a) the relevant participating lender has determined that the participant or participants in the arrangement, as varied, would be able to meet their obligations under the mortgage agreement; or
 - (b) it is necessary to do so to enable or facilitate compliance with a court order.
- (4) This section does *not* apply in the circumstances mentioned in section 44.

Note: Section 44 separately provides for the alteration of arrangements in circumstances involving the death of participants.

38 Varying or entering into new construction contracts

- (1) Where:
 - (a) a construction contract for a new home is to be varied, or a replacement contract is to be entered into, in the circumstances mentioned in clause 14 of Schedule 1; and
 - (b) the purchase price under the varied or replacement contract is higher than the original purchase price;

Housing Australia must not increase the Commonwealth's contribution to the purchase price to more than 40% of the original purchase price.

- (2) Subsection (1) applies even if the increase to the purchase price would mean that Housing Australia contributes less than the amount required to ensure that its contribution and applicant's deposit together equal at least 20% of the new value of the property.

Note: This may mean that the participant has to bear the cost of lenders' mortgage insurance.

EXPOSURE DRAFT

Participating in the Help to Buy program **Part 3**
Terminating arrangements in specified circumstances **Division 6**

Section 39

Division 6—Terminating arrangements in specified circumstances

39 Housing Australia must reserve power to terminate arrangements in certain circumstances

- (1) Housing Australia must ensure that an arrangement can be terminated if, before the settlement date for the purchase of the relevant property:
 - (a) due to a change of circumstances, a participant stops being an eligible applicant; or
 - (b) Housing Australia stops being satisfied that the mortgage requirements or new home contract requirements will be met by the settlement date.
- (2) Housing Australia must ensure that an arrangement can be terminated at any time if:
 - (a) Housing Australia stops being satisfied that the timeframe requirements will be met; or
 - (b) the timeframe requirements have not been met; or
 - (c) Division 2 of Part 5 (about allocating Help to Buy places) would require the arrangement to be terminated.
- (3) This section does *not* limit the circumstances in which an arrangement may allow Housing Australia to terminate the arrangement.

EXPOSURE DRAFT

Part 4 Exiting the program

Division 1 Introduction

Section 40

Part 4—Exiting the program

Division 1—Introduction

40 Simplified outline

Part 4 sets out additional means by which an arrangement is to be able to be brought to an early end, such as voluntary early repayments or sale of the relevant property. It also deals with how Housing Australia may manage arrangements for deceased estates of participants. It is relevant to the performance of Housing Australia's functions in relation to the Territories, and both participating and cooperating States.

41 Application of this Part

This Part applies to the performance of Housing Australia's functions in relation to:

- (a) the Territories and participating States (under subparagraph 24(1)(a)(i) of the Act); and
- (b) cooperating States (under subparagraph 24(1)(a)(ii) of the Act).

Division 2—Exiting the program

42 Housing Australia must allow voluntary early repayments

- (1) Housing Australia must ensure that each arrangement permits a participant to make one or more voluntary repayments, provided that each repayment would:
 - (a) when rounded to the nearest \$1,000, reduce the Commonwealth share percentage by at least 5% of the value of the relevant property as at the time of the repayment; or
 - (b) repay the Commonwealth share (as valued at that time) in full.
- (2) Housing Australia must ensure that each arrangement allows Housing Australia to require the participant to bear the costs of obtaining a valuation, and any other administrative costs, associated with a repayment.

43 Housing Australia must allow the relevant property to be sold

- (1) Housing Australia must ensure that each arrangement allows the participant to sell the relevant property at any time, subject to the conditions specified in subsection (2).
- (2) For the purposes of subsection (1), the conditions are that:
 - (a) the participant must give Housing Australia written notice of a sale immediately after the parties enter into a contract of sale; and
 - (b) Housing Australia is satisfied that the contract of sale has been entered into on an arm's-length basis; and
 - (c) the participant must bear the costs of obtaining a valuation, and any other administrative costs, associated with the sale.

44 Options for deceased estates of participants

- (1) Housing Australia must recover the Commonwealth share (as valued at the time it is recovered), where:
 - (a) a sole participant in an arrangement dies; or
 - (b) 2 joint participants own the relevant property as joint tenants and both participants die.

Note: Subsection 13(2) requires Housing Australia to ensure that each arrangement contains such terms and conditions as are necessary to enable it to comply with the requirements of this instrument.

- (2) However, subsection (1) does *not* apply where:
 - (a) the relevant property is inherited by a single beneficiary (or 2 beneficiaries jointly) of the estate of one or both of the deceased participants; and
 - (b) each beneficiary applies, in the manner and form approved by Housing Australia, to be accepted as a participant in the arrangement; and
 - (c) the requirements in paragraphs 17(a) to (e) (about eligible applicants) are met in respect of each beneficiary at the time of the application; and
 - (d) Housing Australia agrees to substitute each beneficiary as a party to, and participant in, the arrangement in respect of the relevant property.

EXPOSURE DRAFT

Part 4 Exiting the program

Division 2 Exiting the program

Section 44

- (3) Housing Australia must recover the Commonwealth share (as valued at the time it is recovered), where:
 - (a) 2 joint participants own the relevant property as tenants in common; and
 - (b) one of the participants dies; and
 - (c) an individual, other than the surviving participant, inherits the deceased participant's interest in the property.
- (4) However, subsection (3) does *not* apply where:
 - (a) the deceased participant's interest in the relevant property is inherited by a beneficiary of the estate of the deceased or surviving participant (the *successor*); and
 - (b) the successor applies, in the manner and form approved by Housing Australia, to be accepted as a participant in the arrangement; and
 - (c) the requirements in paragraphs 17(a) to (e) (about eligible applicants) are met in respect of the successor at the time of the application; and
 - (d) Housing Australia agrees to substitute the successor as a participant in the arrangement in respect of the relevant property.
- (5) Where Housing Australia must recover a Commonwealth share under this section, Housing Australia must do so within:
 - (a) 2 years of the date of the deceased participant's death; or
 - (b) such longer period as Housing Australia considers reasonable, where a surviving participant or beneficiary is experiencing hardship.
- (6) Housing Australia must ensure an arrangement allows Housing Australia to require a beneficiary to bear any administrative costs associated with the substitution.

Part 5—Miscellaneous

Division 1—Introduction

45 Simplified outline

Part 5 deals with allocation of Help to Buy places across the participating jurisdictions. It also deals with miscellaneous matters relevant to the administration of the program, such as Housing Australia’s ability to charge fees in relation to arrangements, the approval of participating lenders, and the making of improvements to relevant properties.

Part 5 is relevant to the performance of Housing Australia’s functions in relation to the Territories and participating States, and, in some respects, the cooperating States.

EXPOSURE DRAFT

Part 5 Miscellaneous

Division 2 Allocating Help to Buy places

Section 46

Division 2—Allocating Help to Buy places

46 Application of this Division

This Division applies to the performance of Housing Australia’s functions in relation to the Territories and participating States (under subparagraph 24(1)(a)(i) of the Act).

Note: Paragraphs 14(1)(c) and 14(3)(h) provide that Housing Australia may only approve applications for arrangements, and enter into arrangements, where this Division allows.

48 Allocating places—first year of the program

10,000 places are available in the first year

- (1) 10,000 places are available in the 2024-25 financial year.

Initial per-capita allocation to participating jurisdictions

- (2) The places are allocated between the Territories and participating States as follows:
- (a) each Territory is allocated a number of places on 1 July 2024; and
 - (b) each State, that is a participating State on 1 July 2024, is allocated a number of places on 1 July 2024; and
 - (c) 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.

Note: This 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).

- (3) The allocated number of places for a Territory or participating State for the 2024-25 financial year means the number of places worked out in accordance with the following formula:

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

Where the result is not a whole number, round down to the nearest whole number.

49 Committing and using places—first year of the program

- (1) Where a place has been allocated to a particular State or Territory under subsection 48(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 2025.

Note 1: Paragraph 14(3)(h) means that Housing Australia cannot approve an application except where this Division allows.

Note 2: This section operates subject to section 52 (which prevents places from being used and arrangements from being entered into in certain circumstances once a participating State has given notice of its intention to cease participating).

EXPOSURE DRAFT

Committing and using places from 1 March 2025

- (2) Where a place remains unallocated or uncommitted on 1 March 2025, Housing Australia may, on or after that date, commit or use the place for an arrangement in respect of property in any Territory or participating State at any time before the end of the 2024-25 financial year.

Note: Places will be unallocated on 1 March 2025 if not all States are participating by that date, or, if all States are participating, rounding under subsection 48(3) leaves some unallocated places.

Uncommitted places at end of year treated as unused for next financial year

- (3) If a place has not been committed before the end of 30 June 2025, for the purposes of working out the number of unused places in a financial year, it is to be treated as an unused place for the next financial year.

Where place is committed, arrangement need not be entered into before end of financial year

- (4) If a place is committed before the end of 30 June 2025:
- (a) 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 2026; and
 - (b) at the end of 30 June 2026:
 - (i) the place may no longer be used in that financial year, and an arrangement may no longer be entered into in respect of the place; and
 - (ii) for the purposes of working out the number of unused places in a financial year, the place is to be treated as an unused place for the next financial year.

Note 1: This allows the place to be rolled over under subsection 50(1). However, this section applies subject to section 52, which deals with situations where a State gives notice of its intention to cease participating.

Note 2: Paragraph 14(1)(c) provides that Housing Australia may only enter into an arrangement where this Division allows. This section will sometimes prevent Housing Australia from entering into an arrangement in respect of a place even where it had previously approved an application to enter into the arrangement.

50 Allocating places—subsequent years of the program

Number of places available in subsequent years

- (1) The annual number of places that are available in a financial year after the 2024-25 financial year, is:
- (a) 10,000 places; and
 - (b) the number of unused places from a previous financial year that are treated as unused places for the financial year.

Initial per-capita allocation to participating jurisdictions

- (2) The places are allocated between the Territories and participating States as follows:
- (a) each Territory is allocated a number of places on 1 July of each financial year; and

EXPOSURE DRAFT

Part 5 Miscellaneous

Division 2 Allocating Help to Buy places

Section 51

- (b) each State, that is a participating State before 1 July of the financial year, is allocated a number of places on 1 July of that year.

Note: This 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 withdraw).

- (3) The allocated number of places for a Territory or participating State for a financial year means the number of places worked out in accordance with the following formula:

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

Where the result is not a whole number, round down to the nearest whole number.

Maximum number of places that can be allocated under the program

- (4) Despite subsection (1), 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.

51 Committing and using places—subsequent years of the program

- (1) Where 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.

Note 1: Paragraph 14(3)(h) means that Housing Australia cannot approve an application except where this Division allows.

Note 2: This section operates subject to section 52 (which prevents places from being used and arrangements from being entered into in certain circumstances once a participating State has given notice of its intention to withdraw).

- (2) Where a place is unallocated following the application of section 50, Housing Australia may, after 1 March of the relevant financial year, commit or use the place for an arrangement in respect of property in any Territory or participating State at any time before the end of that financial year.

Note: A place may be unallocated because of a rounding under subsection 50(3), because of the operation of section 52 (which prevents places from being allocated in certain circumstances once a participating State has given notice of its intention to withdraw), or because a State is not a participating State.

Uncommitted places after 1 March of the relevant financial year

- (3) Where a place remains uncommitted on 1 March of a relevant financial year, Housing Australia may, on or after that date, commit or use the place for an arrangement in respect of property in any Territory or participating State at any time before the end of that financial year.

EXPOSURE DRAFT

Uncommitted places at end of year treated as unused places for next financial year

- (4) If a place remains uncommitted on 30 June of a relevant financial year, for the purposes of working out the number of unused places in a financial year, it is to be treated as an unused place for the next financial year.

Where place is committed, arrangement need not be entered into before end of financial year

- (5) If a place is committed before the end of 30 June of the relevant financial year:
- (a) 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; and
 - (b) at the end of that next financial year:
 - (i) subject to subparagraph (ii), the place may no longer be used, and an arrangement may no longer be entered into in respect of the place; and
 - (ii) for the purposes of working out the number of unused places in a financial year, it is to be treated as an unused place for the next financial year.

Note 1: This allows the place to be rolled over under subsection 50(1). However, this section applies subject to section 52, which deals with situations where a State gives notice of its intention to cease participating.

Note 2: Paragraph 14(1)(c) provides that Housing Australia may only enter into an arrangement where this Division permits. This section will sometimes prevent Housing Australia from entering into an arrangement in respect of a place even where it had previously approved an application to enter into the arrangement.

52 Actions where a State intends to cease participating

- (1) Where a participating State gives notice, in accordance with the Intergovernmental Agreement on the Help to Buy Scheme, that it intends to stop being a participating State:
- (a) no further places are to be allocated to the State after the date Housing Australia becomes aware of the giving of the notice; and
 - (b) Housing Australia may still use a place for an arrangement, or enter into an arrangement, in respect of property in that State, if:
 - (i) Housing Australia had committed the place before the date mentioned in paragraph (a); and
 - (ii) the State has not ceased to be a participating State as of the date the place is used or the arrangement is entered into.

Note: See subsection 35(4) of the Act for the circumstances in which a State stops being a participating State.

- (2) If a State ceases to be a participating State:
- (a) Housing Australia cannot use a place in respect of a relevant property in that State from the day the State becomes a cooperating State or a withdrawn State (the *withdrawal day*), even if it had committed the place before that day; and

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Part 5 Miscellaneous

Division 2 Allocating Help to Buy places

Section 53

- (b) if Housing Australia has entered into an arrangement in respect of a relevant property in that State, but settlement had not been completed as of the withdrawal day—Housing Australia must terminate the arrangement.
- (3) Where, under this section, Housing Australia:
 - (a) can no longer use a place, or enter into an arrangement in respect of a place, in relation to property in a particular State; or
 - (b) terminates an arrangement in respect of a place, in relation to property in that State;

Housing Australia may commit or use the place for an arrangement in respect of property in a Territory or any other participating State at any time between 1 March in the financial year in which the notice was given by the participating State that it intends to stop being a participating State and the end of that financial year.

- (4) This section applies despite anything in sections 48 and 50.

53 Managing places where purchase does not settle

- (1) Subsections (2) to (3) apply where Housing Australia has committed or used a place, but:
 - (a) the participating lender withdraws their mortgage approval prior to settlement of the purchase of the relevant property and Housing Australia is satisfied that the participating lender, or another participating lender, will not enter into a mortgage over the relevant property within a reasonable time; or
 - (b) the settlement fails for any other reason and Housing Australia is satisfied that settlement will not proceed within a reasonable time.
- (2) Following a withdrawal or failure mentioned in subsection (1), Housing Australia:
 - (a) must not approve an application to enter into an arrangement in respect of that place; and
 - (b) if the approval has already been granted, but an arrangement has not yet been entered into—must revoke the approval; and
 - (c) must not enter into an arrangement in respect of the place (whether or not an approval has already been granted); and
 - (d) if an arrangement has already been entered into—must terminate the arrangement.
- (3) Housing Australia may, on or after the date of the withdrawal or failure mentioned in subsection (1), commit or use the place for an arrangement in respect of property in any 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.

Division 3—Administering the program

54 Application of this Division

This Division applies to the performance of Housing Australia’s functions in relation to:

- (a) the Territories and participating States (under subparagraph 24(1)(a)(i) of the Act); and
- (b) cooperating States (under subparagraph 24(1)(a)(ii) of the Act).

55 Indexing relevant amounts

- (1) Each amount mentioned in paragraph 60(2)(d) and paragraph 13(1)(e) of Schedule 1 is to be indexed on the first day of each financial year starting on or after 1 July 2025 by multiplying it by its indexation factor for 1 June in the preceding financial year.
- (2) The indexation factor for 1 June in a financial year is the number worked out as follows:

Method statement

Step 1. Add:

- (a) the index number for the quarter ending on 31 March in that financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 2. Add:

- (a) the index number for the quarter ending on 31 March in the immediately preceding financial year; and
- (b) the index numbers for the 3 quarters that immediately preceded that quarter.

Step 3. The ***indexation factor*** for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.

- (3) The indexation factor is to be worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more.
- (4) An amount mentioned in paragraph 60(2)(d) or paragraph 13(1)(e) of Schedule 1, after indexation, must be rounded to the nearest \$1,000.

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Part 5 Miscellaneous

Division 3 Administering the program

Section 56

56 Meaning of *index number*

- (1) The ***index number*** for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this instrument:
 - (a) the Australian Statistician has published or publishes an index number in respect of a quarter; and
 - (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;disregard the publication of the later index number for the purposes of this section.
- (3) If, at any time before or after the commencement of this instrument, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change took place or takes place, have regard only to index numbers published in terms of the new index reference period.

57 Housing Australia must not charge certain fees

- (1) Housing Australia must *not* charge fees under an arrangement:
 - (a) in relation to the application for, or approval of, the arrangement; or
 - (b) to cover Housing Australia's operating costs.
- (2) However, this instrument does *not*:
 - (a) prevent Housing Australia from passing on to an applicant or participant the cost of:
 - (i) obtaining a property valuation or other costs related to obtaining the valuation; or
 - (ii) taking action under Division 4 of Part 3 (about managing compliance), or otherwise enforcing an arrangement; or
 - (b) place any further limits on Housing Australia's power to require payment under an arrangement, agreement or contract.
- (3) Housing Australia must not pay a mortgage registration fee on behalf of an applicant or participant.

58 Valuing a relevant property

Ascertaining the value of a relevant property

- (1) This section applies where it is necessary for Housing Australia to ascertain the value of a property at a particular time because of:
 - (a) a provision of the Act or this instrument; or
 - (b) an arrangement.

Example: It would be necessary to value a property where a person wishes to make a voluntary repayment under section 42, because such a payment must reduce the Commonwealth

EXPOSURE DRAFT

share percentage by at least 5% of the value of the property, and the size of the payment required to meet that condition will depend on the value of the property at the relevant time (see section 25).

- (2) The value of the property is the value that Housing Australia is satisfied most closely represents the property's market value, based on:
- (a) a valuation provided by an independent expert acceptable to Housing Australia who:
 - (i) holds the authorisations (if any) that they are required by law to hold in order to provide valuations in the jurisdiction in which the relevant property is located; and
 - (ii) if there are no such legal requirements for the relevant jurisdiction—is a valuer that Housing Australia considers has the appropriate experience and qualifications taking into account the legislative requirements in other jurisdictions; and
 - (iii) operates on an arm's-length basis from the applicant or participant; and
 - (b) any other valuation that Housing Australia considers is appropriate to take into account; and
 - (c) any other matter that Housing Australia thinks is relevant.

Note: Subsection 13(2) requires Housing Australia to ensure that each arrangement contains such terms and conditions as are necessary to enable it to comply with the requirements of this instrument. As such, each arrangement will need to ensure that the valuation requirements under that arrangement reflect this section.

59 Timing of Housing Australia's financial contributions to purchase price

- (1) For an arrangement relating to the construction of a new home, Housing Australia must pay the Commonwealth's contribution:
- (a) at the time of settlement of the purchase of the land to which the arrangement relates—by paying the agreed percentage of the purchase price of the land;
 - (b) at the time each progress payment is required under the construction contract—by paying the agreed percentage of the progress payment.

Example: Housing Australia agrees to provide 40% of the purchase price under an arrangement relating to a house and land package. It pays 40% of the purchase price of the land at the settlement date, followed by 40% of the value of each progress payment in the course of the construction.

- (2) For any other arrangement, Housing Australia must pay the Commonwealth's contribution to the purchase price at the time of settlement.

60 Home improvements

- (1) Housing Australia must *not* impose terms and conditions on an arrangement that would prevent a participant from making improvements to the relevant property at their own expense.
- (2) To ensure that the Commonwealth does not benefit from any part of the increase in the property's value resulting from the improvements, Housing Australia must, under the arrangement:
- (a) reduce the Commonwealth share percentage; and

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Part 5 Miscellaneous

Division 3 Administering the program

Section 61

- (b) make any necessary amendments to the arrangement, or contracts or agreements relating to the arrangement;

where:

- (c) the participant gives notice to Housing Australia of the proposed improvements in the form approved by Housing Australia; and
- (d) the improvements cost \$20,000 or more (as indexed in accordance with section 55); and
- (e) the participant obtained any approvals required under the law of the relevant jurisdiction before commencing the improvements; and
- (f) the property is valued before and after the improvements are carried out to ascertain their impact on its value (disregarding the impact of other factors such as market movements, repairs or maintenance).

Note: If the cost of the improvements is less than \$20,000, the Commonwealth will share in any resultant increase in value.

- (3) For the purposes of subsection (2), 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.

61 Housing Australia must have an internal complaints review mechanism

Housing Australia must establish and maintain a mechanism for:

- (a) applicants and participants to make complaints about actions taken or decisions made by Housing Australia under this instrument or an arrangement; and
- (b) Housing Australia to properly consider and respond to such complaints.

62 Housing Australia must establish arrangements for approving participating lenders

- (1) A *participating lender* is an entity that has been approved, in writing, by Housing Australia to provide mortgages in connection with arrangements, and has not been notified, in writing, that the approval has been revoked.
- (2) Housing Australia must establish criteria and processes for the approval of entities as participating lenders, and for the revocation of such approvals, which must include criteria directed at assessing the following matters:
 - (a) the entity's standard of customer care, including its treatment of borrowers in hardship; and
 - (b) the competitiveness of the mortgage products that the entity would offer in connection with arrangements, including interest rates and other fees and charges; and
 - (c) the quality of an entity's loan origination processes (including distribution channels, such as branches or online portals, and origination channels, such as use of mortgage brokers) and the associated level of financial risk to the Commonwealth; and
 - (d) the entity's reputation; and
 - (e) the extent to which approving the entity would promote competition in lending and related markets; and

- (f) the extent to which all entities approved, considered together, could undertake credit activities across Australia (including through other entities providing credit services); and
- (g) whether the entity holds all the licences and approvals it would require to provide mortgages in connection with arrangements; and
- (h) the lender's capacity to work with Housing Australia over the life of arrangements and the Help to Buy program.

63 Housing Australia may rely on information

Housing Australia may rely on information supplied by a participating lender, participant, or other person or entity, that Housing Australia reasonably believes to be accurate.

64 How Housing Australia must manage arrangements where participant is experiencing hardship

Housing Australia must establish policies and procedures for dealing with and assisting participants who:

- (a) are unable to comply with their obligations under an arrangement (whether those obligations relate to repayments or other matters); and
 - (b) should, in Housing Australia's opinion and as allowed under this instrument, not be required to comply with those obligations; and
- in applying those policies and procedures, must consider a participant's individual circumstances.

65 Principles for operation of the Help to Buy program

Housing Australia must administer the Help to Buy program:

- (a) with integrity; and
- (b) to promote the object of improving housing outcomes for Australians by assisting low-income and middle-income individuals to buy homes; and
- (c) in a manner consistent with the Intergovernmental Agreement on the Help to Buy scheme, as existing at the time this instrument commenced; and
- (d) in a manner designed to:
 - (i) effectively manage risks associated with the program, including by managing the risks of fraud and non-compliance in relation to arrangements and other agreements; and
 - (ii) give applicants as much flexibility as possible in their choice of home, and in decisions relating to the relevant property; and
 - (iii) ensure that the program is consistent with current industry and community standards and expectations and
 - (iv) encourage participants to repay the Commonwealth share as early as their financial circumstances allow; and
 - (v) protect the Commonwealth's investment from loss; and
 - (vi) raise awareness and educate interested parties about the program.

EXPOSURE DRAFT

Schedule 1 Participation requirements

Clause 1

Schedule 1—Participation requirements

Note 1: See section 28.

Note 2: This Schedule does not impose legal obligations on participants directly. Rather, Housing Australia, in accordance with section 28, must ensure that arrangements require participants to meet these requirements.

1 Sale of existing property

Subject to section 28A, a single parent must not continue to hold a disqualifying property interest more than 4 weeks after becoming the registered owner of the relevant property.

2 Participant must remain only registered owner of property

Subject to section 44 (about deceased estates), a participant must remain the only registered owner of the property.

Note: See section 10 for how this section applies to joint participants.

3 Property must remain principal place of residence

Subject to section 29, each participant must treat the relevant property as their principal place of residence.

4 Participant must not take out further mortgages over property

- (1) A participant must *not* take out any mortgages over the relevant property other than:
 - (a) the mortgage with their participating lender; and
 - (b) the mortgage securing the Commonwealth share.
- (2) To avoid doubt, a participant:
 - (a) may only hold one mortgage with one participating lender at a time; but
 - (b) may take out a new mortgage with a participating lender in order to discharge their mortgage with their current participating lender.
- (3) This clause does *not* apply if, as a consequence of the participant taking out a mortgage, the Commonwealth share in respect of the relevant property will be repaid in full.

5 Limits on borrowing additional funds from participating lender

- (1) A participant must *not*:
 - (a) borrow additional funds under their mortgage with their participating lender; or
 - (b) take out a new and larger mortgage with a participating lender to discharge their mortgage with their current participating lender; without first notifying Housing Australia of their intent to do so.

Note: Housing Australia must ensure that an arrangement enables 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.

- (2) To avoid doubt, this clause does not limit the capacity of a participant to borrow other than by way of a mortgage.

6 Participant must not receive assistance from other relevant schemes

A participant must not receive assistance by way of one or more of the following:

- (a) a home-buyer guarantee provided by a Commonwealth entity or Commonwealth company;
- (b) a shared equity scheme;
- (c) a loan or guarantee provided by or on behalf of a State or Territory to support home ownership.

7 Participant must not acquire disqualifying property interest

- (1) A participant must not hold a disqualifying property interest.
- (2) Where the participant acquires the disqualifying property interest as a beneficiary in a deceased estate, subsection (1) does *not* apply for the first 2 years after the deceased's death.

8 Participant must maintain the property

A participant must maintain the relevant property to an adequate standard.

9 Participant must not lease the property

A participant must not enter into a lease arrangement in respect of the relevant property unless:

- (a) the participant is allowed, as set out under section 29, to not comply with the principal place of residence requirements at all times during the currency of the lease arrangement; and
- (b) the participant notifies Housing Australia before entering into the lease arrangement.

10 Participant must not use the property for business purposes

A participant must not use the relevant property for a business or commercial purpose.

11 Participant must maintain adequate insurance

A participant must:

- (a) keep the relevant property adequately insured; and
- (b) provide evidence of their insurance arrangements to Housing Australia each year; and
- (c) notify Housing Australia of any changes to their insurance policy within 60 days of the change taking effect.

EXPOSURE DRAFT

Schedule 1 Participation requirements

Clause 12

12 Participant must pay ongoing costs

A participant must ensure that all ongoing costs associated with the relevant property (such as rates and strata fees) are paid.

13 Participant must notify Housing Australia of relevant changes of circumstances

- (1) A participant must notify Housing Australia if any of the following events occur:
 - (a) the participant breaches a participation requirement (including the participation requirement outlined in this clause);
 - (b) the participant ceases to be an Australian citizen;
 - (c) the participant refinances or discharges their mortgage with their participating lender;
 - (d) a progress payment falls due under a contract for the construction of a new home;
 - (e) the relevant property sustains damage that would cost in excess of \$20,000 to repair (indexed in accordance with section 55).
- (2) The participant must give notice in the form approved by Housing Australia, within 90 days of the day on which the participant became aware, or should have become aware, of the relevant event.

14 Participant may only vary or enter new construction contract in certain cases

- (1) Where an arrangement relates to the construction of a new home, a participant must *not* agree to vary the construction contract (the ***original contract***) for that arrangement in a manner that affects the costs unless:
 - (a) the varied contract would require the construction of substantially the same dwelling as the original contract; and
 - (b) the varied contract would require the builder to construct a fully completed dwelling on the land, up to and including the point at which the home is certified as fit for occupation; and
 - (c) the varied purchase price would be a fixed price that does *not* exceed the price cap that applied at the time the arrangement was entered into for the area in which the property is located; and
 - (d) the participant gives 21 days' notice to Housing Australia before the variation is executed; and
 - (e) the construction timeframes set out in the original contract would continue to apply, subject to any reasonable variations approved by Housing Australia.
- (2) Where the arrangement relates to the construction of a new home, a participant must not enter into a new contract (the ***replacement contract***) for the construction of that home unless:
 - (a) Housing Australia is satisfied that the original contract was terminated due to circumstances beyond the participant's control or that it is otherwise appropriate for the participant to do so in the circumstances; and

EXPOSURE DRAFT

Participation requirements **Schedule 1**

Clause 14

- (b) the replacement contract would provide for the construction of substantially the same dwelling as the original contract; and
- (c) the replacement contract would meet the requirements of paragraphs 22(b), (c) and (d); and
- (d) the fixed price for the construction of the dwelling under the replacement contract, together with the costs incurred under the original contract, would not exceed the price cap that applied at the time the arrangement was entered into for the area in which the property is located; and
- (e) where the participant terminated the original contract—the participant gave Housing Australia 21 days' notice before doing so; and
- (f) where the builder terminated the original contract:
 - (i) the participant gave notice to Housing Australia 21 days before the contract was terminated; or
 - (ii) where it was not possible to give 21 days' notice—the participant gave notice as early as was possible in the circumstances; and
- (g) the construction timeframes in the original contract would continue to apply under the replacement contract, subject to any reasonable variations approved by Housing Australia.