



Help to Buy (Commonwealth Powers) Act 2024

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Queensland

Help to Buy (Commonwealth Powers) Act 2024

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Help to Buy (Commonwealth Powers) Act 2024

An Act to refer particular matters relating to the Help to Buy scheme to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Commonwealth Constitution

Part 1 Preliminary

1 Short title

This Act may be cited as the *Help to Buy (Commonwealth Powers) Act 2024*.

2 Definitions

(1) In this Act—

amendment matters—

- (a) means matters relating to the provision of Commonwealth financial assistance for the purpose of assisting individuals to buy a home, where the financial assistance is provided under a Help to Buy arrangement that—
 - (i) relates to residential property located in a State; and
 - (ii) is entered into while the State is a participating State; and
- (b) without limiting paragraph (a), means matters relating to—

- (i) entering into Help to Buy arrangements that satisfy the conditions mentioned in paragraph (a)(i) and (ii); and
- (ii) administering Help to Buy arrangements of that kind; and
- (iii) monitoring compliance with Help to Buy arrangements of that kind; and
- (iv) doing anything incidental or conducive to anything mentioned in subparagraph (i), (ii) or (iii).

amendment reference means the reference of matters under section 3(1)(c).

Commonwealth Help to Buy Act means a Commonwealth Act, as in force from time to time, that is enacted in the terms, or substantially in the terms, of the scheduled text.

express amendment, of the Commonwealth Help to Buy Act—

- (a) means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, or by an instrument under a Commonwealth Act; but
- (b) does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the Commonwealth Help to Buy Act.

primary text reference means the reference of matters under section 3(1)(a).

referred primary provisions means the scheduled text, other than—

- (a) part 2, divisions 2 and 3; and
- (b) sections 24(1)(a)(ii), 25(3)(b) and (c), and 38.

referred residual provisions means the scheduled text, other than—

- (a) part 2, divisions 1 and 3; and
- (b) sections 24(1)(a)(i), 25(3)(a) and (c), and 38.

residual text reference means the reference of matters under section 3(1)(b).

scheduled text means the text of the Bill for a proposed Commonwealth Act, as set out in schedule 1.

- (2) Unless the contrary intention appears, words defined in the scheduled text and otherwise used in this Act have the same meaning in this Act as they have in the scheduled text.

Part 2 Reference of matters to Commonwealth Parliament

3 Reference of matters

- (1) The following matters are referred to the Parliament of the Commonwealth—
 - (a) the matters to which the referred primary provisions relate, but only to the extent of making laws with respect to those matters by including those provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, set out in the scheduled text;
 - (b) the matters to which the referred residual provisions relate, but only to the extent of making laws with respect to those matters by including those provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, set out in the scheduled text;
 - (c) the amendment matters, but only to the extent of making laws with respect to those matters by making express amendments of the Commonwealth Help to Buy Act.
- (2) The reference in subsection (1)(c) to making laws does not include making a law that would have the effect of—

- (a) giving Housing Australia, after a State stops being a participating State, the function of entering into, or the power to enter into, shared equity arrangements that relate to residential property located in the State; or
- (b) substantively removing or overriding—
 - (i) a provision of the Commonwealth Help to Buy Act that requires approval of the State before certain things are done; or
 - (ii) the Commonwealth Help to Buy Act, section 41, 41A or 42.
- (3) The reference of a matter under subsection (1) has effect only if and to the extent—
 - (a) the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Commonwealth Constitution); and
 - (b) the matter is included in the legislative powers of the Parliament of the State.
- (4) The operation of each paragraph of subsection (1) is not affected by any of the other paragraphs.
- (5) The reference of a matter under subsection (1)—
 - (a) takes effect when this section commences; and
 - (b) has effect only until the end of the expiry day for the reference fixed under section 5, if any.

4 Commonwealth laws not otherwise affected

To remove any doubt, it is declared that it is the intention of the Parliament of the State that the Commonwealth Help to Buy Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act—

- (a) by a provision of a Commonwealth Act the operation of which is based on legislative power that the Parliament

of the Commonwealth has apart from power under the amendment reference; and

- (b) by a provision of an instrument made under the Commonwealth Help to Buy Act or under a provision mentioned in paragraph (a).

5 Termination of references

- (1) The Governor may, at any time by proclamation, fix a day (an *expiry day*) as the day on which 1 or more of the following references is to terminate—

- (a) the primary text reference; or

Note—

Under the Commonwealth Help to Buy Act, the State becomes a cooperating State if this reference is terminated and the residual text reference and amendment reference are not terminated.

- (b) the residual text reference; or

Note—

Under the Commonwealth Help to Buy Act, the State becomes a withdrawn State if this reference is terminated.

- (c) the amendment reference.

Note—

Under the Commonwealth Help to Buy Act, the State becomes a withdrawn State if this reference is terminated.

- (2) The Governor may, by proclamation, revoke a proclamation made under subsection (1).
- (3) A revoking proclamation made under subsection (2) has effect only if it is notified before the expiry day fixed in the proclamation being revoked.
- (4) If a revoking proclamation made under subsection (2) has effect, the revoked proclamation is taken, for the purposes of section 3, never to have been notified.

[s 6]

- (5) The revocation of a proclamation made under subsection (1) does not prevent notification of a further proclamation under that subsection.
- (6) A proclamation under subsection (1) or (2) is subordinate legislation.

Part 3 Miscellaneous

6 Regulation-making power

The Governor in Council may make regulations under this Act.

Schedule 1 **Scheduled text of the proposed Bill for a Commonwealth Act**

section 2(1), definition *scheduled text*

Long title

A Bill for an Act to provide for Housing Australia to enter into shared equity arrangements on behalf of the Commonwealth to improve housing outcomes for Australians, and for other purposes

Part 1 **Preliminary**

Division 1 **Preliminary**

1 **Short title**

This Act is the *Help to Buy Act 2023*.

2 **Commencement**

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

Commencement information

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

Note:

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

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

3 Object of this Act

The object of this Act is to give Housing Australia the function of entering into shared equity arrangements on behalf of the Commonwealth in relation to residential property to improve housing outcomes for Australians by assisting low-income and middle-income individuals to buy homes.

4 Simplified outline of this Act

This Act gives Housing Australia the function of entering, on behalf of the Commonwealth, into shared equity arrangements (known as Help to Buy arrangements) with buyers of residential property in participating States and in Territories. It also gives Housing Australia the function of continuing to administer existing Help to Buy arrangements when a State stops being a participating State.

Note:

A State that has stopped being a participating State is either a cooperating State or a withdrawn State.

In performing its Help to Buy functions, Housing Australia must take all reasonable steps to comply with the directions given by the Minister.

Housing Australia's contributions under Help to Buy arrangements are funded by the Commonwealth, and Housing Australia must pay to the Commonwealth all returns from those contributions.

Division 2 Definitions

5 Definitions

In this Act:

authority of the Commonwealth includes:

- (a) a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); and
- (b) a Commonwealth entity (within the meaning of that Act).

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

business day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

cooperating State has the meaning given by section 36.

enter into a shared equity arrangement has a meaning affected by subsections 7(3) to (6).

extended consultation period has the meaning given by subsection 46(5).

Help to Buy arrangement has the meaning given by section 6.

Help to Buy program means:

- (a) this Act; and
- (b) the regulations; and
- (c) the Help to Buy Program Directions; and
- (d) any other legislative instrument made under this Act.

Help to Buy Program Directions has the meaning given by subsection 24(2).

minimum consultation period has the meaning given by subsection 46(3).

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

participating State has the meaning given by section 35.

residential property:

- (a) subject to paragraph (b), includes:
 - (i) residential property within the meaning of the National Credit Code (disregarding paragraphs (e) and (f) of the definition of *residential property* in subsection 204(1) of the National Credit Code); and
 - (ii) anything prescribed by the regulations for the purposes of this subparagraph; and
- (b) does not include anything prescribed by the regulations for the purposes of this paragraph.

shared equity arrangement has the meaning given by subsections 7(1) and (2).

State or Territory home buyer scheme means a scheme, program or arrangement (whether temporary or otherwise) that:

- (a) was established before, on or after the commencement of this Act by an Act of a State, the Australian Capital Territory or the Northern Territory; and
- (b) provides financial or other types of assistance to individuals towards the purchase of residential property.

State or Territory home buyer scheme law means a law of a State, the Australian Capital Territory or the Northern Territory, to the extent that the law relates to a State or Territory home buyer scheme.

withdrawn State has the meaning given by section 37.

6 Meaning of *Help to Buy arrangement*

- (1) Subject to subsection (2), a *Help to Buy arrangement* is a shared equity arrangement in relation to a residential property that Housing Australia enters into, on behalf of the

Commonwealth, in the performance of Housing Australia's function mentioned in paragraph 10(1)(a).

- (2) An arrangement in relation to residential property that Housing Australia enters into in the performance of Housing Australia's functions under the *Housing Australia Act 2018* is not a **Help to Buy arrangement**.
- (3) For the purposes of subsection (2) of this section, disregard paragraph 8(1)(ca) of the *Housing Australia Act 2018*.

7 Meaning of **shared equity arrangement**

Meaning of shared equity arrangement

- (1) Subject to subsection (2), a **shared equity arrangement** in relation to a residential property is an arrangement or contract with one or more individuals:
 - (a) under which Housing Australia, on behalf of the Commonwealth:
 - (i) contributes (including by means of a loan) part of the cost of the individual or individuals acquiring the residential property; and
 - (ii) 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
 - (iii) secures that entitlement by means of a mortgage or other right relating to the residential property; or
 - (b) that is prescribed by the regulations for the purposes of this paragraph.
- (2) An arrangement or contract prescribed by the regulations for the purposes of this subsection is not a **shared equity arrangement** in relation to a residential property.

Variations

- (3) Subject to subsection (5), **enter** into a shared equity arrangement does not include vary a shared equity arrangement (even if the variation changes the parties to the arrangement).

- (4) Subsection (5) applies in relation to varying a shared equity arrangement if:
 - (a) after the variation, the shared equity arrangement relates to particular residential property; and
 - (b) before the variation, the arrangement did not relate to that particular property.
- (5) This Act applies in relation to the variation in the same way as it applies in relation to entering into a shared equity arrangement in relation to that particular residential property.
- (6) A reference in subsections (3) to (5) to vary a shared equity arrangement includes a reference to:
 - (a) vary a shared equity arrangement by entering into an agreement that varies the arrangement; or
 - (b) agree to vary a shared equity arrangement.

Division 3 Other matters

8 Crown to be bound

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

Part 2 Help to Buy functions of Housing Australia

Division 1 Participating States and Territories

9 Purpose of this Division

This Division sets out the functions and powers of Housing Australia under this Act in relation to:

- (a) participating States; and

(b) Territories.

Note:

For *participating State*, see section 35.

10 Help to Buy functions of Housing Australia—participating States and Territories

Functions

- (1) Housing Australia has the following functions under this Act:
- (a) to enter, on behalf of the Commonwealth, into shared equity arrangements in relation to residential property located in a participating State or a Territory, for the purpose of improving housing outcomes for Australians in the way described in section 3;
 - (b) to determine terms and conditions for such arrangements on behalf of the Commonwealth;
 - (c) to administer such arrangements on behalf of the Commonwealth;
 - (d) to monitor compliance with such arrangements;
 - (e) any other functions conferred on Housing Australia by this Act (disregarding sections 15 and 20), to the extent that they relate to a participating State or a Territory;
 - (f) any other functions, relating to a participating State or a Territory, prescribed by the regulations for the purposes of this paragraph;
 - (g) to do anything incidental or conducive to the performance of the above functions.
- (2) To avoid doubt, the terms and conditions mentioned in paragraph (1)(b) include terms and conditions relating to:
- (a) providing information to Housing Australia; or
 - (b) terminating Help to Buy arrangements; or
 - (c) consequences of non-compliance with Help to Buy arrangements.

Obligation to act properly, efficiently and effectively etc.

- (3) In performing a function mentioned in subsection (1), Housing Australia must:
 - (a) act in a proper, efficient and effective manner; and
 - (b) take all reasonable steps to comply with the Help to Buy Program Directions.

11 Help to Buy powers of Housing Australia—participating States and Territories

- (1) Housing Australia has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions mentioned in section 10.
- (2) Without limiting subsection (1) of this section, Housing Australia may, for the purpose of performing those functions, enter into arrangements and contracts (whether on behalf of the Commonwealth or in Housing Australia's own right) with any persons or entities, including:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory; or
 - (c) any other organisation or body.
- (3) Without limiting subsection (1) or (2), Housing Australia has the powers (if any) prescribed by the regulations for the purposes of this subsection in relation to the performance of those functions.

12 Limitations on Help to Buy powers of Housing Australia—participating States and Territories

Housing Australia must not enter into a Help to Buy arrangement unless directions of the kind mentioned in subparagraph 24(1)(a)(i) are in force.

13 Reporting—participating States and Territories

Without limiting paragraph 10(3)(b), Housing Australia must take all reasonable steps to comply with any directions that:

- (a) are included in the Help to Buy Program Directions as mentioned in subsection 25(3); and
- (b) are directions about reporting on matters relating to the functions mentioned in section 10.

Division 2 Cooperating States

14 Purpose of this Division

This Division sets out the functions and powers of Housing Australia under this Act in relation to cooperating States.

Note:

For *cooperating State*, see section 36.

15 Help to Buy functions of Housing Australia—cooperating States

Functions

- (1) Housing Australia has the following functions under this Act:
 - (a) to administer, on behalf of the Commonwealth, Help to Buy arrangements that:
 - (i) relate to residential property located in a cooperating State; and
 - (ii) were entered into before the State stopped being a participating State;
 - (b) to monitor compliance with such arrangements;
 - (c) any other functions conferred on Housing Australia by this Act (disregarding sections 10 and 20), to the extent that they relate to a cooperating State;
 - (d) any other functions, relating to a cooperating State, prescribed by the regulations for the purposes of this paragraph;
 - (e) to do anything incidental or conducive to the performance of the above functions.

Obligation to act properly, efficiently and effectively etc.

- (2) In performing a function mentioned in subsection (1), Housing Australia must:
- (a) act in a proper, efficient and effective manner; and
 - (b) take all reasonable steps to comply with the Help to Buy Program Directions.

16 Help to Buy powers of Housing Australia—cooperating States

- (1) Housing Australia has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions mentioned in section 15.
- (2) Without limiting subsection (1) of this section, Housing Australia may, for the purpose of performing those functions, enter into arrangements and contracts (whether on behalf of the Commonwealth or in Housing Australia's own right) with any persons or entities, including:
- (a) the Commonwealth, a State or a Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory; or
 - (c) any other organisation or body.
- (3) Without limiting subsection (1) or (2), Housing Australia has the powers (if any) prescribed by the regulations for the purposes of this subsection in relation to the performance of those functions.

17 Limitations on Help to Buy powers of Housing Australia—cooperating States

To avoid doubt, Housing Australia does not have the power under this Division to enter into a shared equity arrangement in relation to a residential property located in a cooperating State.

Note:

This section also prohibits Housing Australia from making certain variations to a Help to Buy arrangement: see subsections 7(4) and (5).

18 Reporting—cooperating States

Without limiting paragraph 15(2)(b), Housing Australia must take all reasonable steps to comply with any directions that:

- (a) are included in the Help to Buy Program Directions as mentioned in subsection 25(3); and
- (b) are directions about reporting on matters relating to the functions mentioned in section 15.

Division 3 Withdrawn States

19 Purpose of this Division

This Division sets out the functions and powers of Housing Australia under this Act in relation to withdrawn States.

Note:

For *withdrawn State*, see section 37.

20 Help to Buy functions of Housing Australia—withdrawn States

Functions

- (1) Housing Australia has the following functions under this Act:
 - (a) to administer, on behalf of the Commonwealth, Help to Buy arrangements that:
 - (i) relate to residential property located in a withdrawn State; and
 - (ii) were entered into before the State stopped being a participating State;

- (b) any other functions conferred on Housing Australia by this Act (disregarding sections 10 and 15), to the extent that they relate to a withdrawn State.

Obligation to act properly, efficiently and effectively

- (2) In performing a function mentioned in subsection (1), Housing Australia must act in a proper, efficient and effective manner.

21 Help to Buy powers of Housing Australia—withdrawn States

- (1) Housing Australia may, in administering a Help to Buy arrangement that relates to residential property in a withdrawn State as mentioned in paragraph 20(1)(a), do anything that the Help to Buy arrangement:
 - (a) permits or requires Housing Australia to do (including do on behalf of the Commonwealth); or
 - (b) permits or requires the Commonwealth to do.
- (2) Housing Australia has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions mentioned in paragraph 20(1)(b).

22 Limitations on Help to Buy powers of Housing Australia—withdrawn States

- (1) To avoid doubt, Housing Australia does not have the power under this Division to enter into a shared equity arrangement in relation to a residential property located in a withdrawn State.

Note:

This section also prohibits Housing Australia from making certain variations to a Help to Buy arrangement: see subsections 7(4) and (5).

- (2) Housing Australia does not have the power under this Division to make a contribution under a Help to Buy arrangement relating to residential property located in a withdrawn State.

23 Reporting—withdrawn States

Housing Australia must take all reasonable steps to comply with any directions that:

- (a) are included in the Help to Buy Program Directions as mentioned in subsection 25(3); and
- (b) are directions about reporting on matters relating to the functions mentioned in section 20.

Part 3 Help to Buy Program Directions

24 Help to Buy Program Directions

- (1) The Minister may, by legislative instrument, give the Board any of the following directions:
 - (a) directions about the performance of:
 - (i) Housing Australia’s functions under this Act in relation to participating States and Territories, mentioned in section 10; or
 - (ii) Housing Australia’s functions under this Act in relation to cooperating States, mentioned in section 15;
 - (b) directions of the kind mentioned in subsection 25(3) (about reporting).

Note 1:

The Minister must consult with the participating and cooperating States and the Territories before giving directions under this subsection: see section 46.

Note 2:

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

- (2) Directions given under subsection (1) together constitute the ***Help to Buy Program Directions***.
- (3) In giving a direction under subsection (1), the Minister must have regard to:

- (a) the object of this Act; and
 - (b) any other matters the Minister considers relevant.
- (4) The Minister must give at least one direction under paragraph (1)(a).

25 Matters covered by Help to Buy Program Directions

- (1) The Help to Buy Program Directions may include directions about the following in relation to the functions mentioned in paragraph 24(1)(a):
- (a) strategies and policies to be followed for the effective performance of the functions;
 - (b) criteria for making decisions in the performance of the functions;
 - (c) limits on entering into Help to Buy arrangements;
 - (d) internal review of decisions made by Housing Australia in the performance of the functions;
 - (e) internal handling of complaints relating to the performance of the functions;
 - (f) any other matters the Minister thinks appropriate.
- (2) Without limiting subsection (1), the Help to Buy Program Directions may include directions about the following matters relating to Help to Buy arrangements:
- (a) the period, or periods, during which Housing Australia may enter into Help to Buy arrangements;
 - (b) the number of residential properties in relation to which Housing Australia may enter into Help to Buy arrangements;
 - (c) the kinds of residential properties in relation to which Housing Australia may enter into Help to Buy arrangements;
 - (d) the amount, or amounts, that Housing Australia may contribute under Help to Buy arrangements.

Reporting

-
- (3) For the purposes of paragraph 24(1)(b), the Help to Buy Program Directions may include directions about reporting on matters relating to:
- (a) Housing Australia's functions under this Act in relation to participating States and Territories, mentioned in section 10; or
 - (b) Housing Australia's functions under this Act in relation to cooperating States, mentioned in section 15; or
 - (c) Housing Australia's functions under this Act in relation to withdrawn States, mentioned in section 20.

26 Limits on Help to Buy Program Directions

- (1) The Minister must not give a direction under subsection 24(1) that is inconsistent with this Act (including the object of this Act) or the *Housing Australia Act 2018* (including the object of that Act).
- (2) The Minister must not give a direction under paragraph 24(1)(a) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring the Board or Housing Australia:
- (a) to enter into a particular Help to Buy arrangement; or
 - (b) to enter into a Help to Buy arrangement in relation to a particular residential property; or
 - (c) to enter into a Help to Buy arrangement with a particular individual or individuals; or
 - (d) to take, or not to take, particular action relating to a Help to Buy arrangement.

Part 4 **Finance**

27 **Provision of contributions by Commonwealth**

- (1) The Commonwealth must pay to Housing Australia amounts to enable Housing Australia to make contributions on behalf of the Commonwealth under Help to Buy arrangements.
- (2) Housing Australia must use amounts provided under subsection (1) only for the purpose mentioned in that subsection.
- (3) Housing Australia must make contributions on behalf of the Commonwealth under Help to Buy arrangements only from amounts paid to Housing Australia under subsection (1).

Appropriation

- (4) Amounts payable under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

28 **Payment of returns to Commonwealth**

Housing Australia must pay to the Commonwealth as soon as reasonably practicable:

- (a) all amounts Housing Australia receives on behalf of the Commonwealth under Help to Buy arrangements; and
- (b) any interest Housing Australia receives in performing its functions under this Act.

Part 5 **Miscellaneous**

Division 1 **Provisions relating to the constitutional basis of this Act etc.**

Subdivision A **General provisions**

29 **Simplified outline of this Division**

Section 35 provides that a participating State is a State that:

- (a) refers the primary matters (see section 32), the residual matters (see section 33) and the amendment matters (see section 34) to the Commonwealth; or
- (b) adopts the primary and residual versions of this Act (see section 31) and refers the amendment matters to the Commonwealth.

Note:

Division 1 of Part 2 provides for Housing Australia to enter into and administer Help to Buy arrangements in relation to residential property located in a participating State.

Section 36 provides that a participating State becomes a cooperating State if the State:

- (a) terminates its reference of the primary matters, or its adoption of the primary version of this Act; but
- (b) does not terminate its other references or its adoption of the residual version of this Act.

Note:

Division 2 of Part 2 provides for Housing Australia to administer Help to Buy arrangements in relation to residential property located in a cooperating State if the arrangements were entered into before the State ceased to be a participating State. Housing Australia cannot enter into new Help to Buy arrangements in relation to residential property located in a cooperating State.

Section 37 provides that a participating or cooperating State becomes a withdrawn State if the State terminates its

reference of the residual matters, its adoption of the residual version of this Act or its reference of the amendment matters.

Note:

Division 3 of Part 2 provides for Housing Australia to administer Help to Buy arrangements in relation to residential property located in a withdrawn State if the arrangements were entered into before the State ceased to be a participating State. Housing Australia cannot enter into new Help to Buy arrangements in relation to residential property located in a withdrawn State.

To the extent this Act relates to withdrawn States, it relies on the Commonwealth's legislative powers other than the power under paragraph 51(xxxvii) of the Constitution (see section 38 of this Act).

30 Definitions

In this Division:

amendment matters has the meaning given by subsection 34(1).

express amendment has the meaning given by subsections 34(4) and (5).

primary matters has the meaning given by subsection 32(1).

primary version of this Act has the meaning given by subsection 31(2).

referral law of a State means the law of the State that refers the amendment matters to the Commonwealth Parliament.

referred primary provisions has the meaning given by subsection 32(3).

referred residual provisions has the meaning given by subsection 33(3).

relevant version of this Act has the meaning given by subsection 31(1).

residual matters has the meaning given by subsection 33(1).

residual version of this Act has the meaning given by subsection 31(3).

31 Versions of this Act

- (1) For the purposes of this Division, the *relevant version of this Act*, in relation to a State, is:
 - (a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or
 - (b) otherwise—this Act:
 - (i) as originally enacted; and
 - (ii) as amended from time to time, until the earliest time that any provision of the State's referral law commences.
- (2) For the purposes of this Division, the *primary version of this Act* is the relevant version of this Act, excluding Divisions 2 and 3 of Part 2, subparagraph 24(1)(a)(ii), paragraphs 25(3)(b) and (c) and section 38 (which deal with the functions and powers of Housing Australia in relation to cooperating States and withdrawn States).
- (3) For the purposes of this Division, the *residual version of this Act* is the relevant version of this Act, excluding Divisions 1 and 3 of Part 2, subparagraph 24(1)(a)(i), paragraphs 25(3)(a) and (c) and section 38 (which deal with the functions and powers of Housing Australia in relation to participating States, Territories and withdrawn States).

Subdivision B Definitions of primary, residual and amendment matters**32 Meaning of *primary matters***

- (1) For the purposes of this Division, the *primary matters* are the matters covered by subsection (2).
- (2) This subsection covers the matters to which the referred primary provisions relate, to the extent of making laws with respect to those matters by including the referred primary provisions in the relevant version of this Act.

- (3) The *referred primary provisions*:
- (a) subject to paragraph (b), are the provisions of the relevant version of this Act, to the extent that they deal with matters that are included in the legislative powers of the Parliaments of the States; and
 - (b) do not include Division 2 or 3 of Part 2, subparagraph 24(1)(a)(ii), paragraph 25(3)(b) or (c) or section 38 of the relevant version of this Act (which deals with the functions and powers of Housing Australia in relation to cooperating States or withdrawn States).

33 Meaning of *residual matters*

- (1) For the purposes of this Division, the *residual matters* are the matters covered by subsection (2).
- (2) This subsection covers the matters to which the referred residual provisions relate, to the extent of making laws with respect to those matters by including the referred residual provisions in the relevant version of this Act.
- (3) The *referred residual provisions*:
- (a) subject to paragraph (b), are the provisions of the relevant version of this Act, to the extent that they deal with matters that are included in the legislative powers of the Parliaments of the States; and
 - (b) do not include Division 1 or 3 of Part 2, subparagraph 24(1)(a)(i), paragraph 25(3)(a) or (c) or section 38 of the relevant version of this Act (which deals with the functions and powers of Housing Australia in relation to participating States and Territories or withdrawn States).

34 Meaning of *amendment matters*

Meaning of amendment matters

- (1) For the purposes of this Division, the *amendment matters* are the matters covered by subsection (2).

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- (2) Subject to subsection (3), this subsection covers the following matters, to the extent of making laws with respect to those matters by making express amendments of this Act:
- (a) matters relating to the provision of Commonwealth financial assistance for the purpose of assisting individuals to buy a home, where the financial assistance is provided under a Help to Buy arrangement that:
 - (i) relates to residential property located in a State; and
 - (ii) is entered into while the State is a participating State;
 - (b) without limiting paragraph (a)—matters relating to:
 - (i) entering into Help to Buy arrangements that satisfy the conditions in subparagraphs (a)(i) and (ii); and
 - (ii) administering Help to Buy arrangements of that kind; and
 - (iii) monitoring compliance with Help to Buy arrangements of that kind; and
 - (iv) doing anything incidental or conducive to anything mentioned in subparagraph (i), (ii) or (iii).
- (3) A reference in subsection (2) to making laws does not include a reference to making laws that would have the effect of:
- (a) giving Housing Australia, after a State stops being a participating State, the function of entering into, or the power to enter into, shared equity arrangements that relate to residential property located in the State; or
 - (b) substantively removing or overriding:
 - (i) a provision of this Act that requires approval of the State before certain things are done; or
 - (ii) section 41, 41A or 42.

*Meaning of **express amendment***

- (4) Subject to subsection (5), **express amendment** is the direct amendment of the text of this Act (whether by the insertion,

omission, repeal, substitution or relocation of words or matter).

- (5) To avoid doubt, the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act is not *express amendment*.

Subdivision C Definitions of participating, cooperating and withdrawn States

35 Meaning of *participating State*

When a State is a participating State

- (1) For the purposes of this Act, a State is a *participating State* if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:
- (a) refers the primary matters to the Commonwealth Parliament; and
 - (b) refers the residual matters to the Commonwealth Parliament; and
 - (c) refers the amendment matters to the Commonwealth Parliament.
- (2) A State is also a *participating State* if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:
- (a) adopts the primary version of this Act; and
 - (b) adopts the residual version of this Act; and
 - (c) refers the amendment matters to the Commonwealth Parliament.
- (3) A State is a *participating State* under subsection (1) or (2) even if the State's referral law, or another law of the State, provides that:
- (a) a reference mentioned in subsection (1) or (2) is to terminate in particular circumstances; or

- (b) an adoption mentioned in subsection (2) is to terminate in particular circumstances; or
- (c) a reference mentioned in subsection (1) or (2) has effect only:
 - (i) if, and to the extent that, the matters referred are not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); or
 - (ii) if, and to the extent that, the matters referred are included in the legislative powers of the Parliament of the State.

When a State stops being a participating State

- (4) A State stops being a ***participating State*** if:
 - (a) in a case where the State is a participating State under subsection (1)—a reference mentioned in that subsection terminates; or
 - (b) in a case where the State is a participating State under subsection (2)—an adoption, or the reference, mentioned in that subsection terminates.

36 Meaning of *cooperating State*

When a State is a cooperating State

- (1) For the purposes of this Act, a State is a ***cooperating State*** if the State:
 - (a) was a participating State under subsection 35(1); and
 - (b) has stopped being a participating State because it terminated its reference of the primary matters; and
 - (c) has not terminated its reference of the residual matters; and
 - (d) has not terminated its reference of the amendment matters.
- (2) A State is also a ***cooperating State*** if the State:

- (a) was a participating State under subsection 35(2); and
- (b) has stopped being a participating State because it terminated its adoption of the primary version of this Act; and
- (c) has not terminated its adoption of the residual version of this Act; and
- (d) has not terminated its reference of the amendment matters.

When a State stops being a cooperating State

- (3) A State stops being a ***cooperating State*** if:
 - (a) in a case where the State is a cooperating State under subsection (1) of this section—a reference mentioned in paragraph (1)(c) or (d) terminates; or
 - (b) in a case where the State is a cooperating State under subsection (2)—the adoption mentioned in paragraph (2)(c), or the reference mentioned in paragraph (2)(d), terminates.

37 Meaning of *withdrawn State*

- (1) For the purposes of this Act, a State is a ***withdrawn State*** if the State:
 - (a) has stopped being a participating State; and
 - (b) is not a cooperating State.
- (2) To avoid doubt, subsection (1) applies whether:
 - (a) the State became a cooperating State when it stopped being a participating State, but has since stopped being a cooperating State; or
 - (b) the State was never a cooperating State.

Subdivision D Constitutional basis of provisions relating to withdrawn States

38 Constitutional basis of provisions relating to withdrawn States

- (1) The provisions mentioned in subsection (2) rely on the legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xxxvii) of the Constitution), including the legislative power that the Parliament has under the Constitution with respect to:
 - (a) the executive power of the Commonwealth (including matters incidental to the execution of the executive power of the Commonwealth); or
 - (b) matters incidental to the execution of any of the legislative powers of the Parliament.
- (2) For the purposes of subsection (1), the provisions are:
 - (a) Division 3 of Part 2; and
 - (b) paragraph 25(3)(c); and
 - (c) the other provisions of this Act, to the extent the other provisions relate to Housing Australia performing its functions under this Act in relation to a withdrawn State; and
 - (d) the provisions of the *Housing Australia Act 2018*, to the extent the provisions relate to Housing Australia performing its functions under this Act in relation to a withdrawn State.

Division 2 Interaction with other laws

Subdivision A Interaction with other Commonwealth laws

39 Interaction with the *Housing Australia Act 2018*

This Act does not limit the *Housing Australia Act 2018*.

40 Application of the *Lands Acquisition Act 1989*

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Act.

Subdivision B Interaction with State and Territory laws

41 Concurrent operation of State and Territory laws

- (1) This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.
- (2) Without limiting subsection (1), this Act is not intended to exclude or limit the concurrent operation of a State or Territory home buyer scheme law merely because the law relates to a State or Territory home buyer scheme.
- (3) This section does not apply to a law of a State or Territory if there is a direct inconsistency between this Act and that law.

Note:

Section 42 prevents inconsistencies arising in some cases by limiting the operation of the Help to Buy program.

41A When Help to Buy program does not apply—exclusion by law of State or Territory

- (1) This section applies if a law of a participating State, a cooperating State, the Australian Capital Territory or the Northern Territory declares a matter to be an excluded matter for the purposes of this section in relation to:
 - (a) the whole of the Help to Buy program; or
 - (b) a specified provision of the Help to Buy program; or
 - (c) the Help to Buy program, other than a specified provision; or
 - (d) the Help to Buy program, otherwise than to a specified extent.
- (2) The Help to Buy program, other than the provisions mentioned in section 42B, does not apply in relation to the excluded matter to the extent provided by the declaration.

Note:

This subsection has effect subject to subsection (3) and section 42C.

- (3) Subsection (2) does not apply to a declaration to the extent (if any) prescribed by the regulations.

Note:

See also section 42A (when declarations and regulations may take effect).

42 Avoiding inconsistency with State and Territory laws

- (1) This section has effect despite anything else in the Help to Buy program.
- (2) Subsection (4) does not apply to a provision of a law of a State or Territory that is capable of concurrent operation with the Help to Buy program.

Note:

This kind of provision is dealt with by section 41.

- (3) Subsection (4) applies to the interaction between:

- (a) a provision of a law of a participating State, a cooperating State, the Australian Capital Territory or the Northern Territory (the ***displacement provision***); and
- (b) a provision of the Help to Buy program (the ***Commonwealth provision***), other than a provision mentioned in section 42B;

only if the displacement provision is declared by a law of the State or Territory to be a Help to Buy program displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision).

- (4) The Commonwealth provision does not operate in, or in relation to, the State or Territory to the extent necessary to ensure that no inconsistency arises between:
 - (a) the Commonwealth provision; and
 - (b) the displacement provision to the extent to which the displacement provision would, apart from this subsection, be inconsistent with the Commonwealth provision.

Note 1:

The operation of the displacement provision will be supported by section 41 to the extent to which it can operate concurrently with the Commonwealth provision.

Note 2:

This subsection has effect subject to subsection (5) and section 42C.

- (5) Subsection (4) does not apply in relation to the displacement provision to the extent to which the regulations provide that the subsection does not apply in relation to the displacement provision.

Note:

See also section 42A (when declarations and regulations may take effect).

42A Declarations and regulations

Declarations

-
- (1) For the purposes of this Subdivision, a declaration by a law of a State or Territory (the *declaring law*) that:
- (a) a matter is an excluded matter for the purposes of section 41A; or
 - (b) a provision of a law of the State or Territory is a Help to Buy program displacement provision for the purposes of section 42;

takes effect at the later of the following times, if the declaration would otherwise take effect before that time:

- (c) the commencement of this Act;
- (d) when the declaring law is enacted or made.

Regulations

- (2) Subsection 12(2) of the *Legislation Act 2003* (retrospective application) does not apply in relation to regulations made for the purposes of subsection 41A(3) or 42(5) of this Act.
- (3) Section 46 (approval of States and Territories required for regulations) does not apply in relation to regulations made for the purposes of subsection 41A(3) or 42(5).

42B Excluded provisions

A reference in subsection 41A(2) or 42(3) of this Act to the Help to Buy program does not include a reference to:

- (a) Part 4 of this Act (finance); or
- (b) this Division; or
- (c) Division 3 of this Part (other miscellaneous matters); or
- (d) regulations made for the purposes of a provision mentioned in paragraph (a), (b) or (c) of this section; or
- (e) a legislative instrument (other than regulations) made under a provision mentioned in paragraph (a), (b) or (c).

42C Preservation of Commonwealth entitlement and security

- (1) If:

- (a) disregarding sections 41A and 42 and this section, Housing Australia, on behalf of the Commonwealth:
 - (i) is entitled under a Help to Buy arrangement to a return on a contribution made under the Help to Buy arrangement; or
 - (ii) under a Help to Buy arrangement, secures such an entitlement by means of a mortgage or other right relating to a residential property; and
- (b) apart from this subsection, an effect of section 41A or 42 would be:
 - (i) that Housing Australia is not entitled to that return, or does not secure that entitlement in that way; or
 - (ii) to diminish or restrict that entitlement or security or Housing Australia's functions or powers in relation to that entitlement or security;

section 41A or 42 does not apply to the extent that it would otherwise have the effect described in paragraph (b) of this subsection.

- (2) To avoid doubt, in subsection (1):
 - (a) a reference to a Help to Buy arrangement includes a reference to a Help to Buy arrangement that Housing Australia would be taken to have entered into if section 41A or 42 were disregarded; and
 - (b) a reference to a contribution made under a Help to Buy arrangement includes a reference to a contribution Housing Australia would be taken to have made, on behalf of the Commonwealth, under a Help to Buy arrangement if section 41A or 42 were disregarded; and
 - (c) a reference to Housing Australia's functions or powers in relation to an entitlement or security includes a reference to Housing Australia's functions or powers in relation to a Help to Buy arrangement, to the extent that the Help to Buy arrangement relates to the entitlement or security.

42D Modification of Help to Buy program

- (1) Subject to subsection (3) of this section, the Minister may, by legislative instrument, modify the operation of the Help to Buy program if the Minister is satisfied that modification is necessary or desirable because of the effect of section 41A or 42 on the operation of a provision of the Help to Buy program.
- (2) To avoid doubt:
 - (a) without limiting subsection (1) of this section, the Minister may make an instrument under that subsection because of an effect that section 41A or 42 might or will have in the future; and
 - (b) a modification made by such an instrument must not commence before section 41A or 42 begins to have that effect.
- (3) To avoid doubt, a legislative instrument made under subsection (1) of this section may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act;
 - (f) substantively remove or override section 41A or 42.

Division 3 Other matters**43 Review by Administrative Appeals Tribunal**

The regulations may provide that applications may be made to the Administrative Appeals Tribunal for review of specified

decisions of Housing Australia made in the performance of its functions mentioned in sections 10 and 15.

44 Matters to be included in annual reports

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

- (a) any changes to the Help to Buy Program Directions during the period; and
- (b) the impact of the changes on the operations of Housing Australia.

Note 1:

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

Note 2:

See also section 56 of the *Housing Australia Act 2018* and subsection 25(3) of this Act.

45 Review of operation of Help to Buy program

- (1) The Minister must cause a review of the operation of the Help to Buy program to be undertaken as soon as possible after the end of 3 years after the commencement of this Part.
- (2) The persons undertaking the review must give the Minister a written report of the review. The report must not include:
 - (a) personal information (within the meaning of the *Privacy Act 1988*); or
 - (b) information that is commercially sensitive.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Division 4 Legislative instruments

46 **Approval of States and Territories required for regulations and other legislative instruments**

- (1) The Governor-General must not make regulations under this Act (including regulations amending other regulations made under this Act), and the Minister must not make a legislative instrument under this Act (including a legislative instrument amending another legislative instrument made under this Act), unless the Minister is satisfied that:
 - (a) each State and Territory to which subsection (2) applies has been notified in writing of the proposal to make the regulations or legislative instrument; and
 - (b) the following consultation period has ended:
 - (i) if the extended consultation period does not apply—the minimum consultation period;
 - (ii) if the extended consultation period applies—the extended consultation period; and
 - (c) during that consultation period none of those States and Territories objected, by written notice given to the Minister, to the making of the regulations or legislative instrument.
- (2) This subsection applies to:
 - (a) each State that, when the regulations or legislative instrument is made, is a participating State or a cooperating State; and
 - (b) the Australian Capital Territory; and
 - (c) the Northern Territory.

Consultation periods

- (3) The ***minimum consultation period*** is the period that:
 - (a) started when a State or Territory was first notified of the proposal as mentioned in paragraph (1)(a); and

- (b) ended on the 20th business day after the last day on which a State or Territory was notified as mentioned in that paragraph.
- (4) For the purposes of paragraph (1)(b), the extended consultation period applies if:
- (a) the regulations or legislative instrument amends other regulations or another legislative instrument; and
 - (b) during the period that:
 - (i) started at the start of the minimum consultation period; and
 - (ii) ended on the tenth business day after the last day on which a State or Territory was notified of the proposal as mentioned in paragraph (1)(a);a State or Territory to which subsection (2) applies gave to the Minister written notice that the State or Territory required an additional 15 business days to consider the proposal.
- (5) The *extended consultation period* is the period that:
- (a) started at the start of the minimum consultation period; and
 - (b) ended on the 35th business day after the last day on which a State or Territory was notified of the proposal as mentioned in paragraph (1)(a).

Making objections

- (6) For the purposes of paragraph (1)(c), the Minister must disregard an objection by a State or Territory if:
- (a) the objection was not made by written notice given to the Minister; or
 - (b) without limiting paragraph (a) of this subsection—any law of the State or Territory relating to the making of such an objection was not complied with in relation to the objection.

Consultation requirements under the Legislation Act 2003

- (7) This section does not limit section 17 of the *Legislation Act 2003*.

47 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed by the regulations; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Note 1:

Section 10 of the *Legislation Act 2003* declares regulations to be legislative instruments.

Note 2:

See also section 46 of this Act.

- (2) Despite subsection 14(2) of the *Legislation Act 2003*, the regulations may apply, adopt or incorporate any matter contained in the Help to Buy Program Directions as in force or existing from time to time.

Part 6 Application and transitional provisions

Division 1 Provisions relating to this Act as originally enacted

48 Consultation may occur wholly or partly before commencement

A reference in section 46 to a notice being given includes a reference to the notice being given before the commencement of this section.