
HOUSING AUSTRALIA FUTURE FUND BILL 2023
NATIONAL HOUSING SUPPLY AND AFFORDABILITY COUNCIL BILL 2023
TREASURY LAWS AMENDMENT (HOUSING MEASURES NO. 1) BILL 2023

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
Aboriginal person	has the same meaning as in the <i>Aboriginal and Torres Strait Islander Act 2005</i>
Acts Interpretation Act	means the <i>Acts Interpretation Act 1901</i>
Agency	means the Future Fund Management Agency established by section 74 of the Future Fund Act
Appropriation Act	means an Act appropriating money for expenditure out of the Consolidated Revenue Fund
ATSILSFF	means the Aboriginal and Torres Strait Islander Land and Sea Future Fund established by section 9 of the ATSILSFF Act
ATSILSFF Act	means the <i>Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018</i>
ATSILSFF Special Account	means the Aboriginal and Torres Strait Islander Land and Sea Future Fund Special Account established by section 12 of the ATSILSFF Act
Amendment Bill	means Treasury Laws Amendment (Housing Measures No. 1) Bill 2023
Bill	means the Housing Australia Future Fund Bill 2023
Bond Aggregator	means the Affordable Housing Bond Aggregator
COAG Reform Fund	means the COAG Reform Fund established by section 5 of the COAG Reform Fund Act

Glossary

Abbreviation	Definition
COAG Reform Fund Act	means the <i>COAG Reform Fund Act 2008</i>
Commonwealth official	means an official of a Commonwealth entity, as defined in section 13 of the PGPA Act
Constitution	means the <i>Commonwealth of Australia Constitution Act</i>
Corporations Act	means the <i>Corporations Act 2001</i>
CRF	means the Consolidated Revenue Fund
Council	means the National Housing Supply and Affordability Council
DCAF	means the DisabilityCare Australia Fund established by section 10 of the DCAF Act
DCAF Act	means the <i>DisabilityCare Australia Fund Act 2013</i>
DCAF Special Account	means the DisabilityCare Australia Fund Special Account established by section 11 of the DCAF Act
Designated Minister	means: <ul style="list-style-type: none"> (a) the Housing Minister; or (b) the Indigenous Australians Minister; or (c) the Social Services Minister; or (d) the Veterans' Affairs Minister
DRF	means the Disaster Ready Fund established by section 9 of the DRF Act
DRF Act	means the <i>Disaster Ready Fund Act 2019</i>
DRF Special Account	means the Disaster Ready Fund Special Account established by section 12 of the DRF Act

Abbreviation	Definition
Executive Agency	has the same meaning as in the <i>Public Service Act 1999</i>
Finance Minister	has the same meaning as defined in section 8 of the PGPA Act
FDF	means the Future Drought Fund established by section 10 of the <i>Future Drought Fund Act 2019</i>
FDF Act	means the <i>Future Drought Fund Act 2019</i>
FDF Special Account	means the Future Drought Fund Special Account established by section 13 of the FDF Act
Future Fund	means the Future Fund established by section 11 of the Future Fund Act
Future Fund Act	means the <i>Future Fund Act 2006</i>
Future Fund Board	means the Future Fund Board of Guardians established by section 34 of the Future Fund Act
Future Fund Special Account	means the Future Fund Special Account established by section 12 of the Future Fund Act
HAFF Act	means the <i>Housing Australia Future Fund Act 2023</i>
Home	refers to a single attached or detached dwelling
Housing Australia	means Housing Australia (previously the National Housing Finance and Investment Corporation)
Housing Australia Act	means the <i>Housing Australia Act 2018</i> (previously the <i>National Housing Finance and Investment Corporation Act 2018</i>)

Abbreviation	Definition
Housing Australia Investment Mandate	means the <i>Housing Australia Investment Mandate Direction 2018</i> (previously the <i>National Housing Finance and Investment Corporation Investment Mandate Direction 2018</i>)
Housing Council Bill	means the National Housing Supply and Affordability Council Bill 2023
Housing Minister	means: <ul style="list-style-type: none"> (a) the Minister declared by the Prime Minister, by notifiable instrument, to be the Housing Minister for the purposes of this Bill; or (b) if no declaration is in force under paragraph (a)—the Minister who administers the NHFIC Act
Housing Australia Future Fund	means the Housing Australia Future Fund established by clause 9 of this Bill
Housing Australia Future Fund Payments Special Account	means the Housing Australia Future Fund Payments Special Account established by clause 25 of this Bill
Housing Australia Future Fund Special Account	means the Housing Australia Future Fund Special Account established by clause 10 of this Bill
Indigenous Australians Minister	means the Minister who administers the <i>Aboriginal and Torres Strait Islander Act 2005</i>
Indigenous person	means: <ul style="list-style-type: none"> (a) an Aboriginal person; or (b) a Torres Strait Islander
ITAA	means the <i>Income Tax Assessment Act 1997</i>
Legislation Act	means the <i>Legislation Act 2003</i>

Abbreviation	Definition
Minister	means the Minister administering the relevant Act
MRFF	means the Medical Research Future Fund established by section 11 of the MRFF Act
MRFF Act	means the <i>Medical Research Future Fund Act 2015</i>
MRFF Special Account	means the Medical Research Future Fund Special Account established by section 14 of the MRFF Act
NHFIC	means the National Housing Finance and Investment Corporation established by section 7 of the NHFIC Act
NHFIC Act	means the <i>National Housing Finance and Investment Corporation Act 2018</i>
NHFIC IM	means the <i>National Housing Finance and Investment Corporation Investment Mandate Direction 2018</i>
NHFIC Review	means the Statutory Review of the Operation of the <i>National Housing Finance and Investment Corporation Act 2018</i>
NHFIC Special Account	means the National Housing Finance and Investment Corporation Special Account established by section 47A of the NHFIC Act
NHIF	means the National Housing Infrastructure Facility
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i>
Responsible Ministers	means the following: (a) the Treasurer; and (b) the Finance Minister

Glossary

Abbreviation	Definition
Social Services Minister	means the Minister who administers section 1 of the <i>Social Security Act 1991</i>
Torres Strait Islander	has the same meaning as in the <i>Aboriginal and Torres Strait Islander Act 2005</i>
Treasury Department	means the Department administered by the Treasurer
Veteran	has the same meaning as in the <i>Australian Veterans' Recognition (Putting Veterans and Their Families First) Act 2019</i>
Veterans' Affairs Minister	means the Minister who administers the <i>Veterans' Entitlements Act 1986</i>

Chapter 1: Housing Australia Future Fund

Outline of chapter

- 1.1 This section has been prepared by the Department of Finance.
- 1.2 The *Housing Australia Future Fund Bill 2023* (the Bill) would give effect to the Government's decision to establish the Housing Australia Future Fund (the Fund) to create a funding stream to support and increase social and affordable housing, as well as other acute housing needs including housing improvements to meet the particular needs of remote Indigenous communities and housing services for women, children and veterans.
- 1.3 The Fund is one aspect of the Government's commitment to improving housing supply and affordability. Central to this is the aim of increasing the supply of social housing and affordable housing, supporting people into home ownership and investing more in acute housing needs. The Bill would establish the Fund to provide a sustainable funding source towards the delivery of these aims.
- 1.4 Program delivery will be guided by a package of reforms, including:
 - a National Housing Supply and Affordability Council (the Council) that will be established to independently advise the Australian Government on options to improve housing supply and affordability;
 - expanding the remit of the National Housing Infrastructure Facility to directly support new social and affordable housing;
 - expanding the remit of the National Housing Finance and Investment Corporation (to be renamed Housing Australia) to deliver the Government's social and affordable housing programs; and
 - the National Housing and Homelessness Plan, which will set out the key short, medium and longer term reforms needed to improve housing and homelessness outcomes across the spectrum, including to make it easier for Australians to buy a home, easier to rent, and reduce homelessness.
- 1.5 The Fund would consist of the Housing Australia Future Fund Special Account and the investments of the Housing Australia Future Fund. It would be a dedicated investment vehicle to provide an additional funding source for social and affordable housing in Australia and to fund certain other acute housing needs.
- 1.6 The Fund would be credited with \$10 billion as soon as practicable after establishment. Once invested this would provide a funding stream of up to \$500 million per year to support new social and affordable housing and to meet a range of acute housing needs, which could include housing improvements in remote Indigenous communities and housing services for women, children and veterans. The adequacy of this annual disbursement amount will be considered periodically as part of the legislated reviews. The first review will be completed by 31 December 2028, with five-yearly reviews thereafter.
- 1.7 In the Fund's first five years, the Australian Government intends to use disbursements to support:
 - 20,000 homes to provide social housing – 4,000 of which would be allocated to women and children leaving or experiencing domestic and family violence and older women on low incomes who are at risk of homelessness; and
 - 10,000 affordable homes for frontline workers like police, nurses and cleaners who kept us safe during the pandemic.
- 1.8 Over the same time period, the Fund would also provide:

- \$200 million for the repair, maintenance and improvements of housing to meet the specific needs of remote Indigenous communities;
- \$100 million for crisis and transitional housing options for women and children leaving or experiencing domestic and family violence and older women on low incomes who are at risk of homelessness; and
- \$30 million to build housing and fund specialist services for veterans experiencing homelessness or at risk of homelessness.

- 1.9 Any disbursements from the Fund would require formal government approval. The Housing Minister, in consultation with the Treasurer and Finance Minister, would be responsible for bringing forward proposals for Government consideration, as part of the annual budget process. It is expected that the Housing Minister would consider advice from the other designated Ministers (Indigenous Australians Minister, Social Services Minister, or Veterans' Affairs Minister) before bringing forward proposals.
- 1.10 The Council would also have an advisory role in relation to the Fund. As an independent advisory body to the Government, the Council will build a strong evidence base to support the Commonwealth in developing housing policy positioning the Government to closely collaborate with the States and Territories on increasing housing supply and improving housing affordability. The National Housing Supply and Affordability Council Bill 2023 will provide the legislative framework for the Council and the role it will undertake in relation to the Fund.
- 1.11 The Bill would establish the Housing Australia Future Fund Payments Special Account to make grants in relation to acute housing needs. Following a decision of Government to allocate disbursements from the Fund, a designated Minister would request that the agreed amount be debited from the Fund and credited to the Housing Australia Future Fund Payments Special Account for the purpose of making grants. Grants to a state or territory would be channelled through the COAG Reform Fund.
- 1.12 Payments to be administered by Housing Australia would be channelled through the Housing Australia Special Account. Housing Australia would have primary responsibility for delivering on the Government's commitment to deliver 30,000 new social and affordable homes over five years, leveraging its existing capability and relationships with the community housing sector, institutional investors and state and territory housing authorities. Housing Australia would also be able to make grants in relation to acute housing needs.
- 1.13 The Future Fund Board would be responsible for deciding how to invest the Fund in line with an investment mandate to enhance the Commonwealth's ability to make grants and transfers in relation to social housing, affordable housing or acute housing needs. The Future Fund Board is an experienced, specialised and trusted sovereign investor that is responsible (as at 30 September 2022) for investing over \$240 billion across six investment funds with different purposes and investment mandates (the investment funds are the Future Fund, the DCAF, the MRFF, the DRF, the FDF and the ATSILSFF).

Investment mandate

- 1.14 The Bill would require the responsible Ministers to issue an investment mandate to the Future Fund Board regarding the investment of the Fund. The purpose of the investment mandate would be to provide a mechanism for the Australian Government to provide strategic guidance to the Future Fund Board on its expectations for the investment of the Fund. As with other funds managed by the Future Fund Board, the Fund would benefit from sovereign immunity from taxation in Australia and certain foreign jurisdictions.

Expenses

- 1.15 Expenses associated with investment and administration of the Fund incurred by the Future Fund Board would be met from the Fund.

Reporting

- 1.16 The Bill would require the Future Fund Board to keep the responsible Ministers informed. The Finance Minister would be able to provide reports, documents and other information to Ministers.
- 1.17 The Bill would provide the Finance Minister with the power to require the Future Fund Board to provide additional information about one or more specified matters relating to the performance of the Board's functions under this Bill.
- 1.18 The Finance Minister would have the power to publish information received from the Future Fund Board, as the Finance Minister deems appropriate and in the public interest.
- 1.19 The Housing Minister and the other designated Ministers would be required to publish up-to-date information about grants on the internet, in addition to their obligations under the Commonwealth Grants Rules and Guidelines 2017.

Detailed explanation of new law

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 – Short title

- 1.20 Clause 1 is a formal provision specifying the short title of the Act.

Clause 2 – Commencement

- 1.21 This clause would provide for the commencement of the whole of the Act, as set out in the table. Item 1 in the table provides that the whole of this Act would commence on a single day to be fixed by Proclamation. However, if the Bill does not commence within 6 months of the Royal Assent, it will commence on the day after the end of that 6-month period.
- 1.22 Subclause 2(2) would provide that any information in column 3 of the table is not part of the Act. Information may be inserted in this column, or information in it may be edited, in any published version of the Act.

Clause 2A – Object

- 1.23 This clause would outline what this Bill intends to achieve. The object of this Bill would be:
- 1.24 to address the particular acute housing needs of certain groups, including, but not limited to, Indigenous persons, women, children and veterans, and
- 1.25 to enable support, in the form of funding, to be provided to increase the availability of social housing and affordable housing.

Clause 3 – Simplified outline of this Act

- 1.26 This clause would provide a high-level introduction to the provisions in the Bill, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions in the Bill.

Clause 4 – Definitions

- 1.27 This clause would provide definitions to support the operation of provisions of the Bill. These definitions are discussed throughout the Explanatory Memorandum where they are relevant to the operation of a particular clause.

Clause 5 – Crown to be bound

- 1.28 Clause 5 would provide that the Act binds the Crown in each of its capacities but does not make the Crown liable to be prosecuted for an offence.

Clause 6 – Extension to external Territories

1.29 Clause 6 would provide that the Act extends to every external Territory.

Clause 7 – Extra-territorial operation

1.30 Clause 7 would provide for the geographical reach of the Act to apply outside of Australia. This would allow the Future Fund Board to invest in financial assets outside of Australia and would also allow recipients of grants from the Housing Australia Future Fund to collaborate with international partners.

Part 2 – Housing Australia Future Fund

Division 1 – Introduction

Clause 8 – Simplified outline of this Part

1.31 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Division 2 – Establishment of the Housing Australia Future Fund and the Housing Australia Future Fund Special Account

Clause 9 – Establishment of the Housing Australia Future Fund

1.32 This clause would establish a Commonwealth investment fund – the Housing Australia Future Fund – consisting of amounts in the Housing Australia Future Fund Special Account and the investments of the Housing Australia Future Fund.

Clause 10 – Establishment of the Housing Australia Future Fund Special Account

1.33 Clause 10 would establish the Housing Australia Future Fund Special Account, which would be a special account for the purposes of the PGPA Act.

1.34 A special account is an appropriation mechanism that sets aside an amount within the CRF to be expended for specific purposes. Any amounts credited to the Housing Australia Future Fund Special Account would be quarantined from the rest of the CRF and could only be debited from the Housing Australia Future Fund for the purposes set out in the Bill.

1.35 The note immediately following this clause would assist the reader by clarifying that amounts could be credited to the Housing Australia Future Fund Special Account by an Appropriation Act.

Division 3 – Credits of amounts to the Housing Australia Future Fund Special Account

Clause 11 – Credits of amounts

1.36 This clause would provide that \$10 billion is to be credited to the Housing Australia Future Fund Special Account as soon as practicable after the commencement of this clause. This amount would be credited in one transaction.

1.37 Subclause 11(2) would establish a mechanism for specified amounts – other than the initial credit in subclause 11(1) – to be credited to the Housing Australia Future Fund Special Account. A specified amount could also be credited in specified instalments.

1.38 Amounts would be credited by a written determination of the responsible Ministers.

1.39 Note 1 immediately following subclause 11(2) would assist readers by directing them to the subsection 33(3) of the Acts Interpretation Act, which provides that a power to make a legislative instrument includes the power to vary or revoke that instrument.

1.40 Note 2 would assist readers by directing them to other clauses of the Bill requiring amounts to be credited to the Housing Australia Future Fund Special Account.

1.41 Subclause 11(3) would provide that a determination to credit a specified amount to the Housing Australia Future Fund Special Account is a legislative instrument but is not subject to disallowance. Such determinations could be regarded as administrative, rather than legislative, in character.

However, having the determination as a legislative instrument ensures transparency of amounts credited as a matter of public interest.

- 1.42 A determination under subclause 11(2) is expected to be made only in limited circumstances following the initial credit provided for by subclause 11(1). Amounts credited under subclause 11(2) are expected to be provided from other Appropriation Acts. In this respect, the determination would be a tool for the Government to manage its financial arrangements. Disallowance could also undermine commercial certainty, given that once an amount is credited to the Housing Australia Future Fund Special Account, the Future Fund Board would be able to invest the amount in any financial assets under clause 39 of the Bill.
- 1.43 Providing for a determination under subclause 11(2) to be a legislative instrument that is not disallowable would be consistent with arrangements for other investment funds managed by the Future Fund Board (see Item 3 of Schedule 1 of the Future Fund Act, section 15 of the MRFF Act, section 14 of the FDF Act, and section 13 of the DRF Act).

Division 4 – Debits of amounts from the Housing Australia Future Fund

Clause 12 – Main purposes of the Housing Australia Future Fund Special Account

- 1.44 This clause would provide that the main purposes of the Housing Australia Future Fund Special Account would be:
- 1.45 transferring amounts to the Housing Australia Future Fund Payments Special Account in accordance with clause 26 for the purposes of making grants under subclause 18(1);
- 1.46 transferring amounts to the COAG Reform Fund in accordance with clause 29 for the purposes of making grants to the States and Territories under subclause 18(3); and
- 1.47 transferring amounts to the Housing Australia Special Account in accordance with clause 33.
- 1.48 Clause 18 would provide the matters in relation to which a grant may be made (through the Housing Australia Future Fund Payments Special Account or the COAG Reform Fund) and section 33 relates to transfers to the Housing Australia Special Account (for the purposes of the Housing Australia making grants in relation to acute housing needs, social housing or affordable housing).
- 1.49 The Note at the end of this clause would direct readers to consider section 80 of the PGPA Act, which relates to the establishment of, crediting to and debiting against a special account established by an Act.

Clause 13 – Purposes of the Housing Australia Future Fund Special Account – purposes related exclusively to the investments etc. of the Housing Australia Future Fund

- 1.50 This clause would relate to the payment of various expenses that may be incurred by the Future Fund Board, which relate exclusively to the investments of the Housing Australia Future Fund, and which do not relate to the main purpose of the Fund. It would set out additional purposes for which the Housing Australia Future Fund may be debited in relation to investments.
- 1.51 The Note at the end of this clause would direct readers to consider section 80 of the PGPA Act, which relates to the establishment of, crediting to and debiting against a special account established by an Act.

Clause 14 – Purposes of the Housing Australia Future Fund Special Account – purposes not related exclusively to the Housing Australia Future Fund

- 1.52 Clause 14 would relate to the payment of various expenses that may be incurred by the Future Fund Board in respect of its broader functions under this Bill, as well as the Future Fund Act, the FDF Act, the MRFF Act, the DRF Act, the DCAF Act or the ATSILSFF Act.
- 1.53 Clause 14 would set out the range of additional purposes for which the Housing Australia Future Fund Special Account may be debited in respect of costs that are common to the investment funds for which the Future Fund Board has responsibility.

- 1.54 The note at the end of this clause would direct readers to consider section 80 of the PGPA Act, which relates to the establishment of, crediting to and debiting against a special account established by an Act.

Clause 15 – Future Fund Board must ensure that the balance of the Housing Australia Future Fund Special Account is sufficient to cover authorised debits etc.

- 1.55 Clause 15 would require the Future Fund Board to take all reasonable steps to ensure that the balance of the Housing Australia Future Fund Special Account is sufficient to cover the debits of amounts from the Housing Australia Future Fund Special Account. Clause 36 specifies that the total amount debited from the Housing Australia Future Fund Special Account in a financial year must not exceed \$500 million.
- 1.56 The note immediately below this clause would assist readers to understand the obligations of the Future Fund Board in respect of this requirement.

Clause 16 – Transfers from the Housing Australia Future Fund to the Future Fund

- 1.57 Clause 16 would allow for transfers from the Housing Australia Future Fund Special Account to the Future Fund Special Account.
- 1.58 This clause would allow for amounts to be transferred between the Housing Australia Future Fund and the Future Fund. The purpose of this is to enable reimbursement to the Future Fund Special Account of expenses incurred in relation to the Housing Australia Future Fund that have been debited from the Future Fund Special Account.
- 1.59 The clause would allow the Finance Minister to direct, in writing, that the Housing Australia Future Fund Special Account is to be debited and the Future Fund Special Account is credited by a specified amount.
- 1.60 Subclause 16(3) would be included to assist readers by stating that a direction under subclause 16(1) would not be a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).

Part 3 – Grants

Division 1 – Introduction

Clause 17 – Simplified outline of this Part

- 1.61 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Division 2 - Grants

Clause 18 – Grants

- 1.62 This clause would provide a broad legislative spending power that is to be read subject to the constitutional limits in clause 22.
- 1.63 Subclause 18(1) would allow a designated Minister to make grants of financial assistance to a person or body in relation to acute housing needs. ‘Designated Minister’ would be defined in clause 4 as the Housing Minister, the Indigenous Australians Minister, the Social Services Minister, or the Veterans’ Affairs Minister. These ministers have policy responsibility in a number of spending areas for the Housing Australia Future Fund that relate to acute housing needs.
- 1.64 ‘[P]erson’ would be defined in clause 4 to include a partnership. Subsection 2C(1) of the Acts Interpretation Act further provides that ‘person’ includes a body politic or body corporate, as well as an individual.
- 1.65 Under this clause, grants could therefore be provided to individuals, incorporated or unincorporated bodies, not-for-profit organisations, state and territory governments, and local government bodies. This list should not be considered prescriptive or exhaustive.

- 1.66 ‘Acute housing’ refers to crisis housing offered to cohorts at serious risk of, or who are already experiencing, homelessness. This includes short-term and emergency housing, medium-to-long-term transitional housing and specialist services in relation to housing. This should not be considered to be an exhaustive description.
- 1.67 The note at the end of subclause 18(1) would assist readers by directing them to clause 22 (which places constitutional limits on the exercise of the spending powers provided for by this clause).
- 1.68 Grants provided under the Housing Australia Future Fund would also be subject to the Commonwealth grants policy framework, which is already well established through the Commonwealth Grants Rules and Guidelines 2017. These guidelines provide for best practice and apply to all grants administration conducted on behalf of the Commonwealth.
- 1.69 Subclause 18(2) would clarify that subclause 18(1) would not authorise the making of a grant to a State or Territory.
- 1.70 Subclause 18(3) would allow a designated Minister to make grants of financial assistance to a State or Territory in relation to acute housing needs, social housing, or affordable housing.
- 1.71 ‘Social housing’ is an umbrella term that typically refers to community housing and public housing owned by state and territory governments.
- 1.72 ‘Affordable housing’ is generally used to refer to a range of housing types that seek to reduce or eliminate housing stress for low to moderate income households, where housing stress is typically defined as spending more than 30 per cent of household income on housing costs. This can include rental housing offered by private or institutional investors at below-market rent rates and pathways to home ownership for low to medium income households (such as shared equity arrangements or subsidised loans).
- 1.73 Subclauses 18(4) and 18(5) would clarify that, without limiting anything in subclause 18(1) or 18(3) in making a grant under this clause, the Commonwealth may reimburse, or partly reimburse, costs or expenses that the other party has incurred or expended prior to the making of the grant.
- 1.74 Subclause 18(6) would expressly exclude the making of a loan under this clause.
- 1.75 Subclause 18(7) would provide that grants under subclause 18(1) can only be made to a person or body that has applied for the grant.
- 1.76 Subclause 18(8) would prohibit a grant under this clause from being made before 1 July 2023.

Clause 19 – Terms and conditions of grants

- 1.77 This clause would require the terms and conditions for a grant of financial assistance under clause 18 to be set out in a written agreement between the Commonwealth and the grant recipient.
- 1.78 The note at the end of subclause 19(2) would assist readers by directing them to clause 22, which places constitutional limits on the exercise of the spending powers provided in this clause.
- 1.79 Subclause 19(3) would require a recipient of a grant under clause 18 to comply with the terms and conditions set out in the agreement made under this clause.
- 1.80 The note at the end of subclause 19(4) would assist readers by alerting them to the fact that an amount repayable to the Commonwealth would be a debt due to the Commonwealth.
- 1.81 Subclause 19(5) would provide that a designated Minister would enter into an agreement made under subclause 19(2) on behalf of the Commonwealth.

Clause 20 – Designated Minister has powers etc. of the Commonwealth

- 1.82 This clause would specify that a designated Minister would hold and exercise all the rights, responsibilities, duties and powers of the Commonwealth in its capacity as the grantor of a grant under clause 18. This would include, but not be limited to:
- paying grants to grant recipients;

- receiving amounts payable to the Commonwealth by way of the repayment of the whole or a part of a grant; and
- instituting actions or proceedings on behalf of the Commonwealth in relation to a matter that concerns a grant made under clause 18.

Clause 21 – Conferral of powers on designated Minister

- 1.83 This clause would provide a legislative basis for a designated Minister to exercise a power conferred on the Minister by an agreement under clause 19 in relation to a grant.

Clause 22 – Constitutional limits—grants to persons or bodies other than a State or Territory

- 1.84 This clause would set out the Constitutional powers under which the Bill would operate. It would provide that a designated Minister may only exercise a power under subclause 18(1) or clause 19 (in so far as that clause relates to a subclause 18(1) grant) where one of the enumerated Constitutional powers is enlivened. In other words, the designated Minister could generally only make a grant where one or more of the powers listed in clause 22 were available. The relevant Constitutional powers include in relation to territories, the external affairs power, the corporations power in respect of Constitutional corporations, the power in respect of veterans and their families, the race power, the aliens power, the power in respect of unemployment, sickness and student benefits and Commonwealth employees and their families.
- 1.85 Clause 22 would act as a limitation on the broad spending power provided for by subclause 18(1) or clause 19 (as it relates to a subclause 18(1) grant). A designated Minister may need to assess, where relevant and on a case-by-case basis, whether the making of a grant is supported by a source of Constitutional power in clause 22.
- 1.86 Clause 22 would inform a court on how the Bill would be capable of operating within the Commonwealth’s legislative powers. It would not apply to every provision of the Bill; instead, it confines only the spending powers in subclause 18(1) or clause 19 (as it relates to a subclause 18(1) grant).
- 1.87 The spending powers in subclause 18(3) would be supported by sections 96 and 122 of the Constitution. Section 96 deals with grants of financial assistance to States. Section 122 deals with laws in relation to Territories.
- 1.88 The other clauses of this Bill (other than clauses 18 and 19) would be incidental in character. That is, they would be incidental to the purpose of providing funding in relation to social housing, affordable housing or acute housing needs in that they establish the mechanism for investment of funds in order to ensure there is sufficient amounts available to make relevant payments under the powers in clause 18 and transfers to Housing Australia under clause 33 (section 10 of the Housing Australia Act sets out the Constitutional limitations on Housing Australia’s spending powers).
- 1.89 Nothing in this clause is intended to narrow the scope of the enumerated Constitutional powers, but rather to clarify the powers relied upon to support the Parliament enacting this legislation.

Clause 23 – Executive power of the Commonwealth

- 1.90 This clause would clarify that this Division does not impliedly limit the executive power of the Commonwealth contained in section 61 of the Constitution.

Clause 24 – Publication of information relating to grants

- 1.91 Subclause 24(1) would require a designated Minister to publish detailed and up to date information about grants on the website of the Department or Executive Agency that they administer. The information to be published would include, but is not limited to, amounts paid and payable under clause 18 grants, as well as the names of recipients of grants.
- 1.92 Where the recipient is an individual, there would be no requirement to publish the name of that individual online, nor the purpose of the grant to that individual. This would ensure that the personal privacy of individual recipients is protected.
- 1.93 A designated Minister would still be required to publish detailed information relating to grants, including each amount paid under a grant, the total amounts paid and payable and the date on which

the most recent payment was made. For all recipients that are not individuals, the name of the recipient as well as the purpose of the grant would also need to be published.

- 1.94 The information required to be published under clause 24 would be additional to the information that must be published in accordance with the Commonwealth Grants Rules and Guidelines and the Commonwealth Procurement Rules.
- 1.95 Subclauses 24(2) and 24(3) would require that the information published under this clause is kept up to date and published as soon as practicable.

Division 3 – Housing Australia Future Fund Payments Special Account

Clause 25 – Housing Australia Future Fund Payments Special Account

- 1.96 Clause 25 would establish the Housing Australia Future Fund Payments Special Account, which would be a special account for the purposes of the PGPA Act. The Secretary of the Treasury Department would be responsible for the special account.
- 1.97 The note immediately following subclause 25(2) would assist the reader by clarifying that amounts could be credited to the Housing Australia Future Fund Payments Special Account by an Appropriation Act.
- 1.98 A special account is an appropriation mechanism that sets aside an amount within the CRF to be expended for specific purposes. Any amounts credited to the Housing Australia Future Fund Payments Special Account would be quarantined from the rest of the CRF and could only be debited from the Housing Australia Future Fund Payments Special Account for the purposes set out in this Bill.

Clause 26 – Transfers from the Housing Australia Future Fund Special Account to the Housing Australia Future Fund Payments Special Account

- 1.99 This clause would provide the mechanism by which amounts could be transferred from the Housing Australia Future Fund Special Account to the Housing Australia Future Fund Payments Special Account, where it could then be used to make grants to a person or body provided for by subclause 18(1).
- 1.100 Subclause 26(1) would allow a designated Minister to request transfers of specified amounts with respect to payments that would be payable during a financial year, beginning on or after 1 July 2023, under grants entered into under subclause 18(1). The note immediately following subclause 26(1) would direct readers to clause 29, which relates to grants to a State or Territory.
- 1.101 Subclause 26(2) would specify that a designated Minister could not make more than one request under subclause 26(1) in relation to a particular grant. This would prohibit designated Ministers from accessing the fund more than once in relation to a particular grant; in effect, limiting the total value of requests under subclause 26(1) to the amount that would be payable under subclause 18(1) grants to persons or bodies other than a State or Territory.
- 1.102 Subclause 26(3) would clarify that a designated Minister may make more than one request under subclause 26(1) in a given financial year, despite the limitation in subclause 26(2). This would provide flexibility for a designated Minister to request more than one transfer in a financial year. This could be in relation to different programs of grants or different grants under the same program agreed by the Government in the same financial year.
- 1.103 In practice, requests for debits under subclause 26(1) would be aggregated, as much as practicable, to streamline the administration of transfers and avoid a large number of requests for relatively small transfers. It is expected that requests for transfers would occur once every three to six months.
- 1.104 Subclause 26(4) would require the Finance Minister to direct, in writing, that a transfer be made from the Housing Australia Future Fund Special Account to the Housing Australia Future Fund Payments Special Account in instances where a request has been made by a designated Minister under subclause 26(1) and the Finance Minister is satisfied that the transfer would not result in a breach of the annual limit as provided for by clause 36.

- 1.105 Subclause 26(5) would provide that a direction by the Finance Minister under subclause 26(4) is not a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).
- 1.106 Subclause 26(6) would specify that the Finance Minister must provide the relevant designated Minister and the Treasurer with a copy of any directions given personally under subclause 26(4).
- 1.107 Subclause 26(7) would apply when the Finance Minister has delegated the power to give a direction under subclause 26(4), as permitted by subclause 61(1). When this delegation has occurred, and the Finance Minister's delegate gives a direction under subclause 26(4), subclause 26(7) would require the delegate to give a copy of that direction to the Treasury Department and the Department or Executive Agency administered by the designated Minister concerned. This would allow correspondence to occur between officials at a departmental level when the power to give a direction under subclause 26(4) has been delegated to an official in the Finance Department.
- 1.108 Delegations under subclause 26(4) are limited to the Secretary and SES employees, or acting SES employees, in the Finance Department. This ensures that any delegate has a suitable level of experience and skills to perform the delegated power.
- 1.109 The purpose of this subclause is to reduce administrative burden, given that correspondence usually occurs at a departmental level as a result of delegations. Departments would still be required to keep their Ministers appropriately informed under provisions in the PGPA Act.
- 1.110 In instances where one or more grants cannot be paid, subclause 26(8) would provide a mechanism for the return of the amount of the grant or grants to the Housing Australia Future Fund Special Account.
- 1.111 It is expected that a designated Minister and the Finance Minister would consult each other in exercising their powers under this clause, to ensure that transfers can accommodate any agreed payment schedules as provided for by subclause 18(1) grants or clause 19 agreements.

Clause 27 – Other credits to the Housing Australia Future Fund Payments Special Account

- 1.112 This clause would require amounts to be credited to the Housing Australia Future Fund Payments Special Account that are equal to amounts paid to the Commonwealth by way of the repayment of the whole or a part of a grant made under subclause 18(1).
- 1.113 This would ensure that any amounts payable to the Commonwealth arising out of a grant made under subclause 18(1) would be credited to the Housing Australia Future Fund Payments Special Account to be used for the purposes of that special account and would not return to the Housing Australia Future Fund Special Account.

Clause 28 – Purpose of the Housing Australia Future Fund Payments Special Account

- 1.114 This clause would set out the purpose of the Housing Australia Future Fund Payments Special Account, which would be to make grants under subclause 18(1).
- 1.115 The note at the end of this clause would direct readers to consider section 80 of the PGPA Act, which relates to the establishment of, crediting to and debiting against a special account established by an Act.

Division 4 – Channelling State/Territory grants through the COAG Reform Fund

Clause 29 – Channelling State/Territory grants through the COAG Reform Fund

- 1.116 This clause would enable the channelling of grants of financial assistance, as provided for by subclause 18(3) of this Bill, to a State or Territory through the COAG Reform Fund.
- 1.117 The COAG Reform Fund would be defined in clause 4 to mean the COAG Reform Fund established by section 5 of the COAG Reform Fund Act.
- 1.118 Subclause 29(1) would allow a designated Minister to request transfers of specified amounts with respect to payments to a State or Territory that would be payable during a financial year, beginning on or after 1 July 2023, under grants entered into under subclause 18(3).

- 1.119 Subclause 29(2) would require the Finance Minister to direct, in writing, that a transfer be made from the Housing Australia Future Fund Special Account to the COAG Reform Fund in instances where a request has been made by a designated Minister under subclause 29(1).
- 1.120 Subclause 29(3) would require that the direction must be expressed to be given in order to enable the amount to be debited from the COAG Reform Fund for the purpose of making the grant.
- 1.121 Subclause 29(4) would prohibit the Finance Minister from giving a direction under subclause 29(2) if it would breach the annual limit on debits from the Housing Australia Future Fund Special Account as provided for by clause 36.
- 1.122 Subclause 29(5) would clarify that a single document may contain more than one direction under subclause 29(2).
- 1.123 Subclause 29(6) would clarify that a direction by the Finance Minister under subclause 29(2) is not a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).
- 1.124 Subclause 29(7) would require the Finance Minister to provide the Treasurer and the Housing Minister, and, if the direction was given as a result of a request from a designated Minister other than the Housing Minister, that designated Minister, with a copy of any directions made personally by the Finance Minister under subclause 29(2).
- 1.125 Subclause 29(8) would apply when the Finance Minister has delegated the power to give a direction under subclause 29(2), as permitted by subclause 61(1). When this delegation has occurred, and the Finance Minister's delegate gives a direction under subclause 29(2), subclause 29(8) would require the delegate to give a copy of that direction to the Treasury Department and the Department or Executive Agency administered by the designated Minister that made the request. This would allow correspondence to occur between officials at a departmental level when the power to give a direction under subclause 29(2) has been delegated to an official in the Finance Department.
- 1.126 Delegations under subclause 29(2) are limited to the Secretary and SES employees, or acting SES employees, in the Finance Department. This ensures that any delegate has a suitable level of experience and skills to perform the delegated power.
- 1.127 The purpose of this subclause is to reduce administrative burden, given that correspondence usually occurs at a departmental level as a result of delegations. Departments would still be required to keep their Ministers appropriately informed under provisions in the PGPA Act.
- 1.128 It is expected that designated Ministers and the Finance Minister would consult each other as required in exercising their powers under this clause, to ensure that transfers can accommodate any agreed payment schedules as provided for by clause 18 grants or clause 19 agreements.

Clause 30 – Debits from the COAG Reform Fund

- 1.129 Subclause 30(1) would provide that when a transfer has been made to the COAG Reform Fund under paragraph 29(2)(b), the Treasurer must ensure that the COAG Reform Fund is debited, for the same amount, for the purposes of making the grant of financial assistance to a State or Territory. The Treasurer must do this as soon as practicable after the amount has been credited into the COAG Reform Fund.
- 1.130 In instances where one or more grants cannot be paid, subclause 30(2) would provide a mechanism for the return of the amount of the grant or grants to the Housing Australia Future Fund Special Account.

Clause 31 – Other credits to the Housing Australia Future Fund Special Account

- 1.131 This clause would require amounts to be credited to the Housing Australia Future Fund Special Account that are equal to amounts paid to the Commonwealth by way of the repayment of the whole or a part of a grant made under subclause 18(3).

- 1.132 This would ensure that any amounts payable to the Commonwealth arising out of a grant made under subclause 18(3) would be credited to the Housing Australia Future Fund Special Account.

Part 4 – Transfers from the Housing Australia Future Fund Special Account to the Housing Australia Special Account

Clause 32 – Simplified outline of this Part

- 1.133 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Clause 33 - Transfers from the Housing Australia Future Fund Special Account to the Housing Australia Special Account

- 1.134 This clause would provide the mechanism by which amounts could be transferred from the Housing Australia Future Fund Special Account to the Housing Australia Special Account where it could then be used to make grants in relation to social housing or affordable housing under the Housing Australia Act.
- 1.135 Subclause 33(1) would allow the Housing Minister to request transfers of specified amounts if the Minister decides that one or more payments should be made to Housing Australia during a financial year beginning on or after 1 July 2023, under paragraph 47C(1)(b) of the Housing Australia Act. Paragraph 47C(1)(b) of the Housing Australia Act would be inserted by Schedule 4 to the Treasury Laws Amendment (Housing Measures No. 1) Bill 2023, which is expected to commence at the same time as this Bill. It would enable payments to be made to Housing Australia to make grants in relation to acute housing needs, social housing or affordable housing under subsection 47C(2A) of the Housing Australia Act.
- 1.136 The Note immediately following subclause 33(1) would direct readers to subsection 47C(2A) of the Housing Australia Act. That subsection would be inserted by Schedule 4 to the Treasury Laws Amendment (Housing Measures No. 1) Bill 2023, which is expected to commence at the same time as this Bill, and would enable Housing Australia to use a payment under clause 33 of this Bill to make grants in relation to acute housing needs, social housing or affordable housing.
- 1.137 Subclause 33(2) would specify that the Housing Minister could not make more than one request under subclause 33(1) in relation to a particular payment. This would prohibit the Minister from accessing the fund more than once in relation to a particular payment; in effect, limiting the total value of requests under subclause 33(1) to the amount that would be payable under grants made under subsection 47C(2A) of the Housing Australia Act.
- 1.138 Subclause 33(3) would clarify that the Housing Minister may make more than one request under subclause 33(1) in a given financial year, despite the limitation in subclause 33(2). This would provide flexibility for the Housing Minister to request more than one transfer in a financial year. This could be in relation to different programs of grants or different grants under the same program agreed by the Government in the same financial year.
- 1.139 Similar to requests made under subclause 26(1), it is expected that requests for transfers under subclause 30(1) would be aggregated, as much as practicable, to streamline the administration of transfers and avoid a large number of requests for relatively small transfers.
- 1.140 Subclause 33(4) would require the Finance Minister to direct, in writing, that a transfer be made from the Housing Australia Future Fund Special Account to the Housing Australia Special Account in instances where a request has been made by the Housing Minister under subclause 33(1) and the Finance Minister is satisfied that the transfer will not result in a breach of the annual limit as provided for by clause 36.
- 1.141 Subclause 33(5) would provide that a direction by the Finance Minister under subclause 33(4) is not a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).

- 1.142 Subclause 33(6) would specify that the Finance Minister must provide the Housing Minister and the Treasurer with a copy of any directions made personally under subclause 33(4).
- 1.143 Subclause 33(7) would apply when the Finance Minister has delegated the power to give a direction under subclause 33(4), as permitted by subclause 61(1). When this delegation has occurred, and the Finance Minister's delegate gives a direction under subclause 33(4), subclause 33(7) would require the delegate to give a copy of that direction to the Treasury Department. This would allow correspondence to occur between officials at a departmental level when the power to give a direction under subclause 33(4) has been delegated to an official in the Finance Department.
- 1.144 Delegations under subclause 33(4) are limited to the Secretary and SES employees, or acting SES employees, in the Finance Department. This ensures that any delegate has a suitable level of experience and skills to perform the delegated power.
- 1.145 The purpose of this subclause is to reduce administrative burden, given that correspondence usually occurs at a departmental level as a result of delegations. Departments would still be required to keep their Ministers appropriately informed under provisions in the PGPA Act.
- 1.146 In instances where one or more grants cannot be paid, subclause 33(8) would provide a mechanism for the return of the amount of the grant or grants to the Housing Australia Future Fund Special Account.
- 1.147 It is expected that the Housing Minister and the Finance Minister would consult each other in exercising their powers under this clause, to ensure that transfers can accommodate any agreed payment schedules for grants made under subsection 47C(2A) of the Housing Australia Act.

Clause 34 – Debits from the Housing Australia Special Account

- 1.148 This clause would provide that when a transfer has been made to the Housing Australia Special Account under paragraph 33(4)(d), the Housing Minister must ensure that the Housing Australia Special Account is debited, for the same amount, for the purposes of making the payment. The Housing Minister must do this as soon as practicable after the amount has been credited to the Housing Australia Special Account.

Part 5 – Annual limit on amounts debited from the Housing Australia Future Fund Special Account

Clause 35 – Simplified outline of this Part

- 1.149 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Clause 36 – Annual limit on amounts debited from the Housing Australia Future Fund Special Account

- 1.150 Clause 36 would limit the total amount debited from the Housing Australia Future Fund Special Account during a financial year, from 2023-24 onwards, for the purposes of transfers under clauses 26, 29 and 33, to \$500 million. Transfers under clause 26 relate to grants to a person or body made under subclause 18(1). Transfers under clause 29 relate to grants of financial assistance to a State or Territory under subclause 18(3). Transfers under clause 33 relate to grants to be made by Housing Australia.

Part 6 – Investment of the Housing Australia Future Fund

Clause 37 – Simplified outline of this Part

- 1.151 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Clause 38 – Objects of investment of the Housing Australia Future Fund

- 1.152 Subclause 38(1) would reinforce that amounts would be invested by the Future Fund Board for the main objects of enhancing the Commonwealth's ability to transfer amounts in accordance with clauses 26, 29 and 33, in relation to acute housing needs, social housing or affordable housing.
- 1.153 Subclause 38(2) would provide that the ancillary objects of the investment of the Housing Australia Future Fund are to enhance the ability of the Commonwealth and the Future Fund Board to discharge costs, expenses, obligations and liabilities set out in clauses 13 and 14.

Clause 39 – Investment of the Housing Australia Future Fund

- 1.154 Clause 39 would take account of the investment powers provided for under section 58 of the PGPA Act. However, subclause 39(1) expands on those powers to provide for the investment of the Housing Australia Future Fund in a broad range of financial assets. Specific conditions on the acquisition of derivatives are separately covered in clause 49. This approach to the investment of the Housing Australia Future Fund is consistent with investment arrangements for other Commonwealth investment funds, including the Future Fund and the Disaster Ready Fund.
- 1.155 Investments of the Housing Australia Future Fund would be made in the name of the Future Fund Board (rather than the Commonwealth) to make it clear that the Future Fund Board would manage the Housing Australia Future Fund at arm's length from the Government. However, beneficial ownership of the Housing Australia Future Fund assets would remain with the Commonwealth at all times.

Clause 40 – Management of investments of the Housing Australia Future Fund

- 1.156 Subclauses 40(1) and 40(2) would provide that income derived from an investment of the Housing Australia Future Fund, including a return of capital or another form of financial distribution, must be credited to the Housing Australia Future Fund Special Account. This is consistent with the requirements under sections 81 and 83 of the Constitution (which, in effect, provide that relevant money forms part of the CRF and can only be spent if authorised by an appropriation made by law). In practice, any amount that has not been invested must be held in the Housing Australia Future Fund Special Account.
- 1.157 Subclauses 40(3) to 40(5) would relate to the arrangements for the realisation of investments. This would allow the Future Fund Board to realise an investment, and upon realisation, authorise the proceeds to be automatically reinvested with the same entity (prior to that investment maturing). This would avoid the proceeds of realisation being treated as relevant money and being credited to the CRF, only to be reappropriated and reinvested. Any reinvestment would be an investment of the Housing Australia Future Fund.
- 1.158 Subclause 40(6) would provide that section 58 of the PGPA Act does not apply to an investment of the Housing Australia Future Fund. Section 58 of the PGPA Act authorises the Finance Minister or the Treasurer to invest relevant money in a limited range of investments, such as government bonds and bank deposits. However, subclause 39(1) would provide for the investment of the Housing Australia Future Fund in a broader range of financial assets.

Clause 41 – Housing Australia Future Fund Investment Mandate

- 1.159 This clause would provide the Australian Government, as owner of the Housing Australia Future Fund, with a mechanism for articulating its expectations for how the Housing Australia Future Fund would be invested and managed by the Future Fund Board. Clause 41 establishes a framework that enables the Government to give strategic guidance to the Future Fund Board while preserving the Board's role in managing the investments of the Housing Australia Future Fund at arm's length from the Government. This approach is consistent with the arrangements in place for the other investment funds managed by the Future Fund Board.
- 1.160 Subclause 41(1) would provide the responsible Ministers with the power to give the Future Fund Board written directions in relation to the performance of its investment functions and the exercise of its powers. This clause would be subject to the limitations in clause 43. The responsible Ministers would be required to issue at least one such direction, and those directions would be collectively known as the Housing Australia Future Fund Investment Mandate (subclause 41(3) refers). The Housing Australia Future Fund investment function would be defined in clause 4.

- 1.161 While the responsible Ministers could issue new directions at any time, the intention would be that the Investment Mandate reflects the Government’s policy intent with regard to the investments of the Housing Australia Future Fund. Any new directions would therefore be expected to take account of significant policy changes or material changes in the investment environment.
- 1.162 These requirements would give the Future Fund Board and the Parliament assurance that the responsible Ministers must make appropriately considered directions in regard to investment targets, while providing flexibility to take account of broader policy issues and national interest considerations.
- 1.163 Subclause 41(2) would provide that in setting an Investment Mandate the responsible Ministers must have regard to maximising the return on the Housing Australia Future Fund over the long term consistent with international best practice for institutional investment, and of the need to enhance the Commonwealth’s ability to make grants and transfers in relation to acute housing needs, social housing or affordable housing.
- 1.164 Subclause 41(4) would provide that the Investment Mandate may include, but is not limited to, statements about policies the Future Fund Board must pursue in relation to risk and return and the allocation of the Housing Australia Future Fund to particular asset classes. This may include restrictions or thresholds for investing the Housing Australia Future Fund in certain jurisdictions or asset classes and statements of the Government’s appetite for risk.
- 1.165 Subclause 41(5) would make it clear that a Ministerial direction under subclause 41(1) prevails over clause 42 to the extent of any inconsistency, and places limitations on responsible Ministers in issuing the Investment Mandate. This would mean that the Investment Mandate could not have the effect of requiring the Future Fund Board to do anything inconsistent with this Bill, including the aim of enhancing the Commonwealth’s ability to make grants and transfer amounts in relation to acute housing needs, social housing or affordable housing.
- 1.166 Subclause 41(6) would provide that the Investment Mandate would not formally commence until at least 15 calendar days after it is issued. This would allow the Future Fund Board time to adjust to any revised directions issued by the responsible Ministers. Importantly, this would allow the Future Fund Board to know with certainty when the new direction would come into force.
- 1.167 Subclause 41(7) would provide that a direction under subclause 41(1) is a legislative instrument, and as such must be tabled in the Parliament and registered on the Federal Register of Legislation. Note 1 would alert the reader that a direction is not subject to disallowance, in accordance with regulations made for the purposes of paragraph 44(2)(b) of the Legislation Act. Note 2 alerts the reader that a direction is not subject to sunseting, in accordance with regulations made for the purposes of paragraph 54(2)(b) of the Legislation Act.
- 1.168 The Government considers it is appropriate that a direction under subclause 41(1) of the Bill is not subject to disallowance. These directions are operational in character. The Bill would provide adequate scrutiny of directions comprising the Housing Australia Future Fund Investment Mandate through mandated consultation with the Future Fund Board (clause 44). Exemption from disallowance together with consultation would give the Future Fund Board necessary certainty when investing through the Housing Australia Future Fund. While it would be possible to provide that a direction under subclause 41(1) does not come into effect until disallowance periods have expired, this approach would significantly impede the ability of Government to make urgent changes to the Housing Australia Future Fund Investment Mandate in the national interest.
- 1.169 The Government also considers it is appropriate that a direction under subclause 41(1) is not subject to sunseting. The process for setting the Housing Australia Future Fund Investment Mandate has been designed to ensure that it remains relevant over the long term, subject to appropriate revisions to take into account changing circumstances. This process means the Housing Australia Future Fund Investment Mandate may comprise of multiple directions issued at different times. Not subjecting investment mandates to sunseting would ensure that the directions remain coherent, regardless of when they were issued.

- 1.170 This approach enables the public and the Parliament to hold the Government accountable for the directions it issues to the Future Fund Board without impeding the Government's ability to manage its finances. The approach is consistent with investment mandates issued for the other investment funds managed by the Future Fund Board.

Clause 42 – Obligation on Future Fund Board in performing investment functions

- 1.171 Clause 42 would require the Future Fund Board, in exercising its Housing Australia Future Fund investment function, to seek to maximise the return on the Housing Australia Future Fund over the long term, consistent with international best practice for institutional investment. It is expected that international best practice would be reflected in the investment policies of the Housing Australia Future Fund.

Clause 43 – Limitation on Housing Australia Future Fund Investment Mandate

- 1.172 Clause 43 would provide that the responsible Ministers must not direct the Future Fund Board to use the assets of the Housing Australia Future Fund to invest in a particular financial asset (for example, shares in a particular company). It would also prevent the responsible Ministers from issuing a direction that has the effect of requiring the Future Fund Board to use the assets of the Housing Australia Future Fund to support a particular business entity, activity or business.

Clause 44 – Future Fund Board to be consulted on Housing Australia Future Fund Investment Mandate

- 1.173 Consistent with arrangements for the other investment funds managed by the Future Fund Board, the responsible Ministers would be required to consult the Future Fund Board before issuing a Housing Australia Future Fund Investment Mandate direction under subclause 41(1).
- 1.174 Subclause 44(1) would require the responsible Ministers to send a draft of a direction under subclause 41(1) to the Future Fund Board and invite the Board to make a submission within a specified time limit. The specified time limit would be determined on a case by case basis with regard to relevant circumstances and priorities at the time. It may be the case that urgent changes are required in the national interest. In this situation, it would be reasonable for the Future Fund Board to be asked to consider a draft direction quickly. However, where there is less urgency, or the change in the Housing Australia Future Fund Investment Mandate is substantial, it would be reasonable to provide the Future Fund Board with a longer period of time to consider a draft direction. Any submission that is received within the specified time limit would need to be considered by the responsible Ministers.
- 1.175 Subclause 44(2) would require any submission received from the Future Fund Board on a draft direction to be tabled in the Parliament along with the direction. This would ensure that the Parliament is kept informed of any concerns raised by the Future Fund Board about the impact of the direction on the Housing Australia Future Fund.

Clause 45 – Compliance with Housing Australia Future Fund Investment Mandate

- 1.176 This clause would deal with compliance of the Future Fund Board with the Housing Australia Future Fund Investment Mandate.
- 1.177 Subclause 45(1) would require the Future Fund Board to take all reasonable steps to ensure that all policies and decisions regarding the operation and investment of the Housing Australia Future Fund are in accordance with the Housing Australia Future Fund Investment Mandate issued by the responsible Ministers. Since the Housing Australia Future Fund Investment Mandate is intended to provide broad guidance to the Future Fund Board, it may contain directions that require the Board to apply its judgment on whether or not Housing Australia Future Fund investments comply with the Housing Australia Future Fund Investment Mandate.
- 1.178 Subclause 45(2) would provide that if the Future Fund Board becomes aware of a breach of the Housing Australia Future Fund Investment Mandate, the Board must inform the responsible Ministers in writing as soon as practicable, and set out a proposed strategy to bring the operations of the Housing Australia Future Fund into compliance with the Housing Australia Future Fund Investment Mandate.

- 1.179 Similarly, subclauses 45(3) and 45(4) would provide that if the Government identifies areas where the Future Fund Board is not complying with the Housing Australia Future Fund Investment Mandate, the responsible Ministers can issue written directions to the Future Fund Board to provide an explanation and to take action to remedy the situation. The Future Fund Board would be required to comply with any such directions, noting that the responsible Ministers would be the final arbiters on what is intended by the Housing Australia Future Fund Investment Mandate.
- 1.180 A direction from the responsible Ministers to the Future Fund Board under subclause 41(1) should only require the Board to take actions in order to comply with an Investment Mandate. A direction is not intended to determine or alter the content of the law with which the Board must comply.
- 1.181 Subclause 45(5) would provide that any transactions entered into by the Future Fund Board that are subsequently deemed not to have complied with the Housing Australia Future Fund Investment Mandate remain valid, and the Future Fund Board is required to honour any commitments made. This would protect third parties who enter into transactions with the Future Fund Board or its agents in good faith.
- 1.182 Subclause 45(6) is included to assist readers by clarifying that a direction under subclause 45(3) is not a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).

Clause 46 – Future Fund Board must not trigger the takeover provisions of the Corporations Act 2001

- 1.183 Clause 46 aims to minimise market distortion and eliminate the potential for conflicts of interest for the Government as a market regulator. It would provide that the Future Fund Board is prohibited from triggering the takeover provisions under section 606 of the Corporations Act.
- 1.184 Section 606 of the Corporations Act essentially prohibits acquisitions of relevant interests in the voting shares of a listed company, or unlisted company with more than 50 shareholders, if a person's voting power increases from a figure at or below 20 per cent to a figure above 20 per cent (or from a figure above 20 per cent but below 90 per cent to a higher figure) – unless the shares are acquired in one of the circumstances set out at section 611 of that Act.
- 1.185 It is the Government's intention that the takeover threshold be adhered to quite strictly in relation to listed companies and unlisted companies with more than 50 shareholders. Therefore, subclause 46(1) would provide that the exceptions under section 611 of the Corporations Act (that is, exceptions to the prohibition in section 606) do not apply in relation to acquisitions by the Future Fund Board if the acquisition is the result of the performance by the Future Fund Board of its Housing Australia Future Fund investment functions.
- 1.186 Subclause 46(2) would provide that if for some reason the Future Fund Board has not complied with section 606 of the Corporations Act (as it is applied to the Future Fund Board under subclause 46(1)) the relevant transactions would still be valid. The aim of this provision is to ensure third parties are not affected adversely by any non-compliance of the Future Fund Board.
- 1.187 The note at the end of this clause would assist the reader by referring to section 39 of the Future Fund Act, which sets out the application of the Corporations Act to the Future Fund Board.

Clause 47 – Borrowing

- 1.188 This clause would prohibit the Future Fund Board from borrowing money, except for short-term borrowing associated with the settlement of transactions, or in other circumstances prescribed in the rules.
- 1.189 The overall aim of this provision is to ensure that the Future Fund Board is able to operate efficiently without exposing the Budget to undue risk.
- 1.190 Subclause 47(3) would provide that the rules may specify circumstances in which it is appropriate for the Future Fund Board to borrow. The rules could also be used to clarify any uncertainty around whether a particular activity constitutes borrowing. While it is not anticipated that the Future Fund Board would have a need to borrow, this provision is intended to accommodate unforeseen events or

changes in the investment environment without the need to amend the primary legislation. The power to make rules would be provided for in clause 66 of the Bill.

Clause 48 – Housing Australia Future Fund investment policies

- 1.191 Clause 48 would require the Future Fund Board to formulate, publish and comply with policies on its investment activities. The aim of this provision is to ensure rigour and transparency around how the Future Fund Board performs its investment function in relation to the Housing Australia Future Fund, including risk management, performance assessment and benchmarks.
- 1.192 Subclauses 48(1) and 48(7) require the Future Fund Board to formulate and comply with policies and any additional matters specified in the rules. For certainty, these clauses do not prescribe a substantive exemption from the requirements of the Legislation Act. A note at the end of subclause 48(1) would remind the reader that, under subsection 33(3) of the Acts Interpretation Act, the Future Fund Board is able to repeal, rescind, revoke, amend, or vary any such policies.
- 1.193 Subclause 48(2) would provide that the policies that the Future Fund Board develops must be consistent with the Housing Australia Future Fund Investment Mandate issued under clause 41.
- 1.194 Subclauses 48(3) and 48(4) would require the Future Fund Board to publish such policies on the internet.
- 1.195 Subclauses 48(5) and 48(6) would require the Future Fund Board to conduct reviews of these policies periodically, and when the responsible Ministers change the Housing Australia Future Fund Investment Mandate. It is not expected that the results of the reviews would be published. However, if a review resulted in any changes to policies, it is intended that the updated policies would be published on the internet.
- 1.196 Subclause 48(8) would provide that if the Future Fund Board enters into a transaction that is not consistent with a policy that it has published under this clause, the transaction would still be valid. This would ensure that third parties would not be affected by a failure of the Future Fund Board to comply with policies formulated under subclause 48(1). However, subclause 48(7) would require the Future Fund Board to take all reasonable steps to comply with the policies it develops under subclause 48(1).
- 1.197 Subclause 48(9) would be included to assist readers by clarifying that a policy formulated under subclause 48(1) would not be a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Such policies would be administrative in character, and would not determine or alter the content of the law. They would be administrative policies that the Future Fund Board would be required to formulate and comply with, to ensure rigour and transparency around how the Board performs its investment function.

Clause 49 – Derivatives

- 1.198 Derivatives are widely used by financial market participants as a tool for risk management.
- 1.199 Clause 49 would allow the Future Fund Board to use derivatives for certain purposes. This would include using derivatives as a risk management tool or to achieve indirect exposure to assets that it could not otherwise achieve. The Future Fund Board could also use derivatives to reduce the transaction cost of achieving required exposures.
- 1.200 Subclause 49(1) would enable the Future Fund Board to acquire a derivative for specified purposes, but would make it clear that the Board cannot acquire or use derivatives for the purposes of speculation or leverage.
- 1.201 Subclause 49(2) would provide that the acquisition of derivatives under subclause 49(1) must be consistent with the investment strategy of the Future Fund Board that is embodied in a policy formulated under subclause 48(1) of this Bill.
- 1.202 Subclauses 49(3) and 49(4) would provide that derivatives would be held in the name of the Future Fund Board and be taken to be an investment of the Housing Australia Future Fund.
- 1.203 Similar to other investments, derivatives could be realised by the Future Fund Board under subclause 40(3) of the Bill.

Clause 50 – Additional financial assets

1.204 Clause 50 would provide that if the Future Fund Board becomes a holder of a financial asset (for example through a capital distribution), that asset would become an investment of the Housing Australia Future Fund and would therefore be subject to all the restrictions and requirements for investments of the Housing Australia Future Fund.

Clause 51 – Securities lending arrangements

1.205 Clause 51 would provide that the Future Fund Board is able to enter into securities lending arrangements. Lending of securities is commonplace among institutional investors. Under this clause, the Future Fund Board could also take collateral as part of a securities lending arrangement. Any collateral the Board takes would either be credited to the Housing Australia Future Fund Special Account or become an investment of the Housing Australia Future Fund.

Clause 52 – Investment managers

1.206 Clause 52 would deal with the use of investment managers by the Future Fund Board for purposes in connection with the Housing Australia Future Fund.

1.207 Subclause 52(1) would enable the Future Fund Board to engage one or more investment managers. An ‘investment manager’ would be defined broadly in clause 4 of the Bill to include custodians, transition managers and other investment managers. However, the Agency would be excluded from this definition as it is generally expected that investment activities, such as acquiring derivatives or investing money, would be outsourced.

1.208 Unless otherwise approved by the responsible Ministers in writing, the Future Fund Board would be required to use investment managers to invest money in financial assets, acquire derivatives, enter into securities lending arrangements or realise financial assets.

1.209 Subclause 52(2) would provide that the responsible Ministers may provide approval in writing for certain methods of investment, other than through investment managers, should it be prudent and cost effective to do so.

1.210 Subclauses 52(3) and 52(4) would require the Future Fund Board to ensure that investment managers operate within the Bill and report on the state of investments of the Housing Australia Future Fund to the Future Fund Board and the Agency. It would be expected that such obligations would be set out in the contractual arrangements between the Future Fund Board and the investment manager.

Clause 53 – Refund of franking credits

1.211 Under subsection 84B(1) of the Future Fund Act, the Future Fund Board is deemed to be an exempt institution that is eligible for a refund of franking credits under the ITAA. As the Future Fund Board is exempt from income tax, it may have an investment bias towards assets whose return had not previously been subject to income tax (such as debt instruments or unfranked dividends). Refunding franking credits removes any potential bias against franked dividends.

1.212 Clause 53 would deal with the refund of franking credits and provide that if the Future Fund Board receives a refund of a tax offset under the ITAA and the tax offset is attributable to the investment of the Housing Australia Future Fund, any refund received would be credited to the Housing Australia Future Fund Special Account. Note 1 would refer the reader to section 84B of the Future Fund Act. Note 2 would refer the reader to Division 63 of the ITAA, which deals with refunds of tax offsets.

Clause 54 – Realisation of non-financial assets

1.213 Clause 54 would require the Future Fund Board to realise an asset that ceases to be a financial asset or any asset acquired by the Board (as an investment of the Housing Australia Future Fund) that is not a financial asset. This could include circumstances where the Future Fund Board holds an asset which was mistakenly acquired by the Board, or given to the Board, or which ceases to be a financial asset.

1.214 The clause would require a non-financial asset to be treated as a financial asset up until the time it is realised. Subclause 54(3) would ensure that the asset is considered an investment of the Housing

Australia Future Fund and that relevant provisions relating to investments of the Housing Australia Future Fund would apply to that asset for the time that it is held by the Future Fund Board.

Clause 55 – Additional function of the Future Fund Board

1.215 Clause 55 would provide that the functions of the Future Fund Board include the function of investing amounts in accordance with the Bill.

Part 7 – Reporting obligations etc.

Clause 56 – Simplified outline of this Part

1.216 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Clause 57 – Finance Minister may require Future Fund Board to prepare reports or give information

1.217 This clause would provide that the Finance Minister may require, in writing, that the Future Fund Board prepare a report or a document on one or more specified matters relating to the performance of the Future Fund Board's functions under this Bill. This report or information would be required to be provided as outlined in the Finance Minister's request. Such a report could be requested, for example, in order to satisfy the Government that the Future Fund Board's management of the Housing Australia Future Fund complies with legislation and the fund's investment mandate.

1.218 Subclause 57(4) would be included to assist readers by clarifying that a report prepared under subclause 57(1) would not be a legislative instrument within the meaning of subsection 8(1) of the Legislation Act. Such reports would be administrative in character, and would not determine or alter the content of the law.

Clause 58 – Keeping the responsible Ministers informed etc.

1.219 Clause 58 would require the Future Fund Board to notify the responsible Ministers of any information that the responsible Ministers should be aware of, including by providing any written information to the Finance Minister. This could include significant investment results, concerns regarding fraud and any non compliance with the Future Fund Board's policy on conflicts of interest.

Clause 59 – Finance Minister may give reports, documents and other information to other Ministers

1.220 Clause 59 would allow the Finance Minister to give reports, documents and other information to another Minister. This includes reports and documents under subclause 57(1) or 58(2) and any other information or document obtained by the Finance Minister under the Bill. It is intended that the Finance Minister would use this provision to inform the Housing Minister and designated Ministers about matters relating to the Housing Australia Future Fund, given their responsibilities under the Bill.

Part 8 – Miscellaneous

1.221 Clause 60 – Simplified outline of this Part

1.222 This clause would provide a high-level introduction to the provisions in this Part, to aid readability. The outline is not intended to be comprehensive and should not be relied on in place of the substantive provisions of this Part.

Clause 61 – Delegation by the Finance Minister

1.223 This clause would enable the Finance Minister to delegate certain functions and powers under this Bill.

1.224 Under subclause 61(1), the Finance Minister would be empowered to, in writing, delegate functions or powers under clauses 26, 29 and 33 of the Bill to the Secretary of the Finance Department or to an SES employee (or acting SES employee) in that Department. The Minister would not be required to delegate any functions or powers under this clause.

1.225 The Finance Minister's powers under clauses 26, 29 and 33 would relate to transfers from the Housing Australia Fund Special Account to the Housing Australia Future Fund Payments Special

Account, the COAG Reform Fund and the Housing Australia Special Account, in relation to acute housing needs, social housing and affordable housing. Delegation of these functions and powers to the Secretary of, or SES official in, the Finance Department would facilitate the efficient administration of these matters.

- 1.226 Subclause 61(2) would allow the Finance Minister to delegate, in writing, any powers under clause 16 of the Bill to the Secretary or an SES employee (or acting SES employee) in the Finance Department; or to the Chair or an SES employee (or an acting SES employee) of the Agency. Clause 16 would relate to the transfer of funds from the Housing Australia Future Fund Special Account to the Future Fund Special Account to enable reimbursement of expenses incurred in relation to the Housing Australia Future Fund.
- 1.227 The note would assist the reader by referring to the relevant section of the Acts Interpretation Act in relation to the expressions ‘SES employee’ and ‘acting SES employee’.
- 1.228 It is envisaged that the delegate would be accountable to the Finance Minister for their actions under any delegation. Subclause 61(3) would reinforce this intention by requiring the delegate to comply with any direction of the Finance Minister in performing functions or exercising powers under a delegation.

Clause 62 – Delegation by the Treasurer

- 1.229 Under subclause 62(1), the Treasurer would be empowered to, in writing, delegate functions or powers under clause 30 of the Bill to the Secretary of the Treasury Department or an SES employee (or acting SES employee) in that Department. The Treasurer would not be required to delegate any functions or powers under this clause.
- 1.230 Clause 30 of the Bill would relate to debiting the COAG Reform Fund for the purposes of making a grant to a State or Territory. Delegation of this power to the Secretary of, or SES official in, the Treasury would enable the efficient administration of these matters.
- 1.231 The note would assist the reader by referring to the relevant section of the Acts Interpretation Act in relation to the expressions ‘SES employee’ and ‘acting SES employee’.
- 1.232 It is envisaged that the delegate would be accountable to the Treasurer for their actions under any delegation. Subclause 62(2) would reinforce this intention by requiring the delegate to comply with any direction of the Treasurer in performing functions or exercising powers under a delegation.

Clause 63 – Delegation by a designated Minister

- 1.233 This clause would enable the designated Ministers to delegate certain functions or powers under this Bill.
- 1.234 Under subclause 63(1), the designated Ministers would be empowered to, in writing, delegate their functions or powers under Division 2 of Part 3 or clause 29 to the Secretary of a department, or the Head of an Executive Agency administered by the designated Minister, whichever is relevant.
- 1.235 The designated Minister may also delegate their functions or powers to an SES employee or acting SES employee in the department or Executive Agency administered by the designated Minister (so long as that employee possesses expertise appropriate to the delegated function or power), or another official of a Commonwealth entity that has the expertise appropriate to the function or power.
- 1.236 Division 2 of Part 3 of the Bill deals with making grants of financial assistance in relation acute housing needs, social housing and affordable housing. Clause 29 relates to requests for transfers to the COAG Reform Fund for grants to States and Territories in relation to acute housing needs, social housing and affordable housing. Delegation of these functions or powers to the listed Commonwealth officials would enable the efficient administration of these matters.
- 1.237 For example, this delegation power could be used to enable grants made under subclause 18(1) to be administered by Commonwealth officials employed in an Australian Government grants hub (for example, the Community Grants Hub, managed by the Commonwealth Department of Social Services). The designated Ministers would not be required to delegate their functions or powers.

- 1.238 The note immediately following subclause 63(1) would assist the reader by referring to the relevant section of the Acts Interpretation Act in relation to the expressions ‘SES employee’ and ‘acting SES employee’.
- 1.239 It is envisaged that the delegate would be accountable to the designated Minister for their actions under any delegation. Subclause 63(2) would reinforce this intention by requiring the delegate to comply with any direction of the designated Minister in performing functions or exercising powers under a delegation.

Clause 64 – Delegation by the Housing Minister

- 1.240 This clause would enable the Housing Minister to delegate certain functions and powers under this Bill. This would be separate from, and in addition to, the Housing Minister’s ability to delegate functions or powers as a designated Minister under clause 63.
- 1.241 Under subclause 64(1), the Housing Minister would be empowered to, in writing, delegate functions or powers under clauses 33 and 34 of the Bill to the Secretary of the Treasury Department or an SES employee (or acting SES employee) in that Department, who has expertise appropriate to the relevant function or power. The Housing Minister would not be required to delegate any functions or powers under this clause.
- 1.242 Clause 33 of the Bill relates to transfers from the Housing Australia Future Fund Special Account to the Housing Australia Special Account for the purposes of paragraph 47C(1)(b) of the Housing Australia Act.
- 1.243 Clause 34 requires the Housing Minister to ensure that a payment from the Housing Australia Special Account is made to Housing Australia as soon as practicable after the amount has been credited to the Housing Australia Special Account.
- 1.244 Delegation of these functions or powers to the Secretary of, or SES official in, the Treasury would enable the efficient administration of these matters.
- 1.245 The note would assist the reader by referring to the relevant section of the Acts Interpretation Act in relation to the expressions ‘SES employee’ and ‘acting SES employee’.
- 1.246 It is envisaged that the delegate would be accountable to the Housing Minister for their actions under any delegation. Subclause 64(2) would reinforce this intention by requiring the delegate to comply with any direction of the Housing Minister in exercising functions or powers under a delegation.

Clause 65 – Reviews of operation of Act

- 1.247 Subclause 65(1) would require the Housing Minister to cause reviews of the operation of this Bill to be undertaken. This review mechanism is intended to provide the opportunity to consider whether the Bill, as enacted, is providing the outcomes envisaged.
- 1.248 Paragraph 65(2)(a) would require the review to consider the extent to which grants provided under clause 18 and transfers to the Housing Australia Special Account under clause 33 have improved housing outcomes for Australians.
- 1.249 Paragraph 65(2)(b) would require that a review of the operation of the Bill, as enacted, also assesses the extent to which the needs of Australians are being met in relation to acute housing needs, social housing and affordable housing as the housing market evolves and economic parameters shift.
- 1.250 Subclause 65(4) would require the Housing Minister to consult the responsible Ministers before causing a review to be conducted. This would give the responsible Ministers an opportunity to provide input into the review process – for example, in determining the scope of the review through its terms of reference, as well as informing timing of the review.
- 1.251 Subclause 65(5) would require the person or persons who conduct the review to give the Housing Minister a written report of the review.
- 1.252 Subclause 65(6) would require the Housing Minister to table, in both Houses of the Parliament, a copy of the terms of reference for the review as well as the report of the review.

- 1.253 Under subclause 65(7), the Housing Minister would be required to publish on the internet both the terms of reference for the review as well as the report of the review. This would need to occur as soon as practicable after the report of the review is tabled in a House of Parliament as provided for in subclause 65(6).
- 1.254 Subclause 65(8) would require the Housing Minister to give a copy of the report of the review to both responsible Ministers.
- 1.255 Subclause 65(9) would require the first review to be completed by 31 December 2028.
- 1.256 Subclause 65(10) would require the Housing Minister to cause each subsequent review of the operation of the Bill, as enacted, within five years of the previous review's completion.
- 1.257 Subclause 65(11) would provide that a review is completed once the report of the review is provided to the Housing Minister under subclause 65(5).

Clause 66 – Rules

- 1.258 Clause 66 would provide that the Finance Minister may, by legislative instrument, make rules covering matters required or permitted to be prescribed in this Bill, or matters that would be necessary or convenient to prescribe for the purposes of this Bill.
- 1.259 Enabling the making of rules rather than regulations would accord with the Office of Parliamentary Counsel's Drafting Direction No. 3.8 – Subordinate Legislation. Paragraph 3 of that Drafting Direction states that "OPC's starting point is that subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so".
- 1.260 Paragraph 4 of the Drafting Direction states that matters such as compliance and enforcement, the imposition of taxes, setting amounts to be appropriated, and amendments to the text of an Act, should be included in regulations unless there is a strong justification otherwise. The Bill does not intend to enable the rules to provide for any of the types of matters listed.
- 1.261 Pursuant to sections 38 and 39 of the Legislation Act, all legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days of the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the rules would be subject to the same level of Parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee for the Scrutiny of Delegated Legislation), and a motion to disallow the rules may be moved in either House of the Parliament within 15 sitting days of the date the rules are tabled (see section 42 of the Legislation Act).
- 1.262 Subclause 66(2) would be a declaratory clause, included for the avoidance of doubt.

Chapter 2: Creating a National Housing Supply and Affordability Council

Outline of chapter

- 2.1 The Housing Council Bill establishes the Council as an independent statutory advisory body to inform the Commonwealth’s approach to housing policy by delivering independent advice to the Government on options to improve housing supply and affordability.

Context of amendments

- 2.2 Establishing the Council as an independent advisory body to the Commonwealth is a 2022-23 October Budget measure.
- 2.3 The Council is a critical element which will support the Commonwealth’s enhanced role in housing policy, informing Government of gaps in the supply and affordability of housing in Australia and assisting the Government to make evidence-based policy and funding decisions.
- 2.4 The Council gives advice to the Minister on the allocation of disbursements between Housing Australia, the COAG Reform Fund and the Housing Australia Future Fund Payments Special Account from the Housing Australia Future Fund Special Account. The Minister should have regard to this advice.
- 2.5 The Council’s functions include:
- reporting to the Minister on housing supply and affordability-related matters, including any matters that the Council considers have the potential to materially impact housing supply and affordability or specific matters relating to housing supply and affordability, as requested by the Minister;
 - monitoring and reporting on conditions in the housing sector that impact on home ownership, housing supply and affordability, rental affordability, homelessness, and the number of new social and affordable houses being built annually;
 - working collaboratively with other Commonwealth bodies, State, Territory and local governments and other stakeholders in the housing sector to support the collection and publication of nationally consistent data; and

- providing advice to the Minister to inform appropriate allocations of disbursements from the Housing Australia Future Fund.
- 2.6 The Housing Australia Future Fund is a Commonwealth investment fund being established under the Bill, forming one aspect of the Australian Government’s commitment to improving housing supply and affordability.
- 2.7 The Housing Australia Future Fund creates a secure funding stream to support and increase social and affordable housing, as well as other acute housing needs including housing improvements in remote Indigenous communities and housing services for women, children, and veterans.
- 2.8 The Bill establishes the Housing Australia Future Fund Special Account and provides for crediting of the Housing Australia Future Fund Special Account with \$10 billion after its creation. The Council will advise the Minister on the appropriate allocation of disbursements from the Housing Australia Future Fund Special Account to the Housing Australia Future Fund Payments Special Account (which can be drawn on by designated Ministers), the COAG Reform Fund and the Housing Australia Special Account.

Summary of new law

- 2.9 The Housing Council Bill establishes the Council as an independent statutory body to advise the Government on housing affordability and supply.
- 2.10 This replaces an interim arrangement where the Council was established as a non-statutory body.
- 2.11 While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

Detailed explanation of new law

- 2.12 The Housing Council Bill establishes the Council as an independent statutory advisory body.
[Subsection 7(1) of the Housing Council Bill]
- 2.13 The short title of the legislation is the *National Housing Supply and Affordability Council Act 2023*.
[Section 1 of the Housing Council Bill]
- 2.14 An objects provision sets out that the primary aim of the Council is to advise the Commonwealth on a range of matters relating to housing supply and affordability. This will be achieved through the Council’s reporting, research

and advisory functions.

[Section 4 of the Housing Council Bill]

- 2.15 The Housing Council Bill contains a simplified outline of the Act and of each Part to clarify the purpose and functions of the Council and legislation. The simplified provisions are to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

[Sections 3, 6, 15, 21 and 33 of the Housing Council Bill]

- 2.16 The Council is subject to the rules in the PGPA Act and solely for the purposes of the PGPA Act it is considered to be a part of the Treasury Department. However, the Council, and staff of the Council are independent and their work remains independent of the Treasury Department.

[Subsection 7(2) of the Housing Council Bill]

- 2.17 The Council consists of the following seven *members*:

- the *Chair*;
- the *Deputy Chair*;
- the *Deputy Secretary* (ex-officio member) primarily responsible for housing policy matters in the Department (Treasury Department); and
- four other *appointed members*.

[Definitions of ‘Chair’, ‘Deputy Chair’, ‘Deputy Secretary’, ‘member’ and ‘appointed member’ in sections 5 and 8 of the Housing Council Bill]

Independence of the Council

- 2.18 The Council has power to ensure it can take any action or decisions necessary in connection with its functions.

[Section 13 of the Housing Council Bill]

- 2.19 The Council has discretion over the performance of its functions and powers and is not subject to direction from anyone in how it performs or exercises these functions or powers.

- 2.20 Whilst the Minister may request the Council to undertake research and provide a report on specific matters, the Minister cannot direct how the Council undertakes the review or provides the advice. This ensures the independence of the Council and supports the integrity of the advice and reports the Council produces.

[Subsection 11(1) and section 14 of the Housing Council Bill]

Meetings

- 2.21 The Council must hold meetings as necessary for the efficient performance of its functions. The Chair is responsible for holding at least six meetings each financial year and may convene meetings at any time. Additionally, if another

appointed member makes a written request for a meeting, the Chair must convene a meeting within 30 days of the receipt of the request. This ensures that all appointed members have the capacity to initiate meetings if they consider that a meeting is required. This process is also essential as decisions cannot be made by the Council without a meeting first being held.

[Section 16 of the Housing Council Bill]

2.22 Where the Chair is present, they must preside over the meeting and undertake the responsibility for running the meeting in an orderly manner. If they are unavailable, in the first instance, the Deputy Chair must act as the Chair. If the Deputy Chair is also unavailable the other appointed members present must appoint one of themselves to preside over that particular meeting.

[Section 17 of the Housing Council Bill]

2.23 Four appointed members at a Council meeting comprises a quorum. However, in circumstances where:

- a member is present during deliberations at a meeting but is required under rules made for the purposes of the PGPA Act to either not be present during deliberations or not take part in a decision on a matter; and
- the member leaves the meeting and there is no longer a meeting quorum;

the remaining members are treated as constituting a quorum for the purpose of any deliberation or decision at that meeting on that matter.

This ensures that there is flexibility to deal with situations in which potential conflicts could arise at short notice without impacting on the quorum requirements for meetings.

[Section 18 of the Housing Council Bill]

2.24 Each appointed member attending a Council meeting has an equal vote and issues are resolved having regard to the majority vote of members attending and voting. However, if a tied vote occurs the person presiding at the meeting may also exercise a casting vote to ensure that matters can be resolved.

[Section 19 of the Housing Council Bill]

2.25 The format of these meetings is not mandated to ensure appropriate flexibility in conducting Council meetings. However, the Council is responsible for ensuring its meetings are run in an appropriate manner. The Housing Council Bill contains a note which signals that the Acts Interpretation Act has further information concerning how members participate in meetings.

[Section 20 of the Housing Council Bill]

Appointment of members

2.26 All members of the Council, except the relevant Deputy Secretary, are appointed by the Minister through a written instrument. An appointed member's term must not exceed four years and they cannot hold office as an appointed member for a total of more than eight years. This ensures that the Council continues to develop and build its capabilities as the introduction of

new appointed members allows different perspectives on the housing market to inform the Council's research and reporting functions.

[Subsection 22(1) and section 23 of the Housing Council Bill]

2.27 Notes are included in the Housing Council Bill to highlight that reappointment of members are subject to them satisfying experience and expertise requirements and that a member that is a Deputy Secretary of the Treasury Department is not treated as an appointed member.

2.28 When appointing members to the Council, the Minister must be satisfied that they have substantial expertise and standing in at least one of a number of fields including economics, planning and demography, social housing, social and homelessness policy and regulation and residential construction. The eligibility requirement creates a standard to guide the Minister when appointing members so that all members have the appropriate knowledge, experience and competency to meaningfully contribute to the Council.

[Subsection 22(2) of the Housing Council Bill]

2.29 The Minister appoints the Chair, Deputy Chair and four others to be members of the Council. The Minister is not required to appoint the Deputy Secretary responsible for housing policy within the Treasury Department (who must not be a member of staff assisting the Council) as the individual in this role will automatically be treated as an ex-officio member of the Council. All members hold office on a part-time basis.

[Subsections 22(3) and (4) of the Housing Council Bill]

2.30 Appointed members of the Council are remunerated according to the standard *Remuneration Tribunal Act 1973* public office remuneration provision. However, if no such provision from the Remuneration Tribunal applies, then the Minister may prescribe by legislative instrument both the rate of remuneration and allowances that apply to appointed members.

[Section 25 of the Housing Council Bill]

2.31 The Minister may grant members a leave of absence from their duties on the Council subject to any terms and conditions established by the Minister.

[Section 26 of the Housing Council Bill]

2.32 In some circumstances, acting arrangements for the Chair and Deputy Chair may be necessary while they are on leave, unable to perform their duties or in the interim period before a new appointment is made. In these situations, the Minister can appoint a member to act as the Deputy Chair through a written instrument. These acting appointments are necessary to ensure continuity of the Council's activities and prevent the delay of research and reports to the Commonwealth. A note in the Housing Council Bill provides a cross reference to rules for acting appointments in Commonwealth legislation.

[Section 24 of the Housing Council Bill]

- 2.33 Appointed members are required to disclose to the Minister the details of any material personal interests as required under the PGPA Act or as imposed by additional rules under that Act in relation to the Council, to further maintain the integrity of the body. A failure to comply with a duty of disclosure is treated also as a failure to comply with the requirements under the PGPA Act. The Deputy Secretary acting as an ex officio member of the Council currently has ongoing disclosure requirements to the Minister under the PGPA Act, and as such has not been included in this provision.
[Section 28 of the Housing Council Bill]
- 2.34 In addition to the mandated terms and conditions of appointments, appointed members must also remain compliant with any other terms and conditions which may be determined by the Minister.
[Section 27 of the Housing Council Bill]
- 2.35 Appointed members can leave the Council permanently through voluntary resignation or termination.
- 2.36 If an appointed member chooses to resign from their appointment, they must inform the Minister in writing and their resignation will be effective from the date of receipt or another date specified in the written resignation.
[Section 29 of the Housing Council Bill]
- 2.37 The Minister may terminate an appointed member's appointment for their misbehaviour or inability to perform their duties in the Council due to physical or mental incapacity. In addition to this, the Minister may also terminate an appointment, if an appointed member becomes bankrupt, attempts to benefit their creditors, misses four out of six meetings in a 12 month period and are not on official leave or do not disclose their interests to the Minister. All of these reasons are cause for termination as they substantially compromise an appointed member's ability to undertake their duties in a competent and ethical manner.
[Section 30 of the Housing Council Bill]
- 2.38 Staff assisting the Council are Australian Public Service employees in the Treasury Department whose services are made available to the Council, by the ***Secretary*** of the Treasury Department, in connection with the performance of any of the Council's functions. These staff remain part of the Treasury Department and do not form part of the new statutory agency, for the purposes of the *Public Service Act 1999* but are subject to the directions of the Council when performing services for the Council.
[Definition of Secretary in sections 5 and 31 of the Housing Council Bill]
- 2.39 In addition to the members and Australian Public Service staff, the Secretary may engage external consultants to assist in the performance of the Council's functions. This provision will allow for extra or specialist resources to be utilised by the Council and enable research and reports to be delivered effectively and efficiently.
[Section 32 of the Housing Council Bill]

Functions of the Council

2.40 The Council is intended to advise the Government on matters relating to housing supply and affordability. The functions of the Council fall into three categories: reporting, research, and advice.

Reporting

2.41 The Council is responsible for reporting to the Minister on matters that have the potential to materially impact housing supply and affordability. This may include housing affordability, homelessness, and the construction of new housing, including social or affordable housing. Reporting on housing supply and affordability is essential to the Council's core objective to provide support to the Commonwealth to ensure well-informed decisions are made in relation to housing policy. These reports can be initiated by the Council itself or the Minister may request reports into specific matters relating to housing supply and affordability.

[Paragraph 9(1)(a) of the Housing Council Bill]

2.42 The Minister, in making requests for specific research and reporting to be conducted on housing supply and affordability, may include certain conditions and parameters, such as a timeframe or deadline and may be withdrawn or amended prior to reporting to ensure maximum flexibility. These requests, even when in writing, are not legislative instruments. Nonetheless, these requests must be complied with by the Council to ensure the widest possible scope of independent research by the Council.

[Section 11 of the Housing Council Bill]

2.43 A significant part of the Council's reporting function is the annual report which must be produced for the Minister on research into housing supply and affordability that the Council has undertaken in the past financial year. The report provides an overview of the past financial year and must be given to the Minister within 10 months after the end of the financial year. The annual report must be published on the Council's website. This will encourage transparency in the Council's operations and provide interested public stakeholders with independent research on housing supply and affordability.

[Subsections 10(1) and (3) of the Housing Council Bill]

2.44 The report will provide important insights into the key research outcomes the Council have found, and any findings, conclusions and recommendations that have been made as a result of this work. In particular, the report should contain an overview of the state of the housing sector in any given financial year, including details on the demand of housing supply and affordability of housing.

[Subsection 10(2) of the Housing Council Bill]

2.45 Reports produced by the Council for the Minister may be published on the Minister's request. Additionally, the Council itself can choose to publish a

report on its own initiative in performing its functions as an independent advisory body.

[Section 12 of the Housing Council Bill]

Research

- 2.46 In order to create the reports, as outlined above, the Council will be required to undertake research into housing supply and affordability. The Council will undertake this research through monitoring conditions which impact housing supply and affordability. This may include looking into conditions such as home ownership, rental affordability, homelessness and the number of new social and affordable houses being developed. The Council will also work collaboratively with Commonwealth, State, territory and local government bodies and key stakeholders to collect and publish nationally consistent data. This data may include the volume and price of land, building costs, availability of labour, training schemes, enabling infrastructure and time taken to navigate planning and development processes.
- 2.47 This research function is unique to the Council as it is mandated to provide advice on issues across the housing spectrum, including both market and non-market housing, land supply and housing density.
[Paragraphs 9(1)(e) of the Housing Council Bill]

Advice

- 2.48 The Council also has an advisory function. The Council will provide independent advice to the Minister on the appropriate allocation of disbursements from the Housing Australia Future Fund to the COAG Reform Account, Housing Australia Special Account and the Housing Australia Future Fund Payments Special Account. This advice should be consistent with the operation of the Bill.
[Paragraphs 9(1)(c) and (d) of the Housing Council Bill]
- 2.49 The Council will also provide advice to the Minister on specific matters being considered at intergovernmental fora involving the Commonwealth. This will assist State and Territory governments when deciding housing policy, as they will have access to independent research on specific issues in the national housing market.
[Paragraph 9(1)(b) of the Housing Council Bill]
- 2.50 Separate to these prescribed functions, the Council is able to undertake any other functions mandated by Commonwealth laws or anything incidental to its existing functions.
[Paragraphs 9(1)(f) and (g) of the Housing Council Bill]

Additional matters to consider

- 2.51 In performing its reporting, research and advisory functions, the Council may consider a number of matters listed in the Housing Council Bill. This non-exhaustive list provides guidance for the Council in conducting its activities and ensures the work of the Council is directed at informing the

Commonwealth’s approach to housing policy to improve housing supply and affordability and also assess the value for taxpayers of government investment in the housing sector.

- 2.52 The matters the Council may consider in performing its functions include the performance of the housing sector, the need to a build strong evidence base, macro-prudential regulation, rental market regulation, taxation, urban land use and planning, climate change, building codes, changing demographics, social policy, the availability, quality and consistency of data, and improving housing outcomes for vulnerable groups.

[Subsection 9(2) of the Housing Council Bill]

Review of the Council

- 2.53 The Housing Council Bill requires a review of the legislation establishing the Council to be undertaken as soon as possible after 1 July 2026. This will cover whether the legislation establishing the Council enables the Council to operate effectively.

[Section 33 and subsection 34(1) of the Housing Council Bill]

- 2.54 The person conducting the review will be required to give the Minister a written report as soon as possible after the commencement of the review. A copy of this report must be tabled in each House of Parliament within 15 sitting days after the report is provided to the Minister.

[Subsections 34(2) and (3) of the Housing Council Bill]

Build the evidence base to assess the value for taxpayers

- 2.55 The Housing Council Bill also specifies that the Council has a function to build the evidence base to assess the value for taxpayers of public investments in the housing sector at all levels of government.

[Subsection 9(2)(b) of the Housing Council Bill]

Commencement, application, and transitional provisions

- 2.56 The Housing Council Bill commences on 1 July 2023.
[Section 2 of the Housing Council Bill]

Chapter 3: *Housing Australia*

Outline of chapter

- 3.1 Schedule 1 to the Amendment Bill amends the NHFIC Act by replacing references to the NHFIC in the NHFIC Act with ‘Housing Australia’ to reflect the NHFIC’s transition to be known as Housing Australia.

Context of amendments

- 3.2 The NHFIC Act established the NHFIC to improve housing outcomes for Australians.
- 3.3 The NHFIC is a corporate Commonwealth entity in the Treasury portfolio dedicated to improving housing outcomes which commenced operation on 30 June 2018. The NHFIC is governed by an independent board.
- 3.4 Section 8 of the NHFIC Act sets out the functions of the NHFIC and section 10 of the Act provides that the NHFIC must perform its functions only for purposes related to specific constitutional powers.
- 3.5 Schedule 1 to the Amendment Bill renames the NHFIC as ‘Housing Australia’. This is a 2022-23 October Budget measure.
- 3.6 Housing Australia will continue to operate as a corporate Commonwealth entity governed by an independent board. It will also continue to perform its existing responsibilities including the range of home guarantee schemes and the new Regional First Home Buyer Guarantee, the Bond Aggregator and the NHIF.
- 3.7 Housing Australia will also take on new functions as required, including using funds from the Housing Australia Future Fund paid to it to assist in the delivery of social and affordable housing, and acute housing.
- 3.8 Housing Australia will continue to report to the Minister, as the NHFIC currently does. This will allow Housing Australia to build upon the NHFIC’s successes, maintaining the current corporate and legislative framework, whilst supporting the Government to deliver on key housing commitments.

Summary of new law

- 3.9 All references to the NHFIC contained in the NHFIC Act will be replaced with ‘Housing Australia’ to reflect the transition of the NHFIC to be known as Housing Australia.
- 3.10 In addition, the title of the NHFIC Act and the name of the body corporate in force, the NHFIC (as established under the NHFIC Act), will become the Housing Australia Act and ‘Housing Australia’ respectively.

Detailed explanation of new law

- 3.11 In line with the range of housing initiatives introduced by the Government in the October 2022-23 Budget, the amendments to the NHFIC Act give effect to the renaming of the NHFIC as Housing Australia.

Renaming the NHFIC as Housing Australia

- 3.12 Schedule 1 to the Amendment Bill amends the name of the NHFIC Act and the short title to the Housing Australia Act.
[Schedule 1, items 1, 2 and 8 of the NHFIC Act]
- 3.13 Schedule 1 to the Amendment Bill amends the Act by replacing all references to the NHFIC with Housing Australia.
[Schedule 1, item 11 of the Housing Australia Act]
- 3.14 Schedule 1 to the Amendment Bill repeals the definition of the NHFIC and amends all references to the NHFIC in the objects clause, simplified outline, matters covered by the Housing Australia Investment Mandate and headings and replaces them with Housing Australia.
[Schedule 1, items 3 to 6, sections 3 to 5 and Part 2 of the NHFIC Act, item 8, subsection 13(d) of the Housing Australia Act]
- 3.15 Schedule 1 to the Amendment Bill repeals and replaces the establishment provision for the NHFIC and provides that the NHFIC continues in existence as a body corporate with the name Housing Australia. A note is also included to provide that the identity of the body corporate is not changed by the name change and that the PGPA Act continues to apply to the body corporate.
[Schedule 1, item 7, subsection 7(1) of the Housing Australia Act]

Consequential amendments

- 3.16 To reflect the transition of the NHFIC to be known as Housing Australia and to ensure consistency across Commonwealth statute, consequential amendments will also be made to the *Administrative Decisions (Judicial Review*

Administrative Decisions (Judicial Review) Act 1977 and the Freedom of Information Act 1982 to replace references to the NHFIC with Housing Australia.

[Schedule 1, items 9 and 10, Paragraph (zd) of Schedule 2 to the Administrative Decisions (Judicial Review Administrative Decisions (Judicial Review) Act 1977; Division 1 of Part II of Schedule 2 to the Freedom of Information Act 1982]

Commencement, application, and transitional provisions

- 3.17 The amendments in Part 1 of Schedule 1 to the Amendment Bill commence on the day after the Bill receives Royal Assent. The amendments in Parts 2 of Schedule 1 to the Amendment Bill that make consequential amendments to other Acts and include a saving provision for prior appointments, commence immediately after Part 1 of the Bill so that they apply immediately after the NHFIC and the NHFIC Act have been renamed.

[Clause 2 of the Amendment Bill]

Chapter 4: ***Amendments to the Housing Australia Act***

Outline of chapter

- 4.1 Schedule 2 to the Amendment Bill amends the Housing Australia Act to simplify the functions and constitutional basis of the Act, improving the readability and operation of these provisions.
- 4.2 This Schedule also introduces an annual review mechanism to allow the Government to closely monitor the activities of the NHIF and assess the effectiveness of these activities in furthering the Government’s objectives of increasing and accelerating the supply of new social and affordable housing.
- 4.3 Certain aspects of the exposure draft legislation are yet to be finalised. In particular, the draft legislation for Housing Australia’s investment function has not yet been completed.
- 4.4 All legislative references in this chapter are to the Housing Australia Act unless otherwise indicated. Schedule 1 of the Bill renames the NHFIC Act as the Housing Australia Act.

Context of amendments

- 4.5 The Housing Australia Act established Housing Australia to improve housing outcomes for Australians.
- 4.6 Section 8 of the Housing Australia Act sets out the functions of Housing Australia and section 10 of that Act provides that Housing Australia must perform its functions only for purposes related to specific constitutional powers.
- 4.7 Housing Australia operates the NHIF as part of its activities, as directed under the Housing Australia Investment Mandate. The NHIF was created to overcome impediments to the provision of housing due to the lack of necessary infrastructure.
- 4.8 In the October 2022-23 Budget, the Government announced the *Safer and More Affordable Housing* measure which includes several initiatives to deliver more social and affordable housing. Further detail can be found in Budget Paper 2 on the Budget website, budget.gov.au. As part of this measure and as announced at the Jobs and Skills Summit, the remit of the NHIF has been broadened to directly support new social or affordable housing in addition to financing critical housing-enabling infrastructure.

- 4.9 The purpose of the NHIF has now expanded to increase the availability of social or affordable housing through providing finance for both eligible infrastructure and housing projects. This expansion was achieved through amendments made to the Housing Australia Investment Mandate via the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Social and Affordable Housing) Direction 2022*. The amendments commenced on 24 November 2022.
- 4.10 The current amendments to the Act further support the Government’s housing initiatives by:
- improving readability, clarity and structure of the relevant functions and constitutional basis provisions in that Act; and
 - providing a review mechanism for the NHIF’s operation, allowing the Government to regularly review the NHIF’s performance in achieving its objectives.

Summary of new law

- 4.11 Schedule 2 to the Amendment Bill amends the Act to simplify the functions and constitutional basis provisions of that Act, improving the readability and operation of these provisions.
- 4.12 Schedule 2 to the Amendment Bill also amends the Act to insert a provision requiring a review of Housing Australia’s activities in operating the NHIF to be undertaken annually. This annual review mechanism will allow the Government to monitor the activities of the NHIF on an ongoing basis and assess whether these activities are furthering the Government’s objectives in increasing and accelerating the supply of new social and affordable housing.

Detailed explanation of new law

- 4.13 Schedule 2 to the Amendment Bill makes two key amendments to the Act.
- 4.14 Firstly, Schedule 2 to the Amendment Bill amends sections 8 and 10 of the Act and inserts new provisions to simplify the functions and constitutional basis provisions of that Act, improving the clarity, readability, and operation of these provisions.
- 4.15 The functions of Housing Australia include the following:
- financing;
 - guarantees;
 - capacity building; and

- research.
- 4.16 The purpose of each function is to, directly or indirectly, improve housing outcomes, with the objective research function to undertake research that assists Housing Australia improve its performance delivering improved housing outcomes.
- 4.17 Prior to these amendments, sections 8 and 10 of the Act outlined the functions and constitutional basis under which the Act was legislated in a complex manner.
[Schedule 2, items 1 to 8, sections 8 and 10 of the Housing Australia Act]
- 4.18 Secondly, Schedule 2 to the Amendment Bill inserts a new provision requiring a review of Housing Australia’s activities in operating the NHIF to be undertaken annually.
- 4.19 This new provision recognises the expanded remit of the NHIF, whereby the NHIF can be used to finance both housing-enabling infrastructure projects as well as social or affordable housing projects. Similar to the existing review mechanism allowing the review of assistance provided to first home buyers, the new annual review mechanism for Housing Australia’s activities in operating the NHIF ensures the Minister maintains regular oversight of the NHIF. This ongoing monitoring allows the Minister to assess whether the NHIF’s activities are furthering the Government’s objectives in increasing and accelerating the supply of new social and affordable housing.
[Schedule 2, item 9, section 57B of the Housing Australia Act]

Increased clarity on Housing Australia’s functions

Functions of Housing Australia

- 4.20 The core functions of Housing Australia are:
- the financing function;
 - the guarantee function;
 - the capacity building function; and
 - the research function.
- [Schedule 2, item 2, paragraphs 8(1)(a) to (cb) of the Housing Australia Act]*
- 4.21 The Housing Australia Investment Mandate directs Housing Australia about the performance of these four functions. The activities that further these functions include:
- the establishment and operation of the Bond Aggregator that provides loans to registered community housing providers to support investment in affordable housing;

- the establishment and operation of the NHIF which provides finance to overcome impediments to the provision of housing that are due to lack of necessary infrastructure and to increase the availability of social and affordable housing;
 - the provision of support for capacity building to assist registered community housing providers to further develop their financial and management capabilities;
 - the establishment and operation of the First Home Guarantee scheme, which issues guarantees to eligible lenders in relation to eligible loans taken by eligible home buyers each financial year. The scheme encompasses the general stream of the First Home Guarantee, the Family Home Guarantee and the Regional First Home Buyer Guarantee; and
 - the research function to support Housing Australia in the performance of its functions.
- 4.22 The simplified overview of Housing Australia’s functions provides clarity on Housing Australia’s core functions.
[Schedule 2, item 2, paragraphs 8(1)(a) to (cb) of the Housing Australia Act]
- 4.23 Details of each function and its performance within the Commonwealth’s legislative power under the Constitution are provided in the subsequent provisions. The details include a link to the constitutional limits relevant to each function. The interlinking of the constitutional basis with the relevant function, provides a clear outline of the constitutional limits of each function.
[Schedule 2, item 3, subsections 8(1A) to (1D) of the Housing Australia Act]

The financing function

- 4.24 The ***financing function***, defined with reference to subsection 8(1A), reflects Housing Australia’s role in providing financial assistance to improve, whether directly or indirectly, housing outcomes for Australians. The financing function enables Housing Australia to make loans and grants to entities who are eligible under the Act and the Housing Australia Investment Mandate, to receive such financial assistance for the purposes of improving, directly or indirectly, housing outcomes. This function includes loans under the Bond Aggregator and the NHIF, and grants under the NHIF and the capacity building function.
[Schedule 2, items 1 and 3, definition of ‘financing function’ in section 5 and subsection 8(1A) of the Housing Australia Act]
- 4.25 The following may be eligible for funding under the financing function:
- ***constitutional corporations*** (corporations to whom paragraph 51(xx) of the Constitution applies) engaging in activities, functions, relationships or business that improve housing outcomes;
 - States and Territories;

- entities who are improving housing outcomes specifically for people located in a Territory, Aboriginal and Torres Strait Islander people, members of the Australian Defence Force or aliens (as defined under paragraph 51(xix) of the Constitution); and
- entities who give effect to Australia’s obligations under international agreements.

[Schedule 2, items 1 and 3, definition of ‘constitutional corporation’ in section 5 and paragraph 8(1A)(a) of the Housing Australia Act]

4.26 Housing Australia’s financing function allows it to make loans and grants to constitutional corporations where the financing is for the purposes of improving, directly or indirectly, housing outcomes. The financing must also assist the constitutional corporation in the performance of its own activities, functions or business. As an example, funding could be provided to a constitutional corporation for the development of new social or affordable housing where the corporation’s existing activities include the provision or development of social or affordable housing. Funding could also be provided to a constitutional corporation for the development of housing-enabling infrastructure where the corporation’s existing activities include the undertaking of such infrastructure development projects.

[Schedule 2, item 3, paragraph 8(1A)(a) of the Housing Australia Act]

4.27 Under the financing function, the Commonwealth may provide a grant of financial assistance to a State or Territory for the purposes of improving housing outcomes. Offering grants allows the Commonwealth to harness the local expertise of State and Territory governments and provides the funding necessary to execute projects which target their local community in the most effective manner.

[Schedule 2, item 3, paragraph 8(1A)(b) of the Housing Australia Act]

4.28 Housing Australia’s financing function further allows it to make loans and grants to entities for vulnerable groups who may experience housing disadvantage, for the purposes of improving, directly or indirectly housing outcomes, or to give effect to Australia’s obligations under international agreements. These groups cover regions and communities who may require urgent support for their housing needs. This also enables Housing Australia to provide grants or loans to entities to support the housing needs of Aboriginal or Torres Strait Islander people.

[Schedule 2, item 3, paragraph 8(1A)(c) of the Housing Australia Act]

4.29 The amendments clarify that entities who are intending to provide or facilitate the provision of social or affordable housing in regional areas and for vulnerable communities are potentially eligible for loans or grants from Housing Australia.

- 4.30 Both individuals and entities can be recipients of loans or grants, to accommodate for the wide range of projects and arrangements that Housing Australia finances. **Entity** is defined broadly as companies, trusts and partnerships, to include the main business structures which may participate in a Housing Australia program.

[Schedule 2, item 1, definition of ‘entity’ in section 5 of the Housing Australia Act]

The guarantee function

- 4.31 The second key function of Housing Australia is its **guarantee function**, defined with reference to subsection 8(1B). Similar to subsection 8(1A), this function allows Housing Australia to issue guarantees to constitutional corporations.

- 4.32 Guarantees will be provided by Housing Australia where the purpose is to improve housing outcomes and assist constitutional corporations in the performance of their own activities, functions, or business. Housing Australia, for example, currently issues guarantees under the Home Guarantee Scheme to enable eligible first home buyers and single parents to purchase a home with a significantly lower deposit and without incurring the cost of Lenders Mortgage Insurance.

[Schedule 2, items 1 and 3, definition of ‘guarantee function’ in section 5 and subsection 8(1B) of the Housing Australia Act]

The capacity building function

- 4.33 Housing Australia also offers grants under its **capacity building function**, defined with reference to subsection 8(1C), to registered community housing providers that are either constitutional corporations or community housing providers targeted at vulnerable cohorts. These grants assist by allowing community housing providers to more efficiently use other finance received through Housing Australia by accessing advisory services in finance, business planning, property development and business management.

[Schedule 2, items 1 and 3, definition of ‘capacity building function’ in section 5 and subsection 8(1C) of the Housing Australia Act]

The research function

- 4.34 Another function of Housing Australia is its **research function**, defined with reference to subsection 8(1D), which is used in conjunction with Housing Australia’s other functions, to ensure accurate and informed decisions are made in the performance of these functions.

[Schedule 2, items 1 and 3, definition of ‘research function’ in section 5 and subsection 8(1D) of the Housing Australia Act]

Further minor amendments

- 4.35 Subsection 8(2) has been repealed as the functions of Housing Australia have been consolidated in section 8. Similarly, a minor amendment has been made to subsection 8(3) to clarify Housing Australia’s obligation to act properly,

efficiently and effectively when conducting any functions.

[Schedule 2, items 4 and 5, subsections 8(2) and (3) of the Housing Australia Act]

- 4.36 Additional editorial updates have also been made to the Special Account provisions to reference the new financing and guarantee functions.
[Schedule 2, items 7 and 8, paragraph 47C(2)(a) and subsection 48A(2) of the Housing Australia Act]

Regulation of finance and guarantee recipients

- 4.37 Housing Australia offers financing and guarantees to constitutional corporations who have applied for assistance to continue or develop their existing business activities. Loans and grants may also be offered to State and Territories and entities who service vulnerable communities.
- 4.38 Regulation of these recipients is necessary to ensure all support provided by Housing Australia is used appropriately and in line with the expectations established between both parties. Additionally, it places requirements on Housing Australia to exercise its decision-making power in accordance with criteria set out in the Housing Australia Investment Mandate.
[Schedule 2, item 6, section 10 of the Housing Australia Act]
- 4.39 Recipients may apply to Housing Australia for a loan, grant or guarantee where they satisfy any requirements outlined for the relevant program in the Housing Australia Investment Mandate. This application process must be completed by all potential recipients as Housing Australia is only permitted to offer funding or issue guarantees to recipients who have followed this process.
[Schedule 2, item 6, subsections 10(2) and (4) of the Housing Australia Act]
- 4.40 Housing Australia then has the onus to assess this application in accordance with the criteria and timeframe set in the Housing Australia Investment Mandate. Establishing these criteria holds Housing Australia to the same standard as recipients of their funding and ensures consistency and integrity in the decision-making process.
[Schedule 2, item 6, subsection 10(3) of the Housing Australia Act]
- 4.41 Recipients that are accepted following the application and assessment process must ensure they remain compliant with any terms and conditions outlined in the written agreement between Housing Australia and recipient. A written agreement is essential to ensure both parties are aware of their responsibilities, and the funding is used to improve housing outcomes. There is no set format for this written agreement, however it may include conditions such as expectations for when the project must be completed, the term of a loan, specific uses of a grant and consequences if these conditions are breached.
[Schedule 2, item 6, subsections 10(5) and (6) of the Housing Australia Act]

4.42 Where a written agreement stipulates that a certain amount is payable to Housing Australia as part of the funding arrangement, this will be treated as a debt which can be recovered by Housing Australia through court processes if necessary.

[Schedule 2, item 6, subsection 10(7) of the Housing Australia Act]

Review mechanism for the NHIF

4.43 The NHIF is a key part of Housing Australia’s financing function. The NHIF offers loans and grants to recipients who range from State or Territory-owned utility providers to Community Housing Providers.

4.44 Due to the importance of the function, a review mechanism has been added into the Housing Australia Act to ensure Housing Australia remains accountable to the Minister and the financing decisions made under the NHIF are in line with the Minister’s expectations.

[Schedule 2, item 9, section 57B of the Housing Australia Act]

4.45 Every year, commencing three months after the first year of the Amendment Bill’s operation, an annual review of the operation of the NHIF provisions must be conducted. This review needs to consider the range of projects funded through the NHIF and should include reporting on the following topics:

- the NHIF is operating in accordance with the legislation;
- funding is provided for social or affordable housing;
- there is an equitable distribution of projects across Australia; and
- active projects are continuing to progress on schedule.

[Schedule 2, item 9, subsection 57B(1) of the Housing Australia Act]

4.46 Based on the findings from this annual review, a written report summarising these findings must be provided to the Minister within three months of commencing the review. The written report does not have a set format however should provide sufficient information for the Minister to determine whether the law is operating as intended and whether any changes are necessary.

[Schedule 2, item 9, subsection 57B(2) of the Housing Australia Act]

4.47 The report must be tabled with the Parliament within 15 days of the Minister receiving the report. This process reinforces the transparency, which is promoted through these amendments, as both Houses of Parliament are also made aware of the activities undertaken by the NHIF.

[Schedule 2, item 9, subsection 57B(3) of the Housing Australia Act]

4.48 In addition to increased transparency, these findings will also ensure the operations of the NHIF are constantly improved and future financing decisions can be shaped based on changing economic and housing market conditions. This fosters a program based on continual improvement and flexibility, which

ensures that funding continues to improve housing outcomes for the most vulnerable communities.

Consequential amendments

- 4.49 The Housing Australia Future Fund is a Commonwealth investment fund being established under the Bill, forming one aspect of the Australian Government’s commitment to improving housing supply and affordability. The Housing Australia Future Fund creates a secure funding stream to support an increase in social and affordable housing, as well as other acute housing needs.
- 4.50 The Bill establishes the Housing Australia Future Fund Special Account from which disbursements will be made to several special accounts including the Housing Australia Special Account.
- 4.51 To accommodate the new funding source, the purposes of the Housing Australia Special Account need to be broadened for these disbursements. Schedule 4 to the Amendment Bill make the necessary changes to the purposes of the Housing Australia Special Account. As Schedule 2 makes other changes to the financing function for Housing Australia which commence prior to Schedule 4, these changes need to be remade following the commencement of Schedule 4.
- [Schedule 2, item 10, subsection 47C(2A) of the Housing Australia Act]*

Commencement, application, and transitional provisions

- 4.52 The amendments in Part 1 of Schedule 2 to the Amendment Bill commence immediately after the commencement of Schedule 1. The amendments in Part 2 of Schedule 2 to the Amendment Bill that make consequential amendments to other Acts commence immediately after Schedule 4 of the Bill so that they apply immediately after the HAFF Act commences.
- [Clause 2 of the Amendment Bill]*

Chapter 5: ***Extension of Commonwealth guarantee***

Outline of chapter

- 5.1 Schedule 3 to the Amendment Bill amends the Housing Australia Act to implement the Government response to Recommendation 6 of the NHFIC Review, extending the Commonwealth guarantee of the liabilities of Housing Australia to apply to contracts entered into until 30 June 2028 and providing that the Commonwealth guarantee cannot be revoked earlier than 1 July 2028. This Schedule recognises the importance of the Bond Aggregator and Housing Australia’s role in continuing to offer community housing providers low-cost and longer tenor finance.

Context of amendments

- 5.2 The Bond Aggregator is operated by Housing Australia and makes loans to eligible community housing providers to provide long tenor and low-cost finance to support investment in social and affordable housing. These loans are financed by issuing bonds to institutional investors, backed by the legislated Commonwealth guarantee.
- 5.3 The Commonwealth guarantee is provided by section 51 of the Housing Australia Act.
- 5.4 Section 57 of the Housing Australia Act required a review of the operation of the Housing Australia Act to be undertaken as soon as possible after 30 June 2020. In response, the Government commissioned the NHFIC Review to assess and make recommendations on whether the Housing Australia Act is achieving its objectives and whether any amendments to the Housing Australia Act should be considered.
- 5.5 The NHFIC Review was provided to the former Minister for Housing on 13 August 2021. While the NHFIC Review found that the Housing Australia Act has been a significant and successful initiative by the Commonwealth, it made 25 recommendations it considered could improve the operation of the Housing Australia Act and better achieve the overall objectives of the Housing Australia Act.
- 5.6 The NHFIC Review provided that the long-term goal for the Bond Aggregator should be to achieve the scale, positive track record and standardisation of

offering that allows it to raise low-cost, long-term finance without the assistance of the Commonwealth guarantee.

- 5.7 The NHFIC Review further noted that the premature removal of the guarantee would risk unnecessarily disrupting market confidence in the development of this new asset class and also impact the price and tenor of the Bond Aggregator’s issuance, with impacts on the finance available to community housing providers.
- 5.8 Recommendation 6 of the NHFIC Review recommended that the Housing Australia Act be amended to extend the period during which the Commonwealth guarantee remains in force, and to include a requirement for a review of the guarantee to be undertaken prior to this extended date.
- 5.9 The previous Government’s response to the NHFIC Review was released on 16 December 2021 that supported Recommendation 6 of the NHFIC Review and committed to extend the guarantee to apply to contracts entered into until 30 June 2028.
- 5.10 The Government is extending the minimum date in which the guarantee may be in force to provide certainty to the community housing provider sector and investors in debt securities issued by the Bond Aggregator. The guarantee will remain in place until the Minister otherwise determines. This is consistent with the intent of existing subsection 51(2) of the Housing Australia Act.

Summary of new law

- 5.11 The Housing Australia Act is amended to extend the period during which the Commonwealth guarantee remains in force and to provide that the Commonwealth guarantee cannot be revoked earlier than 1 July 2028.

Detailed explanation of new law

- 5.12 The Housing Australia Act is amended to extend the period during which the Commonwealth guarantee remains in force, extending the guarantee to apply to contracts entered into until 30 June 2028. The Commonwealth guarantee cannot be revoked earlier than 1 July 2028.
[Schedule 3, item 1, subsection 51(2) of the Housing Australia Act]
- 5.13 The intent of the extended Commonwealth guarantee of the Bond Aggregator’s liabilities is to support market confidence and strengthen Housing Australia’s ability to improve housing outcomes.

- 5.14 The extension of the term of the guarantee recognises the Government's commitment to the Bond Aggregator function and further developing the market for social and affordable housing.
- 5.15 The extended guarantee supports investor appetite to invest in affordable housing bonds issued by the Housing Australia as part of its administration of the Bond Aggregator. The extended guarantee also recognises the importance of the Bond Aggregator and the Housing Australia's role in continuing to offer community housing providers low-cost finance.

Commencement, application, and transitional provisions

- 5.16 The amendments commence immediately after the commencement of Schedule 1.
[Clause 2 of the Amendment Bill]

Chapter 6: ***Housing Australia Future Fund consequential***

Outline of chapter

- 6.1 Schedule 4 to the Treasury Laws Amendment (Housing Measures No. 1) Bill 2023 (the Bill) makes a number of consequential amendments to other legislation to enable the effective operation of the Housing Australia Future Fund from commencement. It is necessary to ensure the smooth functioning of the Housing Australia Future Fund Bill 2023 (the HAFF Bill).
- 6.2 The HAFF Bill establishes the Housing Australia Future Fund as a dedicated investment fund to provide a secure ongoing funding stream to support and increase social housing and affordable housing, as well as other acute housing needs including housing improvements in remote Indigenous communities and housing services for women, children and veterans.
- 6.3 The Housing Australia Future Fund will be established as the Housing Australia Future Fund Special Account and the investments of the Housing Australia Future Fund (made and managed by the Future Fund Board).
- 6.4 The consequential amendments made in the Bill support the establishment of the Housing Australia Future Fund in that they:
 - extend the Future Fund Board’s duties to manage the Housing Australia Future Fund; and
 - allow for amounts to be transferred between the Housing Australia Future Fund and the Future Fund to allow for proper apportioning of common expenses incurred by the Future Fund Board in managing the Housing Australia Future Fund, the Future Fund, the FDF, the ATSILSFF, the MRFF, the DRF, and the DCAF.
- 6.5 The Bill also makes consequential amendments to:
 - broaden the purpose of the Housing Australia Special Account to allow the payment of grants in relation to acute housing needs, social housing and affordable housing; and
 - allow payments in relation to acute housing needs, social housing and affordable housing to be channelled through the COAG Reform Fund.

- 6.6 The Bill amends the ATSISSFF Act, the COAG Reform Fund Act, the DCAF Act, the DRF Act, the FDF Act, the Future Fund Act, the MRFF Act and the Housing Australia Act.
- 6.7 The Housing Australia Future Fund will be established with \$10 billion.
- 6.8 Providing for a separate Bill for consequential amendments conforms to the Commonwealth practice to reduce the complexity of principal Acts.

Consequential amendments

NOTES ON CLAUSES

Commencement

- 6.9 This table sets out the commencement provisions for the Bill. Item 1 of the table provides that Schedule 4 of the Bill commences at the same time as the HAFF Act but the Act would not commence at all if the HAFF Act does not commence.

General Amendments

- 6.10 This schedule makes amendments to several Acts as a result of the establishment of the Housing Australia Future Fund.

Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018

- 6.11 **Item 1** inserts new paragraph 16(a)(iaa) in the ASTIISFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the ATSISSFF can be met from the ATSISSFF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.12 **Item 2** inserts new paragraph 16(b)(iaa) in the ASTIISFF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the ASTIISFF can be met from the ASTIISFF Special Account to the extent that such insurance premiums do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.13 **Item 3** inserts new paragraph 16(c)(iaa) in the ASTIISFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the ASTIISFF can be met from the ASTIISFF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

COAG Reform Fund Act 2008

- 6.14 **Item 4** inserts Note 2AD before Note 3 to subsection 5(2) of the COAG Reform Fund Act, to reflect that an amount originating in the Housing Australia Future Fund may be transferred to the COAG Reform Fund. This note would mirror Note 2A, Note 2AA, Note 2AB and Note 2AC that refer to the ability to transfer amounts originating in the DCAF, MRFF, FDF and DRF to the COAG Reform Fund.
- 6.15 **Item 5** inserts into the COAG Reform Fund Act a new paragraph 7(1)(bad), before paragraph 7(1)(d), to recognise that grants from the Housing Australia Future Fund to States and Territories are channelled through the COAG Reform Fund. The HAFF Act requires that payments to States and Territories through the COAG Reform Fund are bound by the terms and conditions of a written agreement and are therefore exempt from the terms and conditions set out in this section.
- 6.16 **Item 6** inserts Note 1AD before Note 3 to subsection 7(3) to reflect that the channelling of grants to States and Territories from the Housing Australia Future Fund through the COAG Reform Fund is subject to the provisions of the HAFF Act.

DisabilityCare Australia Fund Act 2013

- 6.17 **Item 7** inserts new paragraph 16(a)(ib) in the DCAF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.18 **Item 8** inserts new paragraph 16(b)(ib) in the DCAF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the DCAF can be met from the DCAF Special Account to the extent that such insurance premiums do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.19 **Item 9** inserts new paragraph 16(c)(ib) in the DCAF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the DCAF can be met from the DCAF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

Disaster Ready Fund Act 2019

- 6.20 **Item 10** inserts new paragraph 16(a)(ia) in the DRF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in

establishing and operating bank accounts related to the DRF can be met from the DRFF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

- 6.21 **Item 11** inserts new paragraph 16(b)(ia) in the DRF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the DRF can be met from the DRFF Special Account to the extent that such insurance premiums do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.22 **Item 12** inserts new paragraph 16(c)(ia) in the DRF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the DRF can be met from the DRF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

Future Drought Fund Act 2019

- 6.23 **Item 13** inserts new paragraph 17(a)(iib) in the FDF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the FDF can be met from the FDF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.24 **Item 14** inserts new paragraph 17(b)(iib) in the FDF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the FDF can be met from the FDF Special Account to the extent that such insurance premiums do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.25 **Item 15** inserts new paragraph 17(c)(iib) in the FDF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the FDF can be met from the FDF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

Future Fund Act 2006

- 6.26 **Item 16** amends the note to section 4 of the Future Fund Act. The amended note confirms that the Future Fund Board has additional functions under the HAFF Act.
- 6.27 **Item 17** inserts definitions for Housing Australia Future Fund, Housing Australia Future Fund Special Account, Housing Minister, Social Services Minister and Veterans' Affairs Minister in the Future Fund Act. These expressions are defined by reference to the HAFF Act.

- 6.28 **Item 18** amends Note 2A to section 13 of the Future Fund Act. The amended note explains that Schedule 2A to the Future Fund Act is about transfers of amounts from the Future Fund to the other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.29 **Item 19** inserts new paragraph 28(5)(bac) and **Item 20** inserts new paragraph 28(5)(gb) in the Future Fund Act. The effect of these amendments is to allow the same person to be engaged as an investment manager for more than one investment fund managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.30 **Item 21** amends the note to section 33 of the Future Fund Act. The amended note explains that the Future Fund Board has additional functions under other legislation, including the HAFF Act.
- 6.31 **Item 22** inserts new subparagraph 35(b)(iiib) in the Future Fund Act. This amendment provides that the Future Fund Board has the functions conferred on the Future Fund Board by the HAFF Act.
- 6.32 **Item 23** inserts new paragraph 55(3)(bb) in the Future Fund Act. This amendment provides that the Future Fund Board's reporting obligations in relation to the Future Fund do not include its separate reporting obligation to the responsible Ministers under the HAFF Act.
- 6.33 **Item 24** inserts new paragraph 63(1)(cb) in the Future Fund Act, and **Item 25** inserts new paragraph 63(2)(abb) in the Future Fund Act. These amendments ensure that neither a Future Fund Board member nor the Chair of the Future Fund Board breaches civil or criminal obligations under the Future Fund Act by performing an act that the Future Fund Board member or Chair is required to perform under the HAFF Act.
- 6.34 **Item 26** inserts new subsection 81(1DB) and **Item 27** inserts new subsection 81(2DB) in the Future Fund Act. These amendments require that the annual report prepared by the Chair of the Future Fund Board include a report on the performance of investments of the Housing Australia Future Fund and the amounts debited from the Housing Australia Future Fund for purposes allowed under the HAFF Act. In addition, the annual report would also need to include benchmarks in relation to the performance of the debits from the Housing Australia Future Fund. This is consistent with arrangements for the other investment fund managed by the Future Fund Board.
- 6.35 **Item 28** inserts new paragraph 81(4)(dab) in the Future Fund Act. The effect of this amendment is to include the Housing Minister, the Social Services Minister and the Veterans' Affairs Minister in the list of Ministers to whom the nominated Minister must give a copy of the annual report given to the nominated Minister under section 46 of the PGPA Act.
- 6.36 **Item 29** inserts new paragraph 83B(1)(dab) in the Future Fund Act. The effect of this amendment is to allow the Future Fund Board to delegate its power to

- engage investment managers for purposes in connection with the Housing Australia Future Fund to the Chair of the Future Fund Board or a SES employee in the Agency.
- 6.37 **Item 30** inserts new subparagraph 84(1)(b)(iiab) and **Item 31** inserts new subparagraph 84(1)(b)(viib) in the Future Fund Act. The effect of these amendments is to provide that any amount of money received by the Future Fund Board must be credited to the Future Fund Special Account if none of the legislation for the other investment funds managed by the Future Fund Board requires the amount to be credited to those other Funds.
- 6.38 **Item 32** inserts new subsection 84(4AB) in the Future Fund Act. The effect of this amendment is to allow the nominated Minister to provide a written direction to the Future Fund Board requiring an amount credited to the Future Fund Special Account under subsection 84(1) of the Future Fund Act to be debited from the Future Fund Special Account and credited to the Housing Australia Future Fund Special Account.
- 6.39 **Item 33** inserts a new reference to ‘(4AB)’ in paragraph 84(5)(b) of the Future Fund Act. The effect of this amendment is to provide that if an amount is credited to the Future Fund Special Account under subsection 84(1) of the Future Fund Act, the sum of one or more amounts specified under new subsection 84(4AB) must not exceed the amount of the credit.
- 6.40 **Item 34** inserts a new reference to ‘(4AB)’ in subsection 84(6) of the Future Fund Act. The effect of this amendment is to declare that a written direction made under new subsection 84(4AB) is not a legislative instrument. This is consistent with the status of other written directions that can be made by the nominated Minister under subsections 84(1A), 84(4A), 84(4AA), 84(4B) and 84(4C) for the transfer of amounts to other special accounts as provided for under those subsections.
- 6.41 **Items 35, 36 and 37** amend paragraphs 2(2)(a), 2(2)(b) and 2(2)(c) of Schedule 2 of the Future Fund Act to make reference to certain provisions of the HAFF Act. The effect of these amendments is to provide that the purposes of the Future Fund Special Account include debits by the Future Fund Board to pay bank account expenses, insurance premiums and costs relating to the management of the Housing Australia Future Fund.
- 6.42 **Item 38** adds a reference to the Housing Australia Future Fund in Clause 1 of Schedule 2A of the Future Fund Act. Clause 1 of Schedule 2A provides a simplified outline of the Schedule.
- 6.43 **Item 39** adds new section 5B to Schedule 2A to the Future Fund Act. New section 5B would allow the nominated Minister under the Future Fund Act to require, by writing, the reversal of a debit from the Housing Australia Future Fund to meet bank account, insurance premium or other costs relating to the Housing Australia Future Fund. This reversal is to be effected by debiting the Future Fund Special Account and crediting the Housing Australia Future Fund Special Account. The reversal amount cannot exceed the amount originally

debited from the Housing Australia Future Fund Special Account. The nominated Minister's written direction is declared not to be a legislative instrument. Directions of this type are administrative in character because they are merely the application of a legal power in a particular case (i.e. they do not determine or alter the content of the law itself).

Housing Australia Act 2018

- 6.44 **Item 40** replaces 'Purpose' in the heading to section 47C of the Housing Australia Act with 'Purposes' as the Bill expands the purposes of the Housing Australia Special Account to include making payments to Housing Australia.
- 6.45 **Item 41** replaces existing subsection 47C(1) of the Housing Australia Act to reflect the expansion of the purposes of the Housing Australia Special Account to include making payments to Housing Australia, in addition to the existing purpose of making loans to Housing Australia.
- 6.46 **Item 42** inserts a new subsection 47C(2A) which sets out that the payments made to Housing Australia may be used to make grants in relation to acute housing needs, social housing and affordable housing.
- 6.47 The note inserted by **Item 42** explains that subsection 47C(2A) provides Housing Australia with the function to apply payments from the Commonwealth to provide grants in relation to acute housing needs, social housing and affordable housing. This means that the Housing Australia Investment Mandate Direction may include instructions on how the Housing Australia applies those payments.
- 6.48 New subsection 47C(2B) at **Item 42** would prohibit Housing Australia from making a grant under paragraph (1)(b) from being made before 1 July 2023.
- 6.49 **Item 43** amends subsection 47C(3) of the Housing Australia Act to omit the reference to subsection (2) and substitute a reference to both subsections (2) and (2A).

Medical Research Future Fund Act 2015

- 6.50 **Item 44** inserts new subparagraph 19(a)(ic) in the MRFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in establishing and operating bank accounts related to the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.
- 6.51 **Item 45** inserts new subparagraph 19(b)(ic) in the MRFF Act. The effect of this amendment is to provide that the cost of insurance incurred by the Future Fund Board in relation to the MRFF can be met from the MRFF Special Account to the extent that such insurance premiums do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.

- 6.52 **Item 46** inserts new subparagraph 19(c)(ic) in the MRFF Act. The effect of this amendment is to provide that expenses incurred by the Future Fund Board in relation to managing the MRFF can be met from the MRFF Special Account to the extent that such expenses do not relate to any other investment funds managed by the Future Fund Board, including the Housing Australia Future Fund.