

EXPOSURE DRAFT EXPLANATORY STATEMENT**Issued by authority of the Minister for Housing and Minister for Homelessness***Help to Buy Act 2024**Help to Buy Regulations 2025*

Section 47 of the *Help to Buy Act 2024* (Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 43 of the Act enables identified decisions of Housing Australia made in the performance of its functions under sections 10 and 15 of the Act to be prescribed as qualifying for review by the Administrative Review Tribunal (ART).

The purpose of the *Help to Buy Regulations 2025* (Regulations) is to identify the decisions of Housing Australia that are subject to review by the ART upon application by an applicant. The Regulations specify 15 decisions made by Housing Australia under the *Help to Buy Program Directions 2025* (Program Directions) in performing its functions that are subject to merits review by the ART. These reviewable decisions are a decision:

- to revoke an approval of a Help to Buy arrangement (defined in section 5 of the Act by reference to section 6 of the Act) under subsection 15(1) of the Program Directions;
- regarding the percentage the Commonwealth will contribute to the purchase price of the property under subsection 16(3) of the Program Directions;
- to increase the Commonwealth share percentage (defined in section 5 of the Program Directions) in the property under subsection 25(3) of the Program Directions;
- to refuse to allow a participant (defined in section 5 of the Program Directions by reference to section 10 of the Program Directions) to not comply with the sale of existing property requirement for a period under paragraph 29(2)(a) of the Program Directions;
- to refuse to extend a period for which a participant was allowed to not comply with the sale of existing property requirement under paragraph 29(2)(b) of the Program Directions;
- to require a participant to repay an amount under a Help to Buy arrangement under subsection 37(5) of the Program Directions;
- to require a participant to repay in full a Commonwealth share under a Help to Buy arrangement under subsection 37(8) of the Program Directions;
- to refuse to vary a Help to Buy arrangement by adding a participant in circumstances mentioned subsection 38(2) of the Program Directions;

- to refuse to vary a Help to Buy arrangement by removing a participant in the circumstances mentioned in subsection 38(3) of the Program Directions;
- to terminate a Help to Buy arrangement before the settlement date for the purchase of the property subject to the arrangement in either of the circumstances mentioned in subsection 40(1) of the Program Directions;
- to terminate a Help to Buy arrangement in any of the circumstances mentioned in subsection 40(2) of the Program Directions;
- to recover the Commonwealth share under a Help to Buy arrangement in either of the circumstances mentioned in subsection 45(1) of the Program Directions;
- to recover the Commonwealth share under a Help to Buy arrangement in the circumstances mentioned in subsection 45(3) of the Program Directions;
- regarding the period in which Housing Australia must recover a Commonwealth share under a provision of a Help to Buy arrangement pursuant to paragraph 45(5)(b) of the Program Directions; and
- to terminate a Help to Buy arrangement under paragraph 53(2)(d) of the Program Directions.

A note below these provisions provides that, generally, an application for review of a decision by the ART must be made within 28 days after the applicant is notified of the decision (pursuant to section 18 of the *Administrative Review Tribunal Act 2024* (ART Act) and rule 5 of the *Administrative Review Tribunal Rules 2024*). It also notes that a person may, under section 19 of the ART Act, apply to the ART to allow an application to be made out of time.

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

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

Subsection 46(1) of the Act requires the Minister be satisfied that the Commonwealth has consulted with participating and cooperating states as well as the Australian Capital Territory (ACT) and the Northern Territory (NT) on the Regulations before the Governor-General can make the Regulations. The consultation process is set out in subsections 46(3) to (6) of the Act.

The Regulations are not subject to disallowance or sunseting. The Regulations facilitate the operation of an intergovernmental scheme, namely Help to Buy which is supported by a referral of power from participating States as well as an Intergovernmental Agreement,

thereby triggering the exemption provided in subsections 44(1) and 54(1) of the *Legislation Act 2003*. It is important for the Commonwealth to provide certainty about the operation of the merits review rights of participants in Help to Buy given the long-term nature of the program.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after the instrument is registered.

Details of the Regulations are set out in Attachment A.

ATTACHMENT ADetails of the *Help to Buy Regulations 2025*Section 1 – Name

This section provides that the name of the regulations is the *Help to Buy Regulations 2025* (Regulations).

Section 2 – Commencement

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Help to Buy Act 2024* (Act).

Section 4 – Definitions

This section provides that the Act means the *Help to Buy Act 2024*. The other defined terms have the same meaning as they have in the *Help to Buy Program Directions 2025* (Program Directions). These terms are ‘Commonwealth share’, ‘Commonwealth share percentage’, ‘participant’, ‘purchase price’, and ‘sale of existing property requirement’.

A note sets out that a number of expressions used in the Regulations are defined in the Act, including the Program Directions.

Section 14 – Review by the Administrative Review Tribunal

This section provides that, as per section 43 of the Act, applications may be made to the Administrative Review Tribunal (ART) for review of the following decisions of Housing Australia:

- revoking an approval of a Help to Buy arrangement (defined in section 5 of the Act by reference to section 6 of the Act) under subsection 15(1) of the Program Directions;
- determining the percentage the Commonwealth will contribute to the purchase price of the property under subsection 16(3) of the Program Directions;
- increasing the Commonwealth share percentage (defined in section 5 of the Program Directions) in the property under subsection 25(3) of the Program Directions;
- refusing to allow a participant (defined in section 5 of the Program Directions by reference to section 10 of the Program Directions) to delay satisfying the meeting of the sale of existing property requirement for a period under paragraph 29(2)(a) of the Program Directions;
- refusing to extend the period for which a participant was allowed to not comply with the sale of existing property requirement under paragraph 29(2)(b) of the Program Directions;

- requiring a participant to repay an amount under a Help to Buy arrangement under subsection 37(5) of the Program Directions;
- requiring a participant to repay in full a Commonwealth share under a Help to Buy arrangement under subsection 37(8) of the Program Directions;
- refusing to vary a Help to Buy arrangement by adding a participant in circumstances mentioned subsection 38(2) of the Program Directions;
- refusing to vary a Help to Buy arrangement by removing a participant in the circumstances mentioned in subsection 38(3) of the Program Directions;
- terminating a Help to Buy arrangement before the settlement date for the purchase of the property subject to the arrangement in either of the circumstances mentioned in subsection 40(1) of the Program Directions;
- terminating a Help to Buy arrangement in any of the circumstances mentioned in subsection 40(2) of the Program Directions;
- recovering the Commonwealth share under a Help to Buy arrangement in either of the circumstances mentioned in subsection 45(1) of the Program Directions;
- recovering the Commonwealth share under a Help to Buy arrangement in the circumstances mentioned in subsection 45(3) of the Program Directions;
- determining the period by which Housing Australia must recover a Commonwealth share under a provision of a Help to Buy arrangement under paragraph 45(5)(b) of the Program Directions; and
- terminating a Help to Buy arrangement under paragraph 53(2)(d) of the Program Directions.

In terms of the time limits for making an application to the ART, a note to section 14 provides that, generally, an application for review of a decision by the ART must be made within 28 days after the applicant is notified of the decision (pursuant to section 18 of the *Administrative Review Tribunal Act 2024* (ART Act) and rule 5 of the *Administrative Review Tribunal Rules 2024*). The note also provides that a person may, under section 19 of the ART Act, apply to the ART to allow an application to be made out of time.

Section 15 – Application

Section 15 provides that section 14 of the Regulations applies to decision made before or after the commencement of the Regulations.

This means that if Housing Australia makes decisions before the Regulations commence, applicants will need to rely on the ART allowing an application to be made out of time, under section 19 of the ART Act.