

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **National Housing Finance and Investment Corporation Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to establish the National Housing  
Finance and Investment Corporation, and for  
related purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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# EXPOSURE DRAFT

1     **A Bill for an Act to establish the National Housing**  
2     **Finance and Investment Corporation, and for**  
3     **related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act is the *National Housing Finance and Investment*  
9                     *Corporation Act 2018*.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 2

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#### 1 **2 Commencement**

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

6

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#### **Commencement information**

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

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

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

#### 13 **3 Object of this Act**

14 The object of this Act is to establish the National Housing Finance  
15 and Investment Corporation to contribute to efforts to increase the  
16 supply of housing by:

- 17 (a) encouraging investment in housing (particularly in the social  
18 or affordable housing sector); and  
19 (b) providing finance, grants or investments that complement,  
20 leverage or support Commonwealth, State or Territory  
21 activities relating to housing; and  
22 (c) contributing to the development of the scale, efficiency and  
23 effectiveness of the community housing sector in Australia.



1     **4 Simplified outline of this Act**

2     The National Housing Finance and Investment Corporation is  
3     established to improve housing outcomes by making loans,  
4     investments and grants (within constitutional limits).

5     The NHFIC performs its functions in accordance with one or more  
6     directions given by the Minister, known as its Investment Mandate.

7     The Board of the NHFIC decides the NHFIC’s strategies and  
8     policies and ensures the proper, efficient and effective performance  
9     of its functions.

10    The Chief Executive Officer of the NHFIC is responsible for the  
11    day-to-day administration of the NHFIC. The NHFIC may engage  
12    staff and consultants. The Board may establish Committees.

13    The Board must ensure that the NHFIC maintains commercially  
14    sound and sufficient levels of capital and reserves.

15    The NHFIC may pay a dividend to the Commonwealth, and may  
16    borrow money (supported by a Commonwealth guarantee).

17    **5 Definitions**

18    In this Act:

19    **Board** means the Board of the NHFIC.

20    **Board member** means a member of the Board and includes the  
21    Chair.

22    **CEO** means the Chief Executive Officer of the NHFIC.

23    **Chair** means the Chair of the Board.

24    **Commonwealth company** has the same meaning as in the *Public*  
25    *Governance, Performance and Accountability Act 2013*.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 6

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1                    **Commonwealth entity** has the same meaning as in the *Public*  
2                    *Governance, Performance and Accountability Act 2013*.

3                    **Commonwealth officer** means a person who:

- 4                    (a) holds, or performs the duties of, an appointment, office or  
5                    position under a law of the Commonwealth; or  
6                    (b) is otherwise in the service of the Commonwealth.

7                    **Finance Minister** means the Minister who administers the *Public*  
8                    *Governance, Performance and Accountability Act 2013*.

9                    **Investment Mandate** has the meaning given by subsection 12(1).

10                  **NHFIC** means the National Housing Finance and Investment  
11                  Corporation.

12                  **paid work** means work for financial gain or reward (whether as an  
13                  employee, a self-employed person or otherwise).

14                  **rules** means rules made under section 60.

#### 15                  **6 Crown to be bound**

16                  (1) This Act binds the Crown in each of its capacities.

17                  (2) This Act does not make the Crown liable to be prosecuted for an  
18                  offence.

# EXPOSURE DRAFT

National Housing Finance and Investment Corporation **Part 2**  
Establishment and functions **Division 1**

Section 7

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1 **Part 2—National Housing Finance and Investment**  
2 **Corporation**

3 **Division 1—Establishment and functions**

4 **7 Establishment**

- 5 (1) The National Housing Finance and Investment Corporation is  
6 established by this section.

7 Note: The *Public Governance, Performance and Accountability Act 2013*  
8 applies to the NHFIC. That Act deals with matters relating to  
9 Commonwealth entities, including reporting and the use and  
10 management of public resources.

- 11 (2) The NHFIC:  
12 (a) is a body corporate; and  
13 (b) must have a seal; and  
14 (c) may acquire, hold and dispose of real and personal property;  
15 and  
16 (d) may sue and be sued.
- 17 (3) The NHFIC's seal is to be kept in such custody as the Board  
18 directs and must not be used except as authorised by the Board.

19 **8 Functions of the NHFIC**

- 20 (1) The functions of the NHFIC are:  
21 (a) to make loans, investments and grants to improve, directly or  
22 indirectly, housing outcomes; and  
23 (b) to determine terms and conditions for such loans, investments  
24 and grants; and  
25 (c) any other functions conferred on the NHFIC by this Act or  
26 any other Commonwealth law; and  
27 (d) to do anything incidental or conducive to the performance of  
28 the above functions.

# EXPOSURE DRAFT

## Part 2 National Housing Finance and Investment Corporation

### Division 1 Establishment and functions

#### Section 9

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- 1 (2) Without limiting subsection (1), the functions of the NHFIC  
2 include:  
3 (a) to grant financial assistance to States and Territories for the  
4 purposes of any of the matters mentioned in subsection (1);  
5 and  
6 (b) to determine terms and conditions for the grants of financial  
7 assistance.
- 8 (3) In performing its functions, the NHFIC must act in a proper,  
9 efficient and effective manner.

#### 10 **9 Powers of the NHFIC**

- 11 (1) The NHFIC has power to do all things necessary or convenient to  
12 be done for or in connection with the performance of its functions.
- 13 (2) Without limiting subsection (1), the NHFIC has power to enter into  
14 arrangements and contracts with Commonwealth entities and  
15 Commonwealth companies to obtain services to assist in the  
16 performance of its functions.

#### 17 **10 Constitutional limits**

- 18 (1) The NHFIC may perform its functions only:  
19 (a) for purposes relating to a corporation to which  
20 paragraph 51(xx) of the Constitution applies; or  
21 (b) for purposes related to external affairs, including:  
22 (i) giving effect to the International Covenant on  
23 Economic, Social and Cultural Rights done at New  
24 York on 16 December 1966, particularly Article 11 of  
25 that Covenant; or  
26 (ii) giving effect to another international agreement to  
27 which Australia is a party; or  
28 (iii) addressing matters of international concern; or  
29 (iv) by way of the performance of its functions in a place  
30 outside Australia; or  
31 (c) for purposes relating to the granting of financial assistance to  
32 which section 96 of the Constitution applies; or

# EXPOSURE DRAFT

National Housing Finance and Investment Corporation **Part 2**  
Establishment and functions **Division 1**

## Section 10

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- 1 (d) for purposes relating to the collection of statistics; or  
2 (e) for purposes relating to trade or commerce:  
3 (i) between Australia and places outside Australia; or  
4 (ii) among the States; or  
5 (iii) within a Territory, between a State and a Territory or  
6 between 2 Territories; or  
7 (f) by way of the use of a postal, telegraphic, telephonic or other  
8 like service within the meaning of paragraph 51(v) of the  
9 Constitution; or  
10 (g) for purposes relating to people to which paragraph 51(xxvi)  
11 of the Constitution applies; or  
12 (h) for purposes relating to railway construction or extension to  
13 which paragraph 51(xxxiv) of the Constitution applies; or  
14 (i) by way of the provision of service, or financial assistance, to:  
15 (i) the Commonwealth; or  
16 (ii) an authority of the Commonwealth;  
17 for a purpose of the Commonwealth; or  
18 (j) for purposes relating to a Territory; or  
19 (k) for purposes relating to the implied power of the Parliament  
20 to make laws with respect to nationhood; or  
21 (l) for purposes relating to the executive power of the  
22 Commonwealth; or  
23 (m) for purposes relating to matters incidental to the execution of  
24 any of the legislative powers of the Parliament or the  
25 executive power of the Commonwealth.
- 26 Note: The International Covenant on Economic, Social and Cultural Rights  
27 is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in  
28 2018 be viewed in the Australian Treaties Library on the AustLII  
29 website (<http://www.austlii.edu.au>).
- 30 (2) Paragraph (1)(a) applies in relation to a corporation to which  
31 paragraph 51(xx) of the Constitution applies only if the NHFIC has  
32 entered into an arrangement with the corporation that:  
33 (a) sets out the terms and conditions on which money may be  
34 payable to the corporation under the arrangement; and

# EXPOSURE DRAFT

**Part 2** National Housing Finance and Investment Corporation

**Division 1** Establishment and functions

## Section 11

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1 (b) requires the corporation to comply with the terms and  
2 conditions.

3 (3) Without limiting subsection (2), the terms and conditions must  
4 provide for the circumstances in which the corporation must repay  
5 amounts paid under the arrangement.

### 6 **11 NHFIC does not have privileges and immunities of the Crown**

7 The NHFIC does not have the privileges and immunities of the  
8 Crown in right of the Commonwealth.

# EXPOSURE DRAFT

1 **Division 2—Investment Mandate**

2 **12 Investment Mandate**

3 (1) The Minister may, by legislative instrument, give the Board  
4 directions about the performance of the NHFIC's functions, and  
5 must give at least one such direction. The directions together  
6 constitute the *Investment Mandate*.

7 Note: Section 42 (disallowance) of the *Legislation Act 2003* does not apply  
8 to the direction—see regulations made for the purposes of  
9 paragraph 44(2)(b) of that Act.

10 (2) In giving a direction, the Minister must have regard to the object of  
11 this Act and any other matters the Minister considers relevant.

12 (3) In performing its functions, the NHFIC must take all reasonable  
13 steps to comply with the Investment Mandate.

14 **13 Matters covered by Investment Mandate**

15 The Investment Mandate may include directions about the  
16 following:

- 17 (a) strategies and policies to be followed for the effective  
18 performance of the NHFIC's functions;  
19 (b) decision-making criteria for making loans, investments and  
20 grants, and granting financial assistance to States and  
21 Territories;  
22 (c) limits on making loans, investments and grants, and granting  
23 financial assistance to States and Territories;  
24 (d) risk and return relating to NHFIC's investments;  
25 (e) any other matters the Minister thinks appropriate.

26 **14 Limits on Investment Mandate**

27 The Minister must not give a direction under subsection 12(1):

- 28 (a) that has the purpose, or has or is likely to have the effect, of  
29 directly or indirectly requiring the Board:

# EXPOSURE DRAFT

**Part 2** National Housing Finance and Investment Corporation

**Division 2** Investment Mandate

## Section 14

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- 1 (i) to make, or not to make, a particular loan, investment or  
2 grant; or  
3 (ii) to grant, or not to grant, financial assistance to a State or  
4 Territory for a particular project; or  
5 (iii) to take, or not to take, particular action relating to a  
6 particular loan, investment or grant; or  
7 (iv) to take, or not to take, particular action relating to  
8 financial assistance granted to a State or Territory for a  
9 particular project; or  
10 (b) that is inconsistent with this Act (including the object of this  
11 Act).



# EXPOSURE DRAFT

1 **Part 3—Board**

2 **Division 1—Establishment and functions of the Board**

3 **15 Establishment of the Board**

4 The Board of the NHFIC is established by this section.

5 **16 Functions of the Board**

6 (1) The functions of the Board are:

7 (a) to decide, within the scope of the Investment Mandate, the  
8 strategies and policies to be followed by the NHFIC; and

9 (b) to ensure the proper, efficient and effective performance of  
10 the NHFIC's functions; and

11 (c) any other functions conferred on the Board by this Act.

12 (2) The Board has power to do all things necessary or convenient to be  
13 done for or in connection with the performance of its functions.

14 (3) Anything done in the name of, or on behalf of, the NHFIC by the  
15 Board, or with the authority of the Board, is taken to have been  
16 done by the NHFIC.

# EXPOSURE DRAFT

## Part 3 Board

### Division 2 Board members

#### Section 17

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1 **Division 2—Board members**

2 **17 Membership**

3 The Board consists of:

- 4 (a) the Chair; and  
5 (b) at least 4, and no more than 6, other members.

6 **18 Appointment of Board members**

- 7 (1) Board members are to be appointed by the Minister by written  
8 instrument, on a part-time basis.
- 9 (2) A person is not eligible for appointment as a Board member unless  
10 the Minister is satisfied that the person has appropriate  
11 qualifications, skills or experience in one or more of the following:  
12 (a) banking and finance;  
13 (b) law;  
14 (c) housing;  
15 (d) infrastructure planning and financing;  
16 (e) local government;  
17 (f) public policy;  
18 (g) an area of expertise prescribed by the rules.

19 **19 Chair**

20 The Minister must, by written instrument, appoint one Board  
21 member to be the Chair.

22 **20 Term of appointment**

23 A Board member holds office for the period specified in the  
24 instrument of appointment. The period must not exceed 5 years.

25 Note: A Board member may be reappointed: see section 33AA of the *Acts*  
26 *Interpretation Act 1901*.

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## 21 Acting appointments

- 1
- 2 (1) The Minister may, by written instrument, appoint a Board member  
3 to act as the Chair:
- 4 (a) during a vacancy in the office of Chair (whether or not an  
5 appointment has previously been made to the office); or  
6 (b) during any period, or during all periods, when the Chair:  
7 (i) is absent from duty or from Australia; or  
8 (ii) is, for any reason, unable to perform the duties of the  
9 office.
- 10 (2) The Minister may, by written instrument, appoint a person to act as  
11 a Board member:
- 12 (a) during a vacancy in the office of a Board member (whether  
13 or not an appointment has previously been made to the  
14 office); or  
15 (b) during any period, or during all periods, when a Board  
16 member:  
17 (i) is absent from duty or from Australia; or  
18 (ii) is, for any reason, unable to perform the duties of the  
19 office.

20 Note: For rules that apply to acting appointments, see sections 33AB and  
21 33A of the *Acts Interpretation Act 1901*.

## 22 Remuneration

- 23 (1) A Board member is to be paid the remuneration that is determined  
24 by the Remuneration Tribunal. If no determination of that  
25 remuneration by the Tribunal is in operation, the member is to be  
26 paid the remuneration that is prescribed by the rules.
- 27 (2) A Board member is to be paid the allowances that are prescribed  
28 by the rules.
- 29 (3) This section has effect subject to the *Remuneration Tribunal Act*  
30 *1973*.

# EXPOSURE DRAFT

## Part 3 Board

### Division 2 Board members

#### Section 23

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1       **23 Leave of absence**

- 2                   (1) The Minister may grant leave of absence to the Chair on the terms  
3                   and conditions that the Minister determines.
- 4                   (2) The Chair may grant leave of absence to another Board member on  
5                   the terms and conditions that the Chair determines.
- 6                   (3) The Chair must notify the Minister if the Chair grants another  
7                   Board member leave of absence for a period that exceeds 3  
8                   months.

9       **24 Resignation**

- 10                   (1) A Board member may resign his or her appointment by giving the  
11                   Minister a written resignation.
- 12                   (2) The resignation takes effect on the day it is received by the  
13                   Minister or, if a later day is specified in the resignation, on that  
14                   later day.

15       **25 Termination of appointment**

- 16                   The Minister may terminate the appointment of a Board member:
- 17                   (a) for misbehaviour; or
- 18                   (b) if the Board member is unable to perform the duties of his or  
19                   her office because of physical or mental incapacity; or
- 20                   (c) if the Board member:
- 21                   (i) becomes bankrupt; or
- 22                   (ii) applies to take the benefit of any law for the relief of  
23                   bankrupt or insolvent debtors; or
- 24                   (iii) compounds with his or her creditors; or
- 25                   (iv) makes an assignment of his or her remuneration for the  
26                   benefit of his or her creditors; or
- 27                   (d) if the Board member is absent, except on leave of absence,  
28                   from 3 consecutive meetings of the Board; or
- 29                   (e) if the Minister is satisfied that the performance of the Board  
30                   member has been unsatisfactory for a significant period.

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1                   Note:       The appointment of a Board member may also be terminated under  
2                                    section 30 of the *Public Governance, Performance and Accountability*  
3                                    *Act 2013* (which deals with terminating the appointment of an  
4                                    accountable authority, or a member of an accountable authority, for  
5                                    contravening general duties of officials).

## 6       **26 Other terms and conditions**

7                   A Board member holds office on the terms and conditions (if any)  
8                   in relation to matters not covered by this Act that are determined  
9                   by the Minister.

## 10      **27 Observer**

### 11                   *Role of the observer*

- 12                   (1) A person appointed under this section (the *observer*):  
13                               (a) is entitled to receive notice of meetings of the Board; and  
14                               (b) may attend any meeting of the Board and take such part in  
15                               the proceedings, not including voting, as the observer thinks  
16                               fit.

### 17                   *Appointment of the observer*

- 18                   (2) The Minister may, by written instrument, appoint a  
19                   Commonwealth officer to be the observer, on a part-time basis.  
20                   (3) The observer holds office for the period specified in the instrument  
21                   of appointment. The period must not exceed 6 months.

22                   Note:       The observer may be reappointed: see section 33AA of the *Acts*  
23                                    *Interpretation Act 1901*.

- 24                   (4) The Minister may at any time terminate the appointment of the  
25                   observer.

### 26                   *Terms and conditions*

- 27                   (5) The Minister may grant leave of absence to the observer on the  
28                   terms and conditions that the Minister determines.

# EXPOSURE DRAFT

## Part 3 Board

### Division 2 Board members

#### Section 27

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- 1                   (6) The observer may resign his or her appointment by giving the  
2                   Minister a written resignation. The resignation takes effect on the  
3                   day it is received by the Minister or, if a later day is specified in the  
4                   resignation, on that later day.
- 5                   (7) The observer is an official for the purposes of the *Public*  
6                   *Governance, Performance and Accountability Act 2013*.

# EXPOSURE DRAFT

1 **Division 3—Meetings of the Board**

2 **28 Convening meetings**

- 3 (1) The Board must hold such meetings as are necessary for the  
4 efficient performance of its functions.
- 5 (2) The Chair:
- 6 (a) may convene a meeting at any time; and  
7 (b) must convene at least 4 meetings each calendar year; and  
8 (c) must convene a meeting within 30 days after receiving a  
9 written request to do so from another Board member.

10 **29 Presiding at meetings**

- 11 (1) The Chair must preside at all meetings at which he or she is  
12 present.
- 13 (2) If the Chair is not present at a meeting, the other Board members  
14 present must appoint one of themselves to preside.

15 **30 Quorum**

- 16 (1) At a meeting of the Board, a quorum is constituted by a majority of  
17 Board members.
- 18 (2) However, if:
- 19 (a) a Board member is required by rules made for the purposes  
20 of section 29 of the *Public Governance, Performance and*  
21 *Accountability Act 2013* not to be present during the  
22 deliberations, or to take part in any decision, of the Board  
23 with respect to a particular matter; and  
24 (b) when the Board member leaves the meeting concerned there  
25 is no longer a quorum present;
- 26 the remaining Board members at the meeting constitute a quorum  
27 for the purpose of any deliberation or decision at that meeting with  
28 respect to that matter.

# EXPOSURE DRAFT

## Part 3 Board

### Division 3 Meetings of the Board

#### Section 31

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1     **31 Voting at meetings**

2             (1) A question arising at a meeting of the Board is to be determined by  
3                 a majority of the votes of the Board members present and voting.

4             (2) The person presiding at the meeting of the Board has a deliberative  
5                 vote and, if the votes are equal, a casting vote.

6     **32 Conduct of meetings**

7             The Board may, subject to this Division, regulate proceedings at its  
8                 meetings as it considers appropriate.

9             Note:       Section 33B of the *Acts Interpretation Act 1901* contains further  
10                 information about the ways in which Board members may participate  
11                 in meetings.

12    **33 Minutes**

13             The Board must keep minutes of its meetings.

14    **34 Decisions without meetings**

15             (1) The Board is taken to have made a decision at a meeting if:  
16                 (a) without meeting, a majority of the Board members entitled to  
17                     vote on the proposed decision indicate agreement with the  
18                     decision; and  
19                 (b) that agreement is indicated in accordance with the method  
20                     determined by the Board under subsection (2); and  
21                 (c) all the Board members were informed of the proposed  
22                     decision, or reasonable efforts were made to inform all the  
23                     Board members of the proposed decision.

24             (2) Subsection (1) applies only if the Board:  
25                 (a) has determined that it may make decisions of that kind  
26                     without meeting; and  
27                 (b) has determined the method by which Board members are to  
28                     indicate agreement with proposed decisions.



# EXPOSURE DRAFT

Board **Part 3**  
Meetings of the Board **Division 3**

## Section 34

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- 1                   (3) For the purposes of paragraph (1)(a), a Board member is not  
2                   entitled to vote on a proposed decision if the Board member would  
3                   not have been entitled to vote on that proposal if the matter had  
4                   been considered at a meeting of the Board.
- 5                   (4) The Board must keep a record of decisions made in accordance  
6                   with this section.

# EXPOSURE DRAFT

## Part 3 Board

### Division 4 Reporting obligations

#### Section 35

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1 **Division 4—Reporting obligations**

2 **35 Matters to be included in annual reports**

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

- 6 (a) the particulars of any changes to the Investment Mandate  
7 during the period and their impact on the operations of the  
8 NHFIC;
- 9 (b) in relation to each kind of financial support provided by the  
10 NHFIC during the period, a summary of:
- 11 (i) the amount of that kind of financial support; and  
12 (ii) the risks and returns to the Commonwealth.

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

15 **36 Minister may require Board to prepare reports or give**  
16 **information**

17 *Reports*

- 18 (1) The Minister may, by written notice given to the Board, require the  
19 Board to:
- 20 (a) prepare a report about one or more specified matters relating  
21 to the performance of the Board's functions under this Act;  
22 and  
23 (b) give copies of the report to the Minister within the period  
24 specified in the notice.

25 *Information*

- 26 (2) The Minister may, by written notice given to the Board, require the  
27 Board to:
- 28 (a) prepare a document setting out specified information relating  
29 to the performance of the Board's functions under this Act;  
30 and

# EXPOSURE DRAFT

1 (b) give copies of the document to the Minister within the period  
2 specified in the notice.

3 *Compliance*

4 (3) The Board must comply with a requirement under subsection (1) or  
5 (2).

6 *Publication of reports and documents*

7 (4) The Minister may cause to be published (whether on the internet or  
8 otherwise):

- 9 (a) a report under subsection (1); or  
10 (b) a document under subsection (2).

11 *Reports and documents*

12 (5) A report under subsection (1) is not a legislative instrument.

13 (6) A document under subsection (2) is not a legislative instrument.

14 **37 Keeping the Minister informed etc.**

15 (1) The Board must keep the Minister informed of the operations of  
16 the Board.

17 (2) The Board must give the Minister such reports, documents and  
18 information in relation to those operations as are appropriate.

# EXPOSURE DRAFT

## Part 4 Chief Executive Officer, staff and consultants and committees

### Division 1 Chief Executive Officer

#### Section 38

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1 **Part 4—Chief Executive Officer, staff and**  
2 **consultants and committees**

3 **Division 1—Chief Executive Officer**

4 **38 Chief Executive Officer**

5 There is to be a Chief Executive Officer of the National Housing  
6 Finance and Investment Corporation.

7 **39 Functions of the CEO**

- 8 (1) The CEO is responsible for the day-to-day administration of the  
9 NHFIC.
- 10 (2) The CEO has power to do all things necessary or convenient to be  
11 done for or in connection with the performance of his or her duties.
- 12 (3) The CEO is to act in accordance with policies and strategies  
13 determined by the Board.
- 14 (4) The Board may give written directions to the CEO, not inconsistent  
15 with any direction given to the Board under Division 2 of Part 2,  
16 about the performance of the CEO's duties.
- 17 (5) The CEO must comply with a direction under subsection (4).
- 18 (6) A direction under subsection (4) is not a legislative instrument.

19 **40 Appointment of CEO**

- 20 (1) The CEO is to be appointed by the Board by written instrument, on  
21 a full-time basis.

22 Note: The CEO may be reappointed: see section 33AA of the *Acts*  
23 *Interpretation Act 1901*.

- 24 (2) The CEO holds office for the period specified in the instrument of  
25 appointment. The period must not exceed 5 years.

# EXPOSURE DRAFT

Chief Executive Officer, staff and consultants and committees **Part 4**

Chief Executive Officer **Division 1**

Section 41

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1 (3) The Board must not appoint a Board member as the CEO.

## 2 **41 Acting appointment as CEO**

3 The Board may, by written instrument, appoint a person (other than  
4 a Board member) to act as the CEO:

5 (a) during a vacancy in the office of CEO (whether or not an  
6 appointment has previously been made to the office); or

7 (b) during any period, or during all periods, when the CEO:

8 (i) is absent from duty or from Australia; or

9 (ii) is, for any reason, unable to perform the duties of the  
10 office.

11 Note: For rules that apply to acting appointments, see sections 33AB and  
12 33A of the *Acts Interpretation Act 1901*.

## 13 **42 Remuneration of CEO**

14 (1) The CEO is to be paid the remuneration that is determined by the  
15 Remuneration Tribunal. If no determination of that remuneration  
16 by the Tribunal is in operation, the CEO is to be paid the  
17 remuneration that is prescribed by the rules.

18 (2) The CEO is to be paid the allowances that are prescribed by the  
19 rules.

20 (3) This section has effect subject to the *Remuneration Tribunal Act*  
21 *1973*.

## 22 **43 Leave of absence of CEO**

23 (1) The CEO has the recreation leave entitlements that are determined  
24 by the Remuneration Tribunal.

25 (2) The Board may grant the CEO leave of absence, other than  
26 recreation leave, on the terms and conditions as to remuneration or  
27 otherwise that the Board determines.

# EXPOSURE DRAFT

**Part 4** Chief Executive Officer, staff and consultants and committees

**Division 1** Chief Executive Officer

Section 44

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1     **44 Outside employment**

- 2                   (1) The CEO must not engage in paid work outside the duties of his or  
3                   her office without the Chair's approval.
- 4                   (2) The Chair must notify the Minister of any approval given under  
5                   subsection (1).

6     **45 Other terms and conditions**

7                   The CEO holds office on the terms and conditions (if any) in  
8                   relation to matters not covered by this Act that are determined by  
9                   the Board.

10    **46 Resignation of CEO**

- 11                   (1) The CEO may resign his or her appointment by giving the Board a  
12                   written resignation.
- 13                   (2) The resignation takes effect on the day it is received by the Board  
14                   or, if a later day is specified in the resignation, on that later day.
- 15                   (3) The Chair must notify the Minister of the CEO's resignation.

16    **47 Termination of appointment of CEO**

- 17                   (1) The Board may terminate the appointment of the CEO:
- 18                   (a) for misbehaviour; or
- 19                   (b) if the CEO is unable to perform the duties of his or her office  
20                   because of physical or mental incapacity; or
- 21                   (c) if the CEO:
- 22                   (i) becomes bankrupt; or
- 23                   (ii) applies to take the benefit of any law for the relief of  
24                   bankrupt or insolvent debtors; or
- 25                   (iii) compounds with his or her creditors; or
- 26                   (iv) makes an assignment of his or her remuneration for the  
27                   benefit of his or her creditors; or
- 28                   (d) if the CEO is absent, except on leave of absence, for 14  
29                   consecutive days or for 28 days in any 12 months; or

# EXPOSURE DRAFT

Chief Executive Officer, staff and consultants and committees **Part 4**

Chief Executive Officer **Division 1**

Section 47

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- 1 (e) if the CEO engages, except with the Chair's approval, in paid  
2 work outside the duties of his or her office (see section 44  
3 (outside employment)); or  
4 (f) if the CEO fails, without reasonable excuse, to comply with  
5 section 29 of the *Public Governance, Performance and*  
6 *Accountability Act 2013* (which deals with the duty to  
7 disclose interests) or rules made for the purposes of that  
8 section; or  
9 (g) if the Board is satisfied that the performance of the CEO has  
10 been unsatisfactory for a significant period.
- 11 (2) If the Board terminates the appointment of the CEO, the Board  
12 must notify the Minister of the termination.

# EXPOSURE DRAFT

**Part 4** Chief Executive Officer, staff and consultants and committees

**Division 2** Staff and consultants

Section 48

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1        **Division 2—Staff and consultants**

2        **48 Staff**

- 3                    (1) The NHFIC may employ such persons as it considers necessary for  
4                    the performance of its functions and the exercise of its powers.
- 5                    (2) An employee is to be employed on the terms and conditions that  
6                    the NHFIC determines in writing.
- 7                    (3) The NHFIC may make arrangements for the services of officers or  
8                    employees of the following to be made available to the NHFIC:  
9                    (a) the Commonwealth, a State or a Territory;  
10                    (b) an authority of the Commonwealth or of a State or Territory;  
11                    (c) any other organisation or body.

12        **49 Consultants**

- 13                    (1) The NHFIC may engage consultants to assist in the performance of  
14                    its functions.
- 15                    (2) The consultants are to be engaged on the terms and conditions that  
16                    the NHFIC determines.



# EXPOSURE DRAFT

Chief Executive Officer, staff and consultants and committees **Part 4**  
Committees **Division 3**

Section 50

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1 **Division 3—Committees**

2 **50 Committees**

- 3 (1) The Board may establish committees to advise or assist in the  
4 performance of the Board's or the NHFIC's functions.
- 5 (2) A committee may be constituted:  
6 (a) wholly by Board members; or  
7 (b) wholly by persons who are not Board members; or  
8 (c) partly by Board members and partly by other persons.
- 9 (3) The Board may determine, in relation to a committee established  
10 under this section:  
11 (a) the committee's terms of reference; and  
12 (b) the terms and conditions of appointment of the members of  
13 the committee; and  
14 (c) the procedures to be followed by the committee.
- 15 (4) The members of the committee (other than Board members) are not  
16 officials for the purposes of the *Public Governance, Performance*  
17 *and Accountability Act 2013*.

# EXPOSURE DRAFT

## Part 5 Finance

### Section 51

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1 **Part 5—Finance**  
2

3 **51 Maintenance of adequate capital and reserves**

- 4 (1) The Board is required to ensure, according to sound commercial  
5 principles, that the capital and reserves of the NHFIC at any time  
6 are sufficient:
- 7 (a) to meet the likely liabilities of the NHFIC; and
  - 8 (b) to make adequate provision for default in the repayment of  
9 principal, or in the payment of interest or other charges, in  
10 connection with loans made by the NHFIC.
- 11 (2) If, at any time, the Board determines:
- 12 (a) that the capital and reserves of the NHFIC are not sufficient  
13 to meet the likely liabilities, and make the provision, referred  
14 to in subsection (1); or
  - 15 (b) that there are reasonable grounds for believing that, at a time  
16 in the future, the capital and reserves of the NHFIC may not  
17 be sufficient to meet the likely liabilities, and make the  
18 provision, referred to in subsection (1);
- 19 the Board must, as soon as practicable, cause the Minister to be  
20 informed in writing of its determination and the reasons for that  
21 determination.

22 **52 Payment of annual dividends to the Commonwealth**

- 23 (1) The Board must, within 4 months after the end of each financial  
24 year, by written notice given to the Minister, recommend that the  
25 NHFIC pay a specified dividend, or not pay a dividend, to the  
26 Commonwealth for that financial year.
- 27 (2) The Minister must, within 30 days after receiving the  
28 recommendation, by written notice given to the NHFIC:
- 29 (a) approve the recommendation; or

- 1 (b) where the Board has recommended the payment of a  
2 dividend—direct the payment of a different specified  
3 dividend; or  
4 (c) where the Board has recommended that no dividend be  
5 paid—direct the payment of a specified dividend.
- 6 (3) Subject to subsections (4) and (5), in performing their functions  
7 under subsections (1) and (2), the Board and the Minister must  
8 have regard to:  
9 (a) the policies of the Commonwealth Government, and the  
10 general policy of the NHFIC in relation to the performance of  
11 its functions; and  
12 (b) such commercial considerations as the Board or the Minister,  
13 as the case may be, considers appropriate.
- 14 (4) The NHFIC's dividend for a financial year must not exceed its  
15 profit for that year.
- 16 (5) For each financial year in relation to which the Minister has  
17 approved a recommendation that a dividend be paid or has directed  
18 the payment of a dividend, the NHFIC must pay to the  
19 Commonwealth:  
20 (a) if the Minister has approved a recommendation that a  
21 dividend be paid—the dividend specified in the  
22 recommendation; or  
23 (b) if the Minister has directed that a dividend be paid or that a  
24 different dividend be paid—the dividend specified in the  
25 direction.
- 26 (6) For the purposes of this section, the period beginning on the  
27 commencement of this Act and ending on 30 June 2018 is not to be  
28 taken to be a financial year.

## 29 **53 Borrowings etc.**

### 30 *Borrowings from the Commonwealth*

- 31 (1) The Finance Minister may, on behalf of the Commonwealth, out of  
32 money appropriated by the Parliament for the purpose, lend money

# EXPOSURE DRAFT

## Part 5 Finance

### Section 54

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1 to the NHFIC on such terms and conditions as the Finance Minister  
2 determines.

3 *Other borrowings etc.*

- 4 (2) The NHFIC may:
- 5 (a) borrow money otherwise than from the Commonwealth; or
  - 6 (b) raise money otherwise than by borrowing.
- 7 (3) One of the ways in which the NHFIC may borrow or raise money  
8 under subsection (2) is by dealing with securities.

9 *Security*

- 10 (4) The NHFIC may give security over all or any of its assets:
- 11 (a) for the repayment by the NHFIC of money borrowed under  
12 subsection (1) or paragraph (2)(a) and the payment of interest  
13 on money so borrowed; or
  - 14 (b) for the payment by the NHFIC of money (including interest)  
15 that the NHFIC is liable to pay in respect of money raised  
16 under paragraph (2)(b).

17 *Limitation on borrowing etc.*

- 18 (5) The NHFIC must not borrow or raise money except under this  
19 section.

### 20 **54 Guarantee by Commonwealth**

- 21 (1) Subject to subsection (2), the due payment by the NHFIC of any  
22 money that becomes payable by the NHFIC to a person other than  
23 the Commonwealth is guaranteed by the Commonwealth.
- 24 (2) Subsection (1) does not apply in relation to money that becomes  
25 payable in relation to a contract entered into on or after the day  
26 determined under subsection (3).
- 27 (3) The Minister may, by legislative instrument, determine a day for  
28 the purposes of subsection (2). The day must not be a day  
29 occurring earlier than either of the following:

- 1 (a) 1 July 2023;  
2 (b) 60 days after the instrument is registered under the  
3 *Legislation Act 2003*.

## 4 **55 Exemption from taxation**

- 5 (1) For the purposes of section 50-25 of the *Income Tax Assessment*  
6 *Act 1997*, the NHFIC is taken to be a public authority constituted  
7 under an Australian law.

8 Note: This means the NHFIC is exempt from income tax.

- 9 (2) The NHFIC is not subject to taxation under a law of a State or  
10 Territory, if the Commonwealth is not subject to the taxation.

# EXPOSURE DRAFT

## Part 6 Miscellaneous

### Section 56

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1 **Part 6—Miscellaneous**  
2

3 **56 Delegation by NHFIC**

- 4 (1) The NHFIC may, in writing under its seal, delegate all or any of its  
5 powers or functions under this Act to:  
6 (a) a Board member; or  
7 (b) the CEO.
- 8 (2) In exercising any powers or performing any functions under the  
9 delegation, the delegate must comply with any directions of the  
10 NHFIC.

11 **57 Delegation by Board**

- 12 (1) The Board may, in writing, delegate to a Board member or the  
13 CEO any of its powers or functions under this Act.
- 14 (2) In exercising any powers or performing any functions under the  
15 delegation, the delegate must comply with any directions of the  
16 Board.

17 **58 Delegation and subdelegation by CEO**

- 18 (1) The CEO may, in writing, delegate to a senior member of the staff  
19 referred to in section 48 any of the CEO's powers or functions  
20 under this Act.
- 21 (2) If the NHFIC or the Board delegates a power or function under  
22 subsection 56(1) or 57(1) to the CEO, the CEO may, in writing,  
23 subdelegate the power or function to a senior member of the staff  
24 referred to in section 48.
- 25 (3) In exercising any powers or performing any functions under the  
26 delegation or subdelegation, the delegate or subdelegate must  
27 comply with any directions of the CEO.

- 1 (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
2 apply in relation to a subdelegation in a corresponding way to the  
3 way in which they apply in relation to a delegation.

## 4 **59 Review of operation of Act**

- 5 (1) The Minister must cause a review of the operation of this Act to be  
6 undertaken as soon as possible after the period of 3 years  
7 beginning when this Act commences.
- 8 (2) The persons undertaking the review must give the Minister a  
9 written report of the review.
- 10 (3) The Minister must cause a copy of the report of the review to be  
11 tabled in each House of the Parliament within 15 sitting days of  
12 that House after the report is given to the Minister.

## 13 **60 Rules**

- 14 (1) The Minister may, by legislative instrument, make rules  
15 prescribing matters:  
16 (a) required or permitted by this Act to be prescribed by the  
17 rules; or  
18 (b) necessary or convenient to be prescribed for carrying out or  
19 giving effect to this Act.
- 20 (2) To avoid doubt, the rules may not do the following:  
21 (a) create an offence or civil penalty;  
22 (b) provide powers of:  
23 (i) arrest or detention; or  
24 (ii) entry, search or seizure;  
25 (c) impose a tax;  
26 (d) set an amount to be appropriated from the Consolidated  
27 Revenue Fund under an appropriation in this Act;  
28 (e) directly amend the text of this Act.