

# Intergovernmental Agreement on the Help to Buy scheme

An Agreement for the Commonwealth to establish and administer a national shared equity scheme, the 'Help to Buy' scheme.

## Parties

This Agreement is between:

- the Commonwealth of Australia, and
- States and Territories, being
  - the State of Queensland, and
  - any Subsequent State/Territory Parties.

## Recitals

- A. The Parties agree to the Commonwealth operating and administering a national shared equity scheme, the Help to Buy scheme, to be implemented under Commonwealth legislation.
- B. The Commonwealth legislation is to be supported by one or more State text referrals and amendment referrals of certain matters to the Commonwealth Parliament, in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution.
- C. States that do not make a text referral with an amendment referral may instead, after the Commonwealth legislation comes into force:
  - a. adopt the Commonwealth legislation; and
  - b. make an amendment referral,in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution.
- D. The Australian Capital Territory and the Northern Territory may become Parties to this Agreement, but, having regard to paragraph 51(xxxvii) and section 122 of the Commonwealth Constitution, they will not make a referral or adopt the Commonwealth legislation.
- E. The legislative mechanics for the State referrals referenced above may involve a single State making multiple text-based referrals and/or multiple amendment referrals.
- F. It is not intended that the Help to Buy scheme, or the Commonwealth legislation establishing it, would impact on:

- a. the housing policy or other policies of any State or of the Australian Capital Territory or the Northern Territory; or
- b. housing schemes administered by any State or by the Australian Capital Territory or the Northern Territory.

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# 1. Preliminary

## Purpose

- 1.1 The purpose of this Agreement is to set out and endorse certain arrangements in respect of a shared equity scheme, known as the Help to Buy scheme, which will support low and middle-income Australians to purchase or build a home by providing an equity contribution of up to 40 per cent for new homes and 30 per cent for existing homes.
- 1.2 This Agreement is entered into on the basis that the Help to Buy scheme will be established and administered by the Commonwealth in reliance on State referral legislation, and will:
  - (1) not impact a State or Territory's housing policy and other policies or ability to administer its own shared equity or homebuyer scheme/s; and
  - (2) operate in States and Territories only in accordance with the arrangements provided for in the Commonwealth Law.

**Note:** The Help to Buy scheme will be administered by Housing Australia, on behalf of the Commonwealth. States and Territories are not intended to have a role in the administration of the Help to Buy scheme.

- 1.3 The Commonwealth's intention is to maintain the operation of the Help to Buy scheme (in accordance with the Commonwealth Law and Subordinate Instruments) in a manner consistent with this Agreement.

## Citation

- 1.4 This Agreement may be referred to as the *Help to Buy Agreement 2024*.

## Definitions

- 1.5 **'Agreement'** means this Intergovernmental Agreement on the Help to Buy scheme as amended in accordance with clauses 2.3 and 2.4 from time to time.

**'Commonwealth'** means the Commonwealth of Australia.

**'Commonwealth Law'** means the main Commonwealth Act relating to the Help to Buy scheme which is enacted in accordance with the legislative arrangements in clause 4.2, and (for the avoidance of doubt) does not include the HA Act or any provisions of the HA Act.

**Note:** On the day this Agreement comes into operation in accordance with clause 2.1, the proposed name of the main Commonwealth Act relating to the Help to Buy scheme is the *Help to Buy Act 2024*.

**'cooperating State'** has the meaning given to the term in the Commonwealth Law.

Note: The term 'cooperating State' is broadly intended to cover a State which has withdrawn its primary referral(s) or adoption(s) but has left a more limited referral(s) or adoption(s) in place to regulate the ongoing operation of the Help to Buy scheme for existing participants who signed up to the Help to Buy scheme when the State was a participating State.

**'Housing Australia'** means the body corporate by that name continued in existence by the HA Act, as it exists from time to time (even if its name is later changed).

**'HA Act'** means the *Housing Australia Act 2018* (Cth), as in force from time to time (even if its name is later changed).

**'Original State Party'** means a State that is a signatory to this Agreement at the time of its commencement.

**'Party'** means the Commonwealth, a State Party or a Territory Party.

**'participating State'** has the meaning given to the term in the Commonwealth Law.

Note: The term 'participating State' is broadly intended to cover a State which has made the necessary referrals and/or adoptions with respect to the Commonwealth Law and has not terminated any of those referrals or adoptions. New participants can be signed up to the Help to Buy scheme in a participating State (and not in a cooperating State).

**'relevant Minister'** means:

- (1) for the Commonwealth: the Commonwealth Minister with responsibility for housing policy; and
- (2) for a State: the State Treasurer, or another State Minister that Senior Officials for that State advise the other Parties is the relevant Minister for that State for the purposes of this Agreement; and
- (3) for a Territory: the Territory Treasurer, or another Territory Minister that Senior Officials for that Territory advise the other Parties is the relevant Minister for that Territory for the purposes of this Agreement.

**'Senior Official'** means the First Assistant Secretary (or equivalent) with policy responsibility with respect to the Help to Buy scheme within each relevant Commonwealth, State and Territory department.

**'State'** means a State of the Commonwealth of Australia.

**'State Party'** means a State that is a Party.

**'State referral'** or **'State referral legislation'** means legislation enacted by a participating State to refer matters to the Commonwealth, or to adopt the Commonwealth Law and refer matters to the Commonwealth, as provided for in this Agreement.

**'Subordinate Instrument'** means a legislative instrument (within the meaning of the *Legislation Act 2003* (Cth)) made under the Commonwealth Law.

**'Subsequent State/Territory Party'** means a State or Territory that becomes a Party to this Agreement in accordance with Part 6.

**'Territory'** means the Australian Capital Territory or the Northern Territory.

**'Territory Party'** means a Territory that is a Party.

## 2. Effect and Operation of Agreement

### Commencement

- 2.1 This Agreement comes into operation on the day that it is signed by the Commonwealth and at least one State.
- 2.2 A Subsequent State/Territory Party will comply with this Agreement from the date of its accession to the Agreement in accordance with Part 6.

### Variation of Agreement

- 2.3 This Agreement may be varied at any time only by the unanimous agreement of all the Parties to it at that time.
- 2.4 Any variation must be made in writing and executed by those Parties and will include the date on which the variation will come into force.

### Effect of Agreement

- 2.5 This Agreement is not intended to create legal relations between the Parties.

## 3. Ceasing to be a Party

### Obligation to notify on ceasing to be a participating State

- 3.1 Where a State Party will cease to be a participating State on a particular date (the **cessation date**), the State Party must give notice in writing to the other Parties' relevant Ministers no less than 90 days prior to the cessation date.
- 3.2 Notice given by a State Party under clause 3.1 must:
  - (1) specify the cessation date for the State Party; and
  - (2) advise whether, after the cessation date, the State Party will remain a cooperating State.

## Withdrawal from this Agreement

- 3.3 Subject to clause 3.4, a State Party that ceases to be a participating State ceases to be a Party to this Agreement on the cessation date.
- 3.4 A State Party that ceases to be a participating State but remains a cooperating State remains a Party to this Agreement.

## Agreement Continues with Remaining Parties

- 3.5 If a State ceases to be a Party, this Agreement will remain in force in relation to the remaining Parties.

# 4. Legislation

## Purpose of this Part

- 4.1 This Part establishes procedures relating to the enactment of State referral legislation, the enactment of the Commonwealth Law, and any subsequent amendments of the Commonwealth Law.

## Legislative Arrangements

- 4.2 The Parties will endeavour to implement the following legislative arrangements:
  - (1) the enactment by one or more State Parliaments of legislation containing a referral of power to the Commonwealth Parliament to:
    - a) enact legislation in the terms, or substantially in the terms, of a particular text, which will be the Commonwealth Law (**text referral**); and
    - b) make express amendments of the Commonwealth Law with respect to certain subject-matters relating to the Help to Buy scheme specified in the State referrals and the Commonwealth Law (**amendment referral**);

for the purposes of paragraph 51(xxxvii) of the Commonwealth Constitution;  
and
  - (2) the enactment of the Commonwealth Law by the Commonwealth Parliament, in reliance on a State referral or referrals as mentioned in clause 4.2(1), for the purposes of the establishment of the Help to Buy scheme; and
  - (3) other State Parliaments later:
    - a) adopting the Commonwealth Law, and
    - b) making an amendment referral, in the same terms as the amendment referral described in clause 4.2(1)(b);

for the purposes of paragraph 51(xxxvii) of the Commonwealth Constitution (including the Parliaments of States that become Parties to this Agreement after the enactment of the Commonwealth Law); and

- (4) the amendment from time to time by the Commonwealth Parliament of the Commonwealth Law mentioned in clause 4.2(2) in reliance on the amendment referrals made by participating States, in accordance with this Agreement.

## Amendment of Commonwealth Law

- 4.3 Amendments to the Commonwealth Law can be made only to the extent no objections are received from any Parties by the Commonwealth, in line with the following provisions (the purposes of which include providing a mechanism for the Parties to consider whether proposed amendments to the Commonwealth Law will negatively impact their interests).
- 4.4 The Commonwealth will notify the other Parties' relevant Minister/s in writing of any proposed amendment to the Commonwealth Law.
- 4.5 The notification required by clause 4.4 should ordinarily occur:
  - (1) in relation to an amendment to the Commonwealth Law proposed by the Commonwealth Government – at the earliest practicable time after the development of the legislative proposal and in any event before the introduction of a Bill to the Commonwealth Parliament containing the amendment; and
  - (2) in relation to any other proposed amendment to the Commonwealth Law – at the earliest practicable time.
- 4.6 The Commonwealth will provide the other Parties with a period of at least 20 business days in which to provide a response to it concerning a proposed amendment (***minimum consultation period***), except in relation to an amendment, which is of a minor and technical nature, with a low or nil regulatory impact, where the Commonwealth's relevant Minister proposes that the consultation period be waived and this proposal is agreed to by all other Parties.
- 4.7 During the first 10 business days of the minimum consultation period, any State Party or Territory Party may give notice in writing that it requires an additional 15 business days (***extended consultation period***) to consider the proposed amendment.
- 4.8 During a minimum consultation period or extended consultation period, the Commonwealth's relevant Minister can, by notice in writing, extend the period by a specified additional number of business days (***further extended consultation period***) beyond the business days specified for the minimum consultation period or extended consultation period.
- 4.9 Notice for clauses 4.7 and 4.8 must be given to all other Parties' relevant Ministers.



4.10 Clause 4.11 applies if the Commonwealth's relevant Minister receives notice in writing from any Party that it objects to the proposed amendment during:

- (1) the minimum consultation period; or
- (2) if any Party gives written notice under clause 4.7—the extended consultation period; or
- (3) if the Commonwealth's relevant Minister extends the consultation period under clause 4.8—the further extended consultation period.

4.11 Where this clause applies, the Commonwealth Government will not:

- (1) proceed with the amendment (for an amendment described in clause 4.5(1)); or
- (2) support the amendment (for an amendment described in clause 4.5(2)).

4.12 Prior to proposing an amendment to the Commonwealth Law, the Commonwealth Government will consider whether the amendment is necessary for the operation of the Help to Buy scheme.

## Other Commonwealth legislation that might impact State referral legislation

4.13 If the Commonwealth Government is proposing to introduce legislation or legislative amendments that impact State referral legislation other than the Commonwealth Law or amendments to the Commonwealth Law, the Commonwealth will seek to provide written notice of this to the relevant Minister for the affected State or States.

## Making and amendment of Subordinate Instruments

4.14 The making of, and any amendments to, a Subordinate Instrument can only be made to the extent that no objections are received by the Commonwealth from any Parties on the matters to which the objections apply. It is intended that the Commonwealth Law will also provide that the making of, and any amendments to, a Subordinate Instrument can only be made to the extent that the Commonwealth has not received any objections on matters dealt with by the Subordinate instrument or amendments to it from any Parties.

4.15 The Commonwealth will notify the other Parties' relevant Ministers in writing of any proposed initial Subordinate Instrument and any proposed amendment to a Subordinate Instrument.

4.16 The notification required by clause 4.15 should ordinarily occur at the earliest practicable time after the development of the proposal for the Subordinate Instrument or amendment (as applicable) and in any event before the making of that Subordinate Instrument or amendment (as applicable).

- 4.17 Subject to clause 4.18, the Commonwealth will consult State Parties and Territory Parties about any proposed initial Subordinate Instrument and any proposed amendment to a Subordinate Instrument in accordance with clauses 4.6 to 4.10(1), as if references in those provisions to a proposed amendment to the Commonwealth Law were references to a proposed initial Subordinate Instrument and a proposed amendment to a Subordinate Instrument, respectively.

**Note:** An effect of clause 4.17, in applying clauses 4.6 to 4.11(1) to proposed initial Subordinate Instruments (and proposed amendments to a Subordinate Instrument), is that where a Party objects to a matter proposed in an initial Subordinate Instrument (or to a proposed amendment to a Subordinate Instrument), the Commonwealth will not proceed with making that proposed initial Subordinate Instrument (or with that proposed amendment) to the extent of that objection: see clause 4.11(1).

- 4.18 With respect to a proposed initial Subordinate Instrument, clauses 4.7 to 4.9 and clauses 4.10(2) and (3) do not apply:

**Note:** The effect of clause 4.18 is that for an initial Subordinate Instrument, only the minimum consultation period applies. For amendments to a Subordinate Instrument, the extended consultation period and further extended consultation period are applicable, where relevant.

## Additional matters relating to State Referral Legislation

- 4.19 A State Government will not introduce a Bill to amend its State referral legislation unless the State has given prior written notice of the proposed amendment to the other Parties' relevant Ministers.
- 4.20 State referral legislation may include provision for the termination of the text referral and/or amendment referral, and State adoption legislation may include provision for the termination of the adoption, including provision for the State to cease to be a participating State and become a cooperating State.
- 4.21 State referral legislation may include provision for a referral or adoption to be time limited.

## Operation of other State and Territory legislation

- 4.22 It is intended that the Commonwealth Law will not impact on the continued and concurrent operation of existing and new State and Territory legislation (including legislation relating to the operation of State and Territory-based shared equity or homebuyer schemes) and the enactment by State and Territory Parliaments of amendments to such legislation.
- 4.23 The Commonwealth Law will include a 'displacement provision' with the effect that, in participating States, cooperating States and the Territories, a provision of a State/Territory law that is inconsistent with a provision of a Help to Buy law will take precedence over the provision of the Help to Buy law if the requirements in clause 4.24 are met.

4.24 The displacement provision will require:

- (1) a State Party or Territory Party to declare that the provision of a State/Territory law engages the displacement provision in the Commonwealth Law. The State Party or Territory Party is to make the declaration under a State/Territory law, and
- (2) that the provision of the State/Territory law is not declared by regulations made under the Commonwealth Law to be one to which the displacement provision does not apply.

Note: Regulations are a form of Subordinate Instrument and the making and amendment of regulations will be subject to the requirements in clause 4.31.

4.25 Despite the displacement of a provision of the Help to Buy law by the operation of the displacement provision in the Commonwealth law, Housing Australia, on behalf of the Commonwealth, will remain entitled to any contribution made under an arrangement in respect of the Help to Buy scheme as well as its interest in any gain in respect of any residential property supported under the Help to Buy scheme and any security taken by Housing Australia, on behalf of the Commonwealth, to secure the entitlement (such as by means of a mortgage or other right relating to a residential property). The displacement will not diminish or restrict the entitlement or security which will remain preserved.

4.26 The Commonwealth intends that regulations be made under the Commonwealth Law only in exceptional circumstances where a proposed displacement of a provision would undermine the fundamental operation of the Help to Buy scheme or detrimentally impact or damage the Commonwealth's interest in a residential property, referred to in clause 4.25.

4.27 The Commonwealth Law will include an 'excluded matter provision' with the effect that a State Party or a Territory Party can declare a matter to be an excluded matter, being a matter to which the Help to Buy law does not apply.

4.28 The excluded matter provision will require:

- (1) a State Party or Territory Party to declare, under a State/Territory law, a matter to be an excluded matter, and
- (2) that the matter is not declared by regulations made under the Commonwealth Law to be one to which the excluded matter provision does not apply.

Note: Regulations are a form of Subordinate Instrument and the making and amendment of regulations will be subject to the requirements in clause 4.31.

4.29 Despite the exclusion of a matter, Housing Australia, on behalf of the Commonwealth, will continue to remain entitled to any contribution made under an arrangement in respect of the Help to Buy scheme, as well as its interest in any gain in respect of any residential property supported under the Help to Buy scheme, and any security taken by Housing Australia, on behalf of the Commonwealth, to

secure the entitlement (such as by means of a mortgage or other right relating to a residential property). The excluded matter will not diminish or restrict the entitlement or security which will remain preserved.

4.30 Each State Party and Territory Party undertakes to take reasonable steps to:

- (1) notify the Commonwealth as soon as practical prior to making a State/Territory law declaring that provisions of a State/Territory law are provisions that engage the displacement provision in the Commonwealth law, and
- (2) notify the Commonwealth as soon as practical prior to making a State/Territory law declaring that a matter is to be an excluded matter.

4.31 The Commonwealth undertakes to take reasonable steps to notify a State or Territory Party, as soon as practical, before the making of regulations that declare a provision of the State/Territory law to be one to which the displacement provision or the excluded matter provision does not apply.

4.32 In clauses 4.23, 4.25 and 4.27:

***Help to Buy law*** means:

- (1) the Commonwealth Law, but does not include provisions dealing with the:
  - a) financial contributions by the Commonwealth; or
  - b) returns to the Commonwealth; or
  - c) interaction with other Commonwealth, State or Territory laws; or
  - d) review by Administrative Appeals Tribunal (soon to be replaced by the Administrative Review Tribunal); or
  - e) matters to be included in Housing Australia's annual reports; or
  - f) review of the operation of the Help to Buy scheme, and
- (2) a Subordinate Instrument (other than a Subordinate Instrument made for the purposes of a matter listed in paragraphs (1)(a) to (f) in this clause.

4.33 The Commonwealth Law will provide for rules so that the same participant is not concurrently approved to participate in:

- (1) both the Help to Buy scheme and a State shared equity scheme; or
- (2) both the Help to Buy scheme and a Territory shared equity scheme.

## 5. Other matters

### Information-sharing arrangement

- 5.1 The Parties will work together to establish an information-sharing arrangement to support:
- (1) the Help to Buy scheme; and
  - (2) shared equity schemes operated by the State Parties (***State schemes***); and
  - (3) shared equity schemes operated by the Territory Parties (***Territory schemes***).
- 5.2 It is the Parties' intention that the information-sharing arrangement will:
- (1) operate as an administrative arrangement only in accordance with privacy and information sharing legislation; and
  - (2) contain provisions that will guide and restrict the use of information shared between the parties; and
  - (3) include, as parties:
    - a) Housing Australia; and
    - b) for each State Party that operates a State scheme: the agency that operates that Party's State scheme and/or the State; and
    - c) for each Territory Party that operates a Territory scheme: the agency that operates that Party's Territory scheme and/or the Territory; and
  - (4) be directed to supporting the integrity of the Help to Buy scheme, State schemes and Territory schemes, including ensuring that, consistent with the proposed arrangements for the Help to Buy scheme, the same participant is not concurrently approved to participate in:
    - a) both the Help to Buy scheme and a State scheme; or
    - b) both the Help to Buy scheme and a Territory scheme.

### Reporting

- 5.3 The Commonwealth, through Housing Australia, will provide a report, either by correspondence or existing forums, every 12 months to other Parties' relevant Ministers on basic data concerning the take-up and operation of the Help to Buy scheme, including each of the following matters:
- (1) number of new participants in that 12-month period;

- (2) basic demographic data for those new participants (including age, gender, median income and number of Aboriginal/Torres Strait Islander participants);
- (3) median shared equity contribution and median purchase price;
- (4) number of discharges of the Commonwealth equity investment (Help to Buy scheme exits) during that 12-month period; and
- (5) key trends and insights, including location of participants (with a split between metropolitan and regional).

#### 5.4 Reports for clause 5.3:

- (1) will provide data on a national basis and for each Party; and
- (2) will be made publicly available.

## Governance

- 5.5 The Parties will establish a Senior Officials Working Group to support the ongoing operation of the referral of power and the information sharing arrangement to be established in accordance with clause 5.1.
- 5.6 The Parties will work together to establish a Senior Officials Working Group Terms of Reference which will include role and purpose, responsibilities, participants, meeting frequency and chair.
- 5.7 The First Assistant Secretary in the Commonwealth Treasury with responsibility for the Help to Buy scheme is the point of contact for State and Territory Senior Officials for the purposes of this Agreement.
- 5.8 The Commonwealth Law will include a provision that provides for the review of the operation of the Help to Buy scheme. The provision will require the Commonwealth's relevant Minister to cause a review of the operation of the Help to Buy scheme to be undertaken as soon as possible after the end of three years after the commencement of the Commonwealth Law. It is intended that the arrangements for the review will be agreed at the time the Commonwealth's relevant Minister causes the review to be undertaken and once agreed, the arrangements will be communicated to the State and Territory Parties.

## Dispute Resolution

- 5.9 A Party can raise a dispute by doing so in writing to the relevant First Assistant Secretary in the Commonwealth Treasury.
- 5.10 Senior Officials will attempt to resolve any dispute in the first instance, through the Senior Officials Working Group established in accordance with clause 5.5.
- 5.11 Disputes may be raised to relevant Ministers if they cannot be resolved by Senior Officials.

## 6. Accession

- 6.1 A State which is not an Original State Party or a Territory may become a Party to this Agreement by notifying the Commonwealth's relevant Minister in writing that it agrees to become a Party, and annexing to that notification a copy of this Agreement as in force at the time of the notification.
- 6.2 If a State or Territory becomes a Party to this Agreement under this clause, the Commonwealth will notify the other Parties' relevant Ministers in writing as soon as is practicable.
- 6.3 By choosing to become a Party to this Agreement under this clause, in addition to the other provisions in this Agreement, a State agrees as follows:
- (1) If the Commonwealth Law is not yet in force, for any State at the time the State becomes a Party, to satisfy the requirement of either:
    - a) make a text referral and an amendment referral in the same form as the Original State Party prior to the Commonwealth Law coming into force, in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution; or
    - b) do all of the following at the earliest practicable time after the commencement of the Commonwealth Law:
      - (i) adopt the Commonwealth Law, as in force at the time of the adoption,
      - (ii) refer power to the Commonwealth to make express amendments of the Commonwealth Law (in the same form as the amendment referral enacted by the referring State/s);

in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution.
  - (2) Otherwise, to do all of the following at the same time:
    - a) adopt the Commonwealth Law as in force at the time of the adoption;
    - b) refer power to the Commonwealth to make express amendments of the Commonwealth Law (in the same form as the amendment referral enacted by the referring State/s);

in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution.
- 6.4 By choosing to become a Party to this Agreement under this clause, a Territory agrees to the provisions of this Agreement, but having regard to paragraph 51(xxxvii) and section 122 of the Commonwealth Constitution, will not adopt the Commonwealth Law.

## 7. Finance

- 7.1 Financial costs incurred through the enactment of the Commonwealth Law (including any other consequential Commonwealth legislative amendments), establishment and administration of the Help to Buy scheme and relating to the expenses of Housing Australia, are to be borne by the Commonwealth. The Commonwealth is to bear all financial and legal risks in relation to the Help to Buy scheme.
- 7.2 The States and Territories will have no responsibility for funding any aspect of the Help to Buy scheme's establishment or administration.
- 7.3 However, State Parties will be individually responsible for costs incurred through the preparation and passage of their respective State referral or adoption legislation, including any other consequential legislative amendments and ceasing to be a participating State.

## 8. Places

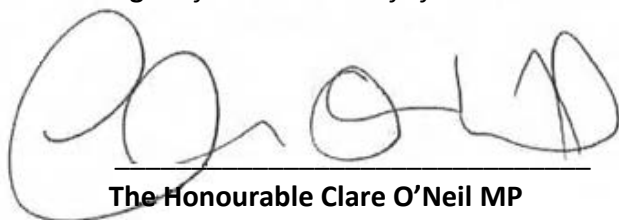
- 8.1 Details about the allocation of places will be dealt with in a Subordinate Instrument.
- 8.2 It is intended that places in the Help to Buy scheme will be allocated on a pro rata basis to each of the participating States or Territories based on their population share.



## Signatures

The Commonwealth and the State/Territory Parties have confirmed their commitment to this Agreement as follows:

*Signed for and on behalf of the Commonwealth of Australia by*



**The Honourable Clare O'Neil MP**

**Minister for Housing**

**Minister for Homelessness**

Date

9/12/24

*Signed for and on behalf of the State of Queensland by*



**The Honourable Samuel O'Connor MP**

**Minister for Housing and Public Works and Minister for Youth**

Date

12/2/25