s 22 [redacted]

OFFICIAL: Sensitive

From: s 22 [redacted]
Sent: Monday, 18 August 2025 10:12
To: s 22 [redacted] @treasury.gov.au>
Cc: s 22 [redacted] @TREASURY.GOV.AU>; s 22 [redacted] @TREASURY.GOV.AU>; s 22 [redacted] @asic.gov.au>; s 22 [redacted] @asic.gov.au>

Subject: RE: Housing Australia (HA) Matter [SEC=OFFICIAL:Sensitive]

Hi s 22

We don't have any red line comments. However, a few queries / notes:

- What is the distinction between the first and third dot point. Is more than one exemption from the NCC being sought, or just one pursuant to s6(13) of the Code?
- We haven't properly considered the mechanics of each exemption. Will we be reviewing the drafting changes?
- I've reattached previous comments (in addition to the below).

It has been a pleasure working with you and the team too, and I also hope our paths will cross again!

Thank you,

s 22

Senior Manager, Regulatory Reform and Implementation

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney, 2000
Tel: s 22 | s 22

From: s 22 @treasury.gov.au>
Sent: Friday, 15 August 2025 13:19
To: s 22 @asic.gov.au>
Cc: s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>
Subject: RE: Housing Australia (HA) Matter [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s 22

Thank you for your time on the phone this afternoon.

As discussed, and following on from the chain below, we are working on Help to Buy (HTB) arrangements and seeking to consult ASIC on the following changes:

- Amend the *National Consumer Credit Protection Regulations 2010* to exempt a HTB arrangement provided by Housing Australia from compliance with the National Credit Code, which is contained in Schedule 1 of the *National Consumer Credit Protection Act 2009,* via a product exemption.

s 22 [redacted]

- Prescribing ‘Help to Buy arrangements’ (HTB arrangements), as defined in section 6 of the *Help to Buy Act 2024* (HTB Act), as being a product that is exempt from compliance with the NCC pursuant to the regulation-making power in subsection 6(13) of the National Credit Code (NCC).

If you have any red line comments on the above, please let us know – ideally today or early on Monday. Apologies for the short turnaround.

s 22 [redacted]

Cheers,

s 22 [redacted]

s 22 [redacted] – **Director**

Banking and Credit Unit – Banking, Currency, and Credit Branch
Financial System Division

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.

LGBTIQ+ Ally

OFFICIAL: Sensitive

From: s 22 [redacted]@asic.gov.au>
Sent: Monday, 16 June 2025 4:29 PM
To: s 22 [redacted]@TREASURY.GOV.AU>
Cc: s 22 [redacted]@treasury.gov.au>; s 22 [redacted]@TREASURY.GOV.AU>; s 22 [redacted]@TREASURY.GOV.AU>; s 22 [redacted]@TREASURY.GOV.AU>; s 22 [redacted]@asic.gov.au>; s 22 [redacted]@asic.gov.au>; s 22 [redacted]@asic.gov.au>
Subject: RE: Housing Australia (HA) Matter [SEC=OFFICIAL]

OFFICIAL

Hi s 22 [redacted]

Just ahead of our meeting tomorrow, we wanted to share a few thoughts. These are officer level comments, and we acknowledge that we may not be across all the details of the scheme. Keen to chat through it tomorrow.

s 22

[redacted]

<u>Relief from the National Credit Code – the Commonwealth as lender</u>

-

Section 22 of the National Credit Act indicates a clear intention for the National Credit Code to apply to the Crown. Exempting Help to Buy from the Code:

- would remove important consumer protections such as those related to disclosure and enforcing defaults.
- may create concerns in relation to a 'level playing field' for businesses offering similar products and result in those businesses approaching ASIC for relief.

As previously flagged by Shelley (cc'ed) last year, if Housing Australia is concerned that Regulation 79A will prevent the Commonwealth from recovering the equity, then the government could consider exempting Help to Buy from this particular regulation.

If Housing Australia is concerned about other restrictions on recovering the equity then we can consider any additional information.

<u>Relief from the National Credit Act and National Credit Code – third party lenders and brokers</u>

-

The primary lenders and brokers have their own RLO obligations in relation to the suitability of the primary loan, which would include considering the impact of the Help to Buy Scheme. The government could consider exempting the Help to Buy scheme through regulations under s164 of the National Credit Act from Part 3-1 of the National Credit Act (the RLO obligations for credit assistance providers).

We look forward to discussing further tomorrow.

Thanks,

s 22 [redacted]

Senior Manager, Regulatory Reform and Implementation

Australian Securities and Investments Commission

Tel: s 22 [redacted] | s 22 [redacted]

s 22 [redacted]

From: s 22 [redacted]
To: s 22 [redacted]
Cc: s 22 [redacted]; s 22 [redacted]
s 22 [redacted]
Subject: FW: Housing Australia - Help To Buy Scheme [SEC=OFFICIAL:Sensitive]
Date: Friday, 16 August 2024 5:52:27 PM
Attachments: RE Help to Buy - Further information SECOFFICIALSensitive.msg

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OFFICIAL: Sensitive

Dear s 22 [redacted]

Further to your queries regarding proposed regulatory exemptions/amendments in relation to the Help to Buy Program, we provide the following information.

Previous ASIC advice

We have previously provided feedback to Treasury on the application of the National Consumer Credit Protection Act 2009 (NCCP) and the Corporations Act 2001 in relation to the proposed Help to Buy program (see attached email of 21 July 2022). This correspondence touches on a number of your recent questions and we therefore refer to it in our responses below where appropriate.

We have also previously suggested that in considering any exemptions for the Help to Buy program from various statutory consumer protections, we would recommend Treasury consult with relevant stakeholders, including both industry and consumer groups to capture different perspectives on this. For example, we note a consumer group has recently raised concerns about equity share products noting the high debt levels and whether this is in line with responsible lending obligations. We also understand there are businesses providing loans to consumers in conjunction with a primary loan from another lender, to assist consumers bridge the deposit gap and such businesses may consider it unfair for their loans to be treated differently.

Application of National Credit Code to Help to Buy Product

As noted in our previous email, s22 of the NCCP provides that other than the National Credit Code, the Crown is not bound by the NCCP. This suggests a clear intention of Parliament for the Code to apply to credit provided by the Crown.

We understand from our discussion that you are considering the applicability of the Code in two contexts: firstly, the application of the exit fee prohibition in reg 79A of the NCCP Regulations and secondly, the potential impact on primary lenders if they are considered to be an intermediary assisting consumers to apply for the Help to Buy loan.

<u>Reg 79A</u>

We note that Treasury consulted with ASIC on the intended scope of the termination fee ban at the time of making the regulation, noting the unintended capture of certain appreciation payments. Although it was agreed that exclusion of such appreciation payments from the prohibition was likely appropriate, time constraints and the low level of such products in the market at the time meant this exclusion did not proceed. In the absence of such an exclusion in Regulation 79A, ASIC has previously provided relief from Reg 79A on multiple occasions, including to a State based scheme (HomeStart) which is discussed in the email attachment.

Where government has a desired policy position it is preferable this is expressed in legislation rather than relying on the grant of relief. This is a more expedient approach and would provide Housing Australia with more certainty, to consider including an exclusion from regulation 79A in legislation. Whether relief is granted will depend on the individual circumstances of the product and the relief being sought.

Impact on primary lenders

We note your suggestion that there could be regulatory issues if primary lenders are considered intermediaries. However, it is not apparent what these particular issues may be as we understand these lenders will already be licensed and subject to the responsible lending obligations (see additional comment on this below).

Responsible lending obligations

Commentary regarding responsible lending obligations for lenders for both the primary loan and the Help to Buy arrangement are discussed in the attached email. In particular, please see the comments under the Income Review section. As noted above, we understand there are businesses providing loans to consumers in conjunction with a primary loan from another lender, and relief for primary lenders has not been sought or provided. Therefore, it is not apparent that an exemption for primary lenders from considering Help to Buy arrangements is needed or warranted.

s 22

OFFICIAL: Sensitive

From: s 22 @TREASURY.GOV.AU>
Sent: Monday, August 5, 2024 3:37 PM

To: s 22 [redacted] @asic.gov.au>; s 22 [redacted] @asic.gov.au>; s 22 [redacted] @asic.gov.au>;
s 22 [redacted] @asic.gov.au>; s 22 [redacted] @asic.gov.au>
Cc: s 22 [redacted] @treasury.gov.au>;
s 22 [redacted] @TREASURY.GOV.AU>
Subject: [SEC=OFFICIAL] Housing Australia - Help To Buy Scheme

Some people who received this message don't often get email from nick.mathews@treasury.gov.au. Learn why this is important

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear s 22 [redacted]
Thank you for agreeing to meet with us tomorrow at short notice on Housing Australia's proposed Help to Buy Scheme.

Housing Australia have made a request for certain regulatory exemptions/amendments in relation to this Help to Buy Scheme. An outline of their proposed requests are included in the attached document.

s 22 [redacted]

We would appreciate:

- Your views on these Housing Australia regulatory requests.
- Whether ASIC has dealt with other similar schemes in the past (such as for States) + whether you have knowledge of any exemptions/amendments these States may have been granted.
- Any issues ASIC may foresee, from your perspective, on these proposed exemptions/amendments.

As background I have attached a link to:

a. The Help To Buy Bill which is currently going through the Senate.

   Note that the meaning of "**Help to Buy Arrangements**" and "**Shared Equity Arrangements"** are defined in clause 6 and 7 of the Bill and, allow for a contribution by Housing Australia, <u>including by means of a loan</u>, towards the cost of an individual/s acquiring residential property.

b. The Help To Buy Program Directions 2024 Exposure Draft.

A summary of the key Scheme terms outlined in these Program Directions are as follows:

- **Clause 16**. Housing Australia's contribution under its proposed Shared Equity Arrangement is set at a minimum of 5% of the purchase price and capped at 30% of the purchase price for an existing dwelling and 40% for a new home. Housing Australia's contribution together with the applicant's deposit contribution must, in aggregate, equal at least 20% of the value of the property (with the Participating Lender providing a mortgage for the remaining portion of the purchase price).

- **Clause 25.** The return the Commonwealth is entitled to under the arrangement (the **Commonwealth Share**) is expressed as a percentage of the relevant **value** of the property (the **Commonwealth Share Percentage**) from time to time. The Commonwealth Share Percentage will **initially** be based on the "agreed percentage" of the original purchase price contributed by the Commonwealth under **clause 16** above. As such, given the value of the relevant property may change from time to time, the precise monetary value of the Commonwealth share will also vary depending on the time at which it is calculated. This will be the case even if the Commonwealth Share Percentage itself has not been adjusted.

  The **Commonwealth Share Percentage** can be:
  (a) **reduced** under Clause 25(4), to reflect repayments by the applicant (Under clause 36 or 42) or in circumstances where the applicant has made improvements to the property (under clause 60) and,
  (b) **increased** (under Clause 25(3), where the value of the relevant property as assessed by the participating lender for the purpose of settlement, is lower than the purchase price, to a percentage that preserves what would have been the value of the Commonwealth share on the date of settlement, had the value of the property at that date been equal to the purchase price.

- **Clause 22.** The applicant/joint applicants grant a second mortgage over the property in favour of the Commonwealth.
- **Clause 17**. The applicant/s must provide a deposit of at least 2% of the purchase price and cover additional costs such as legal, conveyancing and stamp duty.
- **Clause 7**. Property price caps are set out for capital cities, regional centres and other areas within each State and Territory.
- **Clause 8.** Income thresholds for Single and Joint applicants are set at $90,000 and $120,000 respectively and, indexed in accordance with Clause 9.

s 22 [redacted]

s 22 [redacted] Policy Analyst - Melbourne
Consumer and Competition Unit
Financial System Division

breaches of your privacy by ASIC.

Housing Australia requests

#	Regulatory issue	Request from HA	Housing Division position	Policy consideration
1	National Credit Code Applicability	HTB arrangements to be exempt from the National Credit Code	Supports in-principle	The Help to Buy product's status as a credit contract is not in keeping with the intent of the program. Regulatory certainty is also important for both lenders and Housing Australia. If it is considered credit then banks could be considered as acting as an intermediary – this is not consistent with the design of a Government scheme where people are making an active choice to participate and apply to the Government's scheme. Further many consumer credit obligations in the Code will not naturally fit with Help to Buy as a program. Exempting the Help to Buy side (and ensuring normal treatment applies to the primary mortgage) is an appropriate response.
2	National Consumer Credit Protection Act – Responsible Lending obligations	Bank loans provided to Help to Buy participants to be subject to reduced Responsible Lending requirements	Supports in-principle	Help to Buy repayments should not be taken into consideration by lenders when considering the provision of their own loan given any obligation to pay will be subject to future financial capacity and will have no impact on an individual's ability to repay a loan from a lender. Similarly, given Help to Buy's status as a legislated scheme and something that participants will need to actively apply for, the lender should have no duty to take special care or to explain in relation to the HTB aspects of the transaction. A lender should also be able to assume if the participant is applying for a loan and the Help

to Buy scheme, the combination meets the customers objectives and requirements.

The RLOs should otherwise apply in full to the lenders loan.

s 22