



3 November 2025

FOI ref: 4058

Senator Andrew Bragg

By email: [sophia.bayada@aph.gov.au](mailto:sophia.bayada@aph.gov.au)

Dear Senator Bragg

### FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 25 September 2025 for access, under the *Freedom of Information Act 1982* (FOI Act), to the following:

*I note that the Assistant Treasurer and Minister for Financial Services recently released an explanatory statement regarding a proposal to exempt the Help to Buy scheme from the Nation[a]l Consumer Credit Protection Act 2009 (Cth) ('the Credit Act').*

*I seek access to any correspondence, briefings and other documents, including emails and messaging on mobile devices, pertaining to the consultation between the Treasury and the Australian Securities and Investments Commission (ASIC) about exempting the Help to Buy scheme from the Credit Act.*

I am an authorised decision maker under section 23 of the FOI Act.

#### **Decision**

The Treasury has identified five documents within scope of your request, listed in the attached schedule. I have decided to release two documents in part. I have decided to refuse access to three documents in full. Irrelevant information in the documents has been deleted under section 22 of the FOI Act. My decision on each document is shown in the schedule.

The documents for release are attached.

Further information regarding my decision is set out below.

#### **Material Considered**

The material to which I have had regard in making this decision includes the scope of the request and content of the documents subject to your request, consultation responses from ASIC, the relevant provisions in the FOI Act and Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and advice from subject matter experts within the Treasury.

**treasury.gov.au**

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Parkes ACT 2600  
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## ***Reasons for decision***

### Material deleted pursuant to Section 22

Section 22 of the FOI Act allows information that is irrelevant to your request to be deleted.

The documents contain the names, signatures and direct phone numbers of government employees. We informed you in our acknowledgement email that it is our usual practice not to include the personal information of government employees and invited you to inform us if you did not agree with us processing the request on this basis. As we did not hear from you, the personal information of government employees has been deleted under section 22 of the FOI Act.

The documents also contain material that is irrelevant to your request. This material has been deleted under section 22 of the FOI Act.

### Section 42 – legal professional privilege

Section 42 of the FOI Act provides that a document is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The following criteria need to be met for a document to be privileged:

- there must be a legal adviser-client relationship;
- the communication must have been for the dominant purpose of giving or receiving legal advice;
- the advice given must be independent;
- the advice must be confidential in nature; and
- privilege must not have been waived by the client, either expressly or implied.

Documents 2 and 2a contain legal advice and material on the preparation of draft legislation. I am satisfied the relevant material satisfies the elements of privileged material set out above. I am also satisfied that the claim to legal professional privilege has not been waived, either expressly or implied.

I have therefore decided that Documents 2 and 2a are exempt in full under section 42 of the FOI Act.

### Section 47C – deliberative material

Section 47C of the FOI Act relevantly provides that a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency.

Documents 1 and 3 comprise of preliminary advice prepared as part of deliberative processes to advise on the application of the proposed Help to Buy Scheme exemption from the *National Credit Consumer Protection Act 2009* (NCCP Act). Document 3a contains preliminary advice on the policy considerations around the Help to Buy Scheme and proposed exemptions. I am satisfied this material is 'deliberative' material for the purposes of section 47C of the FOI Act. To the extent the advice contains factual information, I consider it to be inextricably intertwined with the deliberative material.

I have therefore decided that Documents 1, 3 and 3a are conditionally exempt in full under section 47C of the FOI Act. My consideration of the public interest is set out below.

#### Section 47E(d) – certain operations of agencies

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient operations of an agency.

Documents 1, 3 and 3a contain preliminary advice and analysis of the Help to Buy Scheme and the proposed exemption under the NCCP Act. One of Treasury's core functions is to provide authoritative policy advice to enable decision-making at Ministerial and Cabinet levels and, where policies require legislative changes to be implemented, to support the Government as it seeks passage of legislation in the Parliament.

I consider it is important that Treasury is able to develop and provide advice on these matters in a confidential environment. Disclosure of this material will hinder effective policy formulation and adversely affect Treasury's ability to provide advice to the Government to a substantial degree.

I have therefore decided that Documents 1, 3 and 3a are conditionally exempt under section 47E(d) of the FOI Act. My consideration of the public interest is set out below.

#### ***Public interest***

Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors favouring release, and section 11B(4) sets out factors that must not be taken into account. The FOI Guidelines set out factors in favour of, and against, releasing conditionally exempt material.

In favour of disclosure, I have considered the public interest factors favouring release of the material. This includes promoting the objects of the FOI Act, the increase of public participation in government decision making, the public interest in the topic, as well as the benefit of informed public debate based on accurate information.

Against release of the conditionally exempt material in Documents 1, 3 and 3a, I have considered the following:

- disclosure would impede Treasury's ability to provide frank, high-quality advice to the government in future;
- the importance of agencies being able to develop preliminary recommendations and advice on core issues in a confidential environment that is conducive to policy development and implementation by the government;
- the importance of maintaining the ability of government agencies to share comprehensive information to allow relevant Ministers to understand a particular issue before them; and
- the importance of preserving confidential government processes in circumstances where disclosure of the relevant material would undermine the effectiveness of the Cabinet and Parliamentary processes and inhibit the free and unqualified advice of agencies to government ahead of such processes.

Having regard to the factors in favour of and against disclosure, on balance, I consider the public interest factors against disclosure override the factors in favour of disclosure. I have

therefore decided that Documents 1, 3 and 3a are exempt in full under sections 47C and 47E(d) of the FOI Act.

***Rights of Review***

A statement setting out your rights of review in this matter is attached.

***Disclosure Log***

The Treasury publishes documents disclosed in response to FOI requests on the Treasury website. This is consistent with the arrangements established by section 11C of the FOI Act. In this instance, I consider that the documents released to you are appropriate for publication on the Treasury's FOI disclosure log.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N Hunter', with a stylized, cursive script.

Nerida Hunter  
First Assistant Secretary  
Housing Division

### FOI 4058 Document Schedule

| Doc No.    | Description   | Decision  |
|------------|---|---|
| <b>1.</b>  | Email correspondence with ASIC on the HTB exemption | Release in part <ul style="list-style-type: none"> <li>- Section 47C – deliberative material</li> <li>- Section 47E(d) – operations of agencies</li> <li>- Section 22 – irrelevant information</li> </ul> |
| <b>2.</b>  | Email correspondence – legal advice                 | Refuse in full <ul style="list-style-type: none"> <li>- Section 42 – legal professional privilege</li> <li>- Section 22 – irrelevant information</li> </ul>   |
| <b>2a.</b> | Draft legislation                                   | Refuse in full <ul style="list-style-type: none"> <li>- Section 42 – legal professional privilege</li> </ul>  |
| <b>3.</b>  | Email correspondence with ASIC                      | Release in part <ul style="list-style-type: none"> <li>- Section 47C – deliberative material</li> <li>- Section 47E(d) – operations of agencies</li> <li>- Section 22 – irrelevant information</li> </ul> |
| <b>3a.</b> | Consideration of Housing Australia requests         | Refuse in full <ul style="list-style-type: none"> <li>- Section 47C – deliberative material</li> <li>- Section 47E(d) – operations of agencies</li> <li>- Section 22 – irrelevant information</li> </ul>  |



Fully redacted pages have been removed from the Document Set

OFFICIAL: Sensitive

FOI 4058  
Document 1

**From:** s 22

**Sent:** Monday, 18 August 2025 10:12

**To:** s 22

[s 22@treasury.gov.au](mailto:s 22@treasury.gov.au)

**Cc:** s 22

[s 22@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU); s 22

[s 22@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU); s 22

[s 22@asic.gov.au](mailto:s 22@asic.gov.au);

s 22

[s 22@asic.gov.au](mailto:s 22@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]

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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.



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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.

Cheers,

s 22

– 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  
To: s 22  
Cc: s 22 ; s 22  
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 SEC OFFICIAL Sensitive.msg

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OFFICIAL: Sensitive

Dear s 22

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.

s 47C, s 47E(d)



s 47C, s 47E(d)

s 22

OFFICIAL: Sensitive

**From:** s 22 [s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Sent:** Monday, August 5, 2024 3:37 PM

To: s 22 @asic.gov.au> s 22  
s 22 @asic.gov.au> s 22 @asic.gov.au>;  
s 22 @asic.gov.au> s 22 @asic.gov.au>  
Cc: s 22 @treasury.gov.au>  
s 22 @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](mailto:nick.mathews@treasury.gov.au). [Learn why this is important](#)

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Dear s 22

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

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, including by means of a loan, 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

s 22 : Policy Analyst - Melbourne  
Consumer and Competition Unit  
Financial System Division

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