

CLAUSE NOTES

Help to Buy (Commonwealth Powers) Bill 2026

- Clause 1** **Short title**
- The short title will be the *Help to Buy (Commonwealth Powers) Act 2026*.
- Clause 2** **Commencement**
- Provides for the Bill to come into operation on the day it receives Royal Assent.
- Clause 3** **Interpretation**
- This clause defines certain words and expressions used in the provisions of the Act.
- Clause 4** **Adoption of versions of the Commonwealth Help to Buy Act**
- This clause provides for the primary and residual versions of the Commonwealth Help to Buy Act to be adopted under section 51 (xxxvii) of the Constitution of the Commonwealth.
- The structure of the Bill includes two separate adoptions to provide Tasmania with flexibility to choose how it participates in the Help to Buy scheme in the future, and to align with the drafting of the Commonwealth Act. In particular, the Governor-in-Council may choose to terminate the adoption of the primary version and retain the operation in Tasmania of the adoption of the residual version as set out in clause 7 of the Bill. In this circumstance, Housing Australia can continue to administer existing shared equity arrangements but cannot enter into any new such arrangements in Tasmania.
- Clause 5** **Commonwealth laws not otherwise affected**
- This clause provides that the Parliament of Tasmania intends that the Commonwealth Help to Buy Act may be expressly amended or have its operation otherwise affected at any time after commencement of clause 4. This could be by either or both –
- a provision of a Commonwealth Act the operation of

which is based on a legislative power of the Commonwealth Parliament other than as provided under the amendment reference; and

- a provision of an instrument made under the Commonwealth Act, or a Commonwealth Act the operation of which is based on a legislative power of the Commonwealth Parliament other than as provided under the amendment reference.

Clause 6

Amendment reference

This clause refers limited State legislative power to the Commonwealth Parliament.

The referral allows the Commonwealth to make express amendments to the *Help to Buy Act 2024* (Cth) in relation to the “amendment matters” defined in clause 3 of the Bill.

The referral is limited and specific. It authorises the Commonwealth Parliament to amend the Commonwealth Act only –

- by making express textual amendments, and
- only in relation to the matters Tasmania has agreed to refer.

This ensures the Commonwealth has sufficient flexibility to maintain and adjust the Help to Buy scheme, while preventing broader or unintended expansions of Commonwealth power.

Subclause (2) places limits on the reference by excluding any law which would have the effect of –

- giving Housing Australia power to enter shared-equity arrangements in Tasmania after Tasmania ceases to be a participating State. This is so a State (including Tasmania) can choose to stop new participants entering to the Help to Buy scheme within the State by terminating its adoption of the primary version of the Commonwealth Act.
- substantively removing or overriding State approval requirements or key Commonwealth Act provisions (sections 41, 41A or 42). This is so that the Commonwealth Parliament cannot make amendments to the Commonwealth Act that undermine key protections for a State as set out in those provisions.

Subclause (3) provides that the reference of State power is intended to apply only where the Commonwealth lacks its own power, and Tasmania has the power to refer.

Clause 7**Termination of adoption and amendment reference**

This clause provides that at any time, by proclamation in the *Gazette*, the Governor-in-Council may fix a day as they day on which to terminate –

- adoption of any or all of the primary version; or
- adoption of any or all the residual version; or
- the amendment reference.

For reference, under the Commonwealth Act, Tasmania will become a ‘participating State’ upon referring ‘primary matters’, ‘residual matters’, and ‘amendment matters’ to the Commonwealth. These functionally align with the definitions of ‘primary version’, ‘residual version’ and ‘amendment matters’ set out in this Bill, which means Tasmania will be a participating State upon commencement of the Bill.

Under the Commonwealth Act, Tasmania’s status as a participating State will change on termination of its adoption of certain parts under clause 7:

- it would become a ‘cooperating State’ if adoption of the primary version is terminated and the residual text reference and amendment reference are not terminated.
- it would become a ‘withdrawn State’ if it ceases to be a participating State but does not become a cooperating State.

The intention of clause 7 is to provide a mechanism to protect Tasmania’s interests in the events Tasmania no longer wishes the Commonwealth to have the power to legislate with respect to any of the adoptions or the reference.

Clause 8**Effect of termination of amendment reference before termination of adoption of primary version or residual version**

This clause provides that if the amendment reference ends while the adoption of the primary version or the residual version of the Commonwealth Act continues, the termination of the amendment reference does not affect –

- the validity or continued operation of any Commonwealth laws made under the amendment reference before it ended; or
- the continued operation in Tasmania of the Commonwealth Act as it existed immediately before the amendment reference ended.

This includes amendments to the Commonwealth Act that have been enacted but have not yet commenced, and amendments that the Commonwealth may make using its own powers as preserved by clause 5. Ending the amendment reference alone does not end the operation of the Commonwealth Act in Tasmania.

The purpose is to ensure continuity of the Help to Buy scheme in Tasmania despite the ending of the amendment reference.

Clause 9

Declaring certain matters to be excluded matters

Provides that the listed matters are declared to be excluded matters for the purposes of section 41A of the Commonwealth Act in relation to the Help to Buy scheme.

The intent of this provision is to ensure that in the event of an inconsistency between the matters listed under this clause and the Help to Buy scheme, the matters listed under this clause will take precedence over the Help to Buy program except to the extent prescribed by any regulations made under the Commonwealth Act.

This declaration of the excluded matters will only apply to the extent –

- necessary to ensure that no inconsistency arises between the Help to Buy program and the excluded matter; and
- that it is not possible for there to be concurrent operation between the Help to Buy scheme and the Tasmanian shared equity scheme.

For the avoidance of doubt, upon adoption it is intended that the meaning of excluded matter in the Commonwealth Act is to include all of the matters listed under this clause.

Clause 10

State's objection to matters

Provides for the power of the State Minister to object to regulations or legislative instruments being made under the Commonwealth Act.

This clause establishes the mechanism by which Tasmania may exercise its rights under section 46 of the Commonwealth Help to Buy Act to object to proposed Commonwealth regulations or other legislative instruments relating to the Help to Buy program.

The clause defines the Commonwealth Minister for these purposes and sets out the process for giving an objection, withdrawing an objection, and requesting additional time to consider a proposal. It provides that an objection or

withdrawal must be given by notice to the Commonwealth Minister and must be published in the *Gazette*, although a failure to publish does not affect the validity of the notice.

The clause also enables the Minister to extend the consultation period by a further 15 business days by giving notice during the minimum consultation period, after which the extended consultation period applies for the purpose of lodging an objection.

The overall intent is to clarify how Tasmania is to exercise its statutory rights under the Commonwealth Act, ensuring that the State has a clear, legally recognised process for objecting to or seeking more time to consider proposed Commonwealth instruments that may affect the operation of the Help to Buy scheme within the State.

Clause 11 Regulations

This clause authorises the Governor to make regulations for the purposes of this Act.

Clause 12 Administration of Act

This clause states that, until provided for in an Administrative Arrangement Order, the Act will be administered by the Minister for Housing and Planning, and the department responsible to the Minister in relation to the administration of the Act is the Department of State Growth.

Clause 13 Consequential amendments

This clause makes consequential amendments to the *Duties Act 2001*, the *First Home Owner Grant Act 2000*, the *First Home Owner Grant Regulations 2021* and the *Land Tax Act 2000*, as set out in Schedule 1.

Schedule 1 Duties Act 2001

Amends the *Duties Act 2001* to:

- insert a new section 32 which provides that the equity interest of the Commonwealth or Housing Australia under a Help to Buy arrangement is not accounted for when assessing duties.
- insert a new section (section 53A) which provides that duty is not chargeable on a change in interest in land purchased under a Help to Buy arrangement resulting from an owner of the land paying money to the Commonwealth or Housing Australia under the

arrangement. This would, for example, mean that duty is not charged if the owner buys out the Commonwealth's or Housing Australia's interest.

- insert definitions of relevant words and expressions.

First Home Owner Grant Act 2000

In relation to the *First Home Owner Grant Act 2000* (FHOG Act), the Bill would:

- amend section 5 to provide that any interest in land held by, or to be held by, the Commonwealth or Housing Australia under a Help to Buy arrangement is not a relevant interest in land for the purposes of the FHOG Act.
- amend section 40 to provide that certain protected information obtained in the administration of the FHOG Act can be provided to the Commonwealth or Housing Australia to assist in determining whether a person is ineligible to enter into a Help to Buy arrangement because they are receiving assistance under a State or Territory scheme.
- insert definitions of relevant words and expressions.

First Home Owner Grant Regulations 2021

Amends the First Home Owner Grant Regulations 2021 to insert a new regulation 5A which excludes the application of section 15 of the Act in respect of an interest in land held by the Commonwealth or Housing Australia under a Help to Buy arrangement (as defined in the Commonwealth Act).

The effect of this is that the Commonwealth or Housing Australia do not need to be listed as an applicant when applying for a First Home Owners' Grant.

Land Tax Act 2000

Amends the *Land Tax Act 2000* to insert a new section 11A which provides that, for the purposes of assessing land tax (including whether any exemptions or concessions apply), no account is to be taken of any interest that the Commonwealth or Housing Australia has in the land as the result of a Help to Buy arrangement.

Also inserts the definition of relevant words and expressions.