

NSW Shared Equity Scheme Policy Guidelines 2022



made under the
First Home Owner Grant and Shared Equity Act 2000

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Part 1 – Preliminary

Name

1.1 This instrument is the *NSW Shared Equity Scheme Policy Guidelines 2022*.

Authority

1.2 The Treasurer may publish this instrument for the purposes of the administration of a shared equity scheme under section 24D(1) of the *First Home Owner Grant and Shared Equity Act 2000*.

Nature of the Scheme

1.3 This Scheme is intended to help people to acquire their own home. Under the Scheme, the acquisition is subject to the State providing funding in exchange for a proportional interest in the property value.

Key terms

1.4 The **Act** is the *First Home Owner Grant and Shared Equity Act 2000*.

1.5 The **Scheme** is a reference to the shared equity scheme established under section 24C(1) of the Act in the *NSW Shared Equity Scheme Order 2022*.

1.6 The **Chief Commissioner** is the Chief Commissioner of State Revenue who must administer the Scheme in accordance with this instrument under section 24D(3) of the Act.

1.7 The **applicant** is a person who has lodged an application to participate in the Scheme. A reference to applicant also refers to **joint applicants** where there is more than one applicant in respect of the property.

1.8 The **participant** is a person whose application to participate in the Scheme has been approved by the Chief Commissioner; home loan, and where applicable, construction loan has been provided by a Panel Financier; and funds have been provided for the acquisition of a property under the Scheme. A reference to participant also refers to **joint participants** where there is more than one participant in respect of the property.

1.9 The **State** is the State of New South Wales.

1.10 The **Panel Financier** is a financial institution (from a panel of financiers) appointed by the State for the Scheme that has agreed to facilitate the delivery of the Scheme by providing a home loan, and where applicable, a construction loan to participants in cooperation with the State to deliver the Scheme.

1.11 The **Participation Agreement** is a contract between the participant and the State acting through the Chief Commissioner that sets out the terms and conditions of participation in the Scheme.

1.12 The **total property price** means:

(a) for an acquisition that does not involve an eligible comprehensive home building contract – the purchase price of the property, or

(b) for an acquisition that involves an eligible comprehensive home building contract – the purchase price of the property plus the sum for the construction works under the eligible comprehensive home building contract.

1.13 A **current property valuation** means a full valuation from an independent accredited valuer conducted not more than 90 days prior to its use.

1.14 A dictionary that provides an index of defined terms that apply to the entire instrument is in Schedule 1. The definitions in the Act do not apply in this instrument unless otherwise specified.

Eligibility to participate in the Scheme

- 1.15 To be eligible for participation in the Scheme:
 - (a) the applicant must be an eligible person (under Part 2),
 - (b) the property acquisition must be an eligible property transaction (under Part 3), and
 - (c) all conditions of final Scheme approval must be met (under Part 4).
- 1.16 The Chief Commissioner may approve the participation of the applicant in the Scheme subject to the availability of a Scheme place.
- 1.17 The number of Scheme places available is 3,000 in the 2022-23 financial year and 3,000 in the 2023-24 financial year.

Part 2 – Eligible persons

- 2.1 A person is eligible to apply to participate in the Scheme if the person:
 - (a) is an eligible transferee (clause 2.2),
 - (b) satisfies the income threshold (clause 2.10),
 - (c) has funds for the minimum financial contribution and acquisition costs (clauses 2.19 and 2.21), and
 - (d) satisfies the asset limit (clause 2.22).

Eligible transferee

- 2.2 An **eligible transferee** is a person who, at the completion of the contract for the purchase of land (being the time when settlement occurs and the person acquires the land):
 - (a) is a natural person (that is, not an organisation, partnership, company or other body or entity),
 - (b) is at least 18 years of age,
 - (c) is an Australian citizen or a permanent resident, where:
 - (i) **Australian citizen** has the same meaning as in the *Australian Citizenship Act 2007* (Cth), and
 - (ii) **permanent resident** means the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* (Cth), or a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* (Cth),
 - (d) intends to occupy the property as their principal place of residence,
 - (e) satisfies at least one of the following:
 - (i) is a single parent,
 - (ii) is a single person 50 years of age or older,
 - (iii) is a first home buyer who is employed as a key worker, or
 - (iv) is a domestic and family violence victim-survivor.
 - (f) is not entering into the Scheme as trustee of a trust that will hold the property,
 - (g) does not own any other land in Australia or overseas, excluding land which is held by the person solely as trustee of a trust or as the executor of a will,
 - (h) is not a shareholder in any corporation (other than a public company as defined in the *Corporations Act 2001* (Cth)) or beneficiary of a trust (other than a widely held trust as defined in the *Duties Act 1997*) that

owns land in Australia or overseas,

- (i) has not received a guarantee or other form of financial support by the Australian Government's National Housing Finance and Investment Corporation in relation to the purchase of the property (including the Home Guarantee Scheme or the Help to Buy shared equity scheme), and
- (j) if a joint applicant, satisfies the criteria in subclauses (a) to (i) of this clause under the application of clause 2.9.

2.3 For the purposes of this instrument, a person is a **single person** if they do not have a spouse.

- (a) A person is a **spouse** of another person if they are legally married or in a de facto relationship with that other person. In assessing eligibility, the Chief Commissioner may treat a person who is legally married to, or in a de facto relationship with, an applicant or participant as not being the applicant's or participant's spouse, if the Chief Commissioner is satisfied that the applicant or participant:
 - (i) is not cohabitating with the person, and
 - (ii) has no intention of cohabitating with or resuming cohabitation with the person.

2.4 For the purposes of clause 2.2(e)(i), a single person is a **single parent** if they have custody or joint custody of at least one dependent child (legally responsible), and cares for the dependent child at least 35 per cent of the time.

- (a) A **dependent child** is a person:
 - (i) under 16 years of age,
 - (ii) 16 to 18 years of age (under 19 years of age) in full-time study, or
 - (iii) 16 to 21 years of age (under 22 years of age) and in receipt of a disability support pension under the *Social Security Act 1991* (Cth).
- (b) The Chief Commissioner, if satisfied there is good reason to do so, may waive the requirement for a child between 16 and 18 years of age to be in full-time study.

2.5 For the purposes of clause 2.2(e)(iii), a **key worker** is a person employed under the relevant award or enterprise agreement and holds certain qualifications as set out below. Key workers can be employed either temporarily, permanently, full-time or part-time.

- (a) A teacher (up to Year 12) – holds conditional to proficient accreditation with the NSW Education Standards Authority (including early education teachers) and is employed under any of the following:
 - (i) Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2020,
 - (ii) Independent Schools (Teachers) Agreement 2017,
 - (iii) Independent Christian Schools Agreement 2021,
 - (iv) NSW and ACT Catholic Systemic Schools Enterprise Agreement 2020,
 - (v) Educational Services (Teachers) Award 2020,
 - (vi) various Early Childhood Teacher private enterprise agreements, or
 - (vii) any other award or enterprise agreement approved by the Chief Commissioner.
- (b) An early childhood educator – holds or is studying towards a Certificate III or Diploma in Children's services or Early Childhood Education and Care and is employed under the Children's Services Award 2010 or any other award or enterprise agreement approved by the Chief Commissioner.
- (c) A registered or provisionally registered nurse and/or midwife, an assistant in nursing, or an enrolled nurse – is employed under any of the following:

- (i) Public Health System Nurses and Midwives (State) Award 2021,
 - (ii) Nurses Award 2020,
 - (iii) Private Hospital Industry Nurses (multiple agreements),
 - (iv) aged care (multiple agreements),
 - (v) miscellaneous industrial agreements (multiple) including affiliated health organisations, medical centres and GP services, private sector day procedure services and private sector specialist services, or
 - (vi) any other award or enterprise agreement approved by the Chief Commissioner.
- (d) A police officer – is employed under the Crown Employees (Police Officers - Award) 2017 or any other award or enterprise agreement approved by the Chief Commissioner.
 - (e) A paramedic – is registered with the Australian Health Practitioner Regulation Agency and employed under any of the following:
 - (i) Paramedics and Control Centre Officers (State) Award 2021,
 - (ii) Ambulance and Patient Transport Industry Award 2020, or
 - (iii) any other award or enterprise agreement approved by the Chief Commissioner.
- 2.6 For the purposes of clause 2.2(e)(iii), a person is a ***first home buyer*** if the person, and if they have a spouse, their spouse, has not previously owned or co-owned residential property in Australia and has not been a party to an application for a first home buyer grant or duty concession that was approved by the Chief Commissioner.
- 2.6A For the purposes of clause 2.2(e)(iv), a person is a ***domestic and family violence victim-survivor*** if the person can demonstrate they are one of the following:
- (a) a complainant of a domestic violence offence, defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (CDPVA), where the offence resulted in a criminal conviction being imposed or a finding of guilt within the past five years,
 - (b) a protected person in a current Final Apprehended Domestic Violence Order or in a Final Apprehended Domestic Violence Order that has expired within the past five years, where:
 - (i) a 'protected person' has the same meaning as section 3 of the CDPVA, that is, the person for whose protection an Apprehended Domestic Violence order is sought or made, and
 - (ii) a 'Final Apprehended Domestic Violence Order' is a Final Apprehended Domestic Violence Order made by a court under Part 4 or Part 9 of the CDPVA or a final interstate Domestic Violence Order or registered foreign Domestic Violence Order under Part 13B of the CDPVA.
 - (c) a person against whom an injunction is directed under the *Family Law Act 1975* (Cth), made within the past five years, for their personal protection, or
 - (d) a person who was a victim-survivor of a domestic and family violence incident within the last five years, as identified by way of a declaration supported by any two of the following authorised persons in a prescribed form issued by the Chief Commissioner:
 - (i) a registered health practitioner, as defined in section 5 of the *Health Practitioner Regulation National Law (NSW)*, who holds general or specialist registration under that Law,
 - (ii) a person registered as a social worker (a member of the Australian Association of Social Workers),
 - (iii) an employee of a NSW government agency that provides services relating to child welfare,
 - (iv) an employee of a non-government agency that receives government funding to provide services relating to:

1. domestic violence or sexual assault, or
 2. refuge or emergency accommodation, or
- (v) a professional counsellor approved by the Commissioner of Victims Rights under section 31 of the *Victims Rights and Support Act 2013* to provide approved counselling services for the purposes of that Act.
- 2.6B For the purposes of clause 2.6A(a), (b) or (c), the Chief Commissioner may, if satisfied there are good reasons to do so in a particular case, extend the evidentiary timeframe from five to ten years.
- 2.7 In the case of a break-up of marriage or other relationship, where an applicant:
- (a) is a party to a previous marriage or de facto relationship,
 - (b) is acquiring the other party's interest in the couple's former property, and
 - (c) qualifies for a duty exemption under section 68(1) (break-up of marriage) or section 68(1A) (break-up of de facto relationship) of the *Duties Act 1997* in relation to the acquisition,
- the applicant will not need to enter an agreement for sale to transfer the property to qualify for the Scheme. If there is no agreement for sale, the acquisition will be treated as if it occurred, or is to occur, under an agreement for sale where the purchase price is the value of the property as determined by a current property valuation.
- 2.8 **Application for participation** – A person who will be an owner of the property must apply to the Chief Commissioner to become a participant in the Scheme. If a person has a spouse at the time of applying to the Chief Commissioner, both the person and the spouse must jointly apply for participation in the Scheme, even if the spouse will not be an owner of the property. Except in the case of a spouse who jointly applies for participation in the Scheme but will not be an owner of the property, a person is not permitted to apply unless:
- (a) the person will be the sole owner of the property, or
 - (b) the person with their spouse will jointly own the property and there will be no other owners.
- 2.9 Under a joint application, each person is an eligible transferee if, at the time of settlement:
- (a) both persons meet the eligibility criteria in clauses 2.2(a), (b), (d), (f), (g), (h) and (i),
 - (b) at least one person meets both clause 2.2(c) and clause 2.2(e)(iii), and
 - (c) if an applicant is a domestic and family violence victim-survivor under clause 2.2(e)(iv), the spouse must not be the person who was the perpetrator of domestic and family violence against the applicant, that is:
- (i) the defendant who received the criminal conviction in relation to the domestic violence offence in relation to the person satisfying clause 2.6A(a),
 - (ii) the defendant named in the Final Apprehended Domestic Violence Order in relation to the person satisfying clause 2.6A(b),
 - (iii) the person restrained by an injunction under the *Family Law Act 1975* (Cth) in relation to the person satisfying clause 2.6A(c), or
 - (iv) the person who committed the domestic and family violence incident against the victim-survivor in relation to the person satisfying clause 2.6A(d).

Note: For the avoidance of doubt, when determining if joint applicants own any land, if one applicant has an interest in land, regardless of whether the other applicant also has an interest in land, the joint applicants will be taken to have an interest in land.

Income thresholds

- 2.10 **Income thresholds** – An applicant satisfies the relevant **income threshold** if the gross annual income for the relevant period is no more than:

- (a) \$90,000 for a single person applicant for a Scheme assessment in the 2022-23 financial year, or
 - (b) \$120,000 in aggregate for joint applicants for a Scheme assessment in the 2022-23 financial year.
- 2.10A An applicant satisfies the relevant income threshold if the gross annual income for the relevant period is no more than:
- (a) \$93,200 for a single person applicant for a Scheme assessment in the 2023-24 financial year, or
 - (b) \$124,200 in aggregate for joint applicants for a Scheme assessment in the 2023-24 financial year.
- 2.11 The **relevant period** for an applicant in clause 2.10 and 2.10A is the last full financial year prior to the date of application.
- 2.12 The Chief Commissioner may, if satisfied there is good reason to do so, consider and use more recent information in relation to an applicant's income for clause 2.10 and 2.10A if there has been a material change in the applicant's circumstances since the last full financial year.
- 2.13 An applicant's **gross annual income** is the sum of their 'assessable income' and 'exempt income' (as per the *Income Tax Assessment Act 1997* (Cth)). This includes:
- (a) employee income (from an employer or own incorporated enterprise), such as wages and salaries, salary sacrifice amounts, allowances, bonuses, and assessable termination payments,
 - (b) certain government payments and allowances,
 - (c) investment income (including interest, rent, dividends and royalties),
 - (d) private transfers (such as a superannuation pension and income from annuities), and
 - (e) personal service income.
- 2.14 Child support payments and lump sum workers compensation payments are not included in gross annual income. If salary sacrifice amounts (as referred to in 2.13(a)) have the effect of reducing assessable income or exempt income, then those amounts are included in gross annual income. An adjustment to gross annual income may factor in an attributable share of business net income (instead of gross income) from their unincorporated business, including sole traders and partnerships.
- 2.15 **Indexation of income thresholds** – For Scheme assessment purposes in a particular financial year, the income thresholds in clause 2.10A and clause 2.22A will be adjusted on 1 July of each financial year in accordance with the indexed income threshold rounded up to the nearest \$100.
- 2.16 The indexed income threshold for each income threshold in clause 2.10A and clause 2.22A is:
- (a) for a Scheme assessment in the 2024-25 financial year, the income threshold in 2.10A multiplied by the indexation factor, and
 - (b) for a Scheme assessment in subsequent financial years, the previous financial year's indexed income threshold multiplied by the indexation factor.
- 2.17 The indexation factor is 1 *plus* the Australian Bureau of Statistics (ABS) published annual percentage change in the Wage Price Index for NSW (total hourly rates of pay excluding bonuses) for the March quarter before the relevant financial year.
- 2.18 The adjusted income thresholds must be published on the Revenue NSW website.

Minimum financial contribution and acquisition costs

- 2.19 **Minimum financial contribution requirement** – The applicant must have a minimum financial contribution at settlement of two per cent of the total property price, accumulated through genuine savings as defined by the Panel Financier.
- 2.20 The **financial contribution** of the applicant is the total amount of funds the applicant contributes towards the

total property price.

Note: The required financial contribution of the applicant is subject to the conditions in clause 5.10.

- 2.21 **Acquisition costs requirement** – The applicant must have sufficient funds to cover acquisition costs associated with the property purchase and where applicable, construction works, under an eligible home building contract. The applicant is required to pay acquisition costs associated with the property purchase and applicable construction works, including any stamp duty, conveyancing fees, legal fees, cost of relevant certificates, settlement fees, building inspection costs and registration fees. Any fees for the registration of the Scheme mortgage will be borne by the State.

Asset limits

- 2.22 An applicant satisfies the **asset limit** if the financial assets of the applicant on application are no more than:
- (a) 30 per cent of the total property price if the joint applicants' aggregate gross annual income is more than \$90,000 for a Scheme assessment in the 2022-23 financial year,
 - (b) 45 per cent of the total property price if the applicant's aggregate gross annual income is up to \$90,000 for a Scheme assessment in the 2022-23 financial year, or
 - (c) 65 per cent of the total property price if the applicant is a single person 50 years of age or older for a Scheme assessment in the 2022-23 financial year.
- 2.22A An applicant satisfies the asset limit if the financial assets of the applicant on application are no more than:
- (a) 30 per cent of the total property price if the joint applicants' aggregate gross annual income is more than \$93,200 for a Scheme assessment in the 2023-24 financial year,
 - (b) 45 per cent of the total property price if the applicant's aggregate gross annual income is up to \$93,200 for a Scheme assessment in the 2023-24 financial year, or
 - (c) 65 per cent of the total property price if the applicant is a single person 50 years of age or older, or a domestic and family violence victim-survivor, for a Scheme assessment in the 2023-24 financial year.
- 2.23 **Financial assets**, whether in Australia or overseas, include:
- (a) currency and deposits (cash, savings, gold, monetary non-refundable gifts, lump sum payments other than workers compensation payments and funds received from a superannuation fund),
 - (b) securities and related assets (shares, bonds, investments etc),
 - (c) loans and placements (that are receivable by the applicant),
 - (d) superannuation amounts that may be withdrawn from a superannuation fund at the discretion of the member without satisfying early access provisions,
 - (e) an attributable share of net fixed assets of a business (excluding trading stock and intangible assets),
 - (f) household assets that the Chief Commissioner considers to be luxury items, and
 - (g) any other financial assets that the Chief Commissioner considers to be relevant for determining eligibility.
- 2.24 Ordinary non-luxury household assets are not included in the calculation of financial assets for clause 0.
- 2.25 In the event of a break-up under clause 2.7, the applicant's share of the net equity (that is, the current property valuation less the mortgage) in the property is treated as a financial asset for the purposes of clause 2.23.

Part 3 – Eligible property transactions

- 3.1 An eligible person must undertake an eligible property transaction to be eligible to participate in the Scheme. For the purposes of participating in the Scheme, a spouse who is a joint applicant but will not be an owner of the property is taken to have undertaken an eligible property transaction if the spouse who will be an owner of

the property undertakes an eligible property transaction.

- 3.2 A transaction for the acquisition of a property is an ***eligible property transaction*** if it:
- (a) is an eligible agreement for sale (clause 3.3), and
 - (b) satisfies the relevant property price threshold (clause 3.9).

Eligible agreement for sale

- 3.3 An agreement for sale is an ***eligible agreement for sale*** if:
- (a) it is for the acquisition of either:
 - (i) a home,
 - (ii) a vacant block of residential land where the purchaser has signed an eligible comprehensive home building contract, or
 - (iii) a property intended to be demolished and replaced where the purchaser has signed an eligible comprehensive home building contract,
 - (b) it is for the acquisition of the whole of the property,
 - (c) the property is located in New South Wales,
 - (d) it does not involve the acquisition of a business or business premises,
 - (e) either:
 - (i) it is for the vacant possession of the property, or
 - (ii) in respect of a home subject to a lease entered into by the previous owner, the lease expires in less than 12 months of settlement, and
 - (f) either:
 - (i) the vendor is not a related person of the applicant, or
 - (ii) the vendor is a related person of the applicant and the purchase price does not exceed the current property valuation.

Note: For clause 3.3(e)(ii), after the lease expires the participant is required to move into the property under the obligation to occupy the property as a principal place of residence.

- 3.4 For the purposes of this instrument, a ***related person*** has the same meaning as in the *Duties Act 1997*.
- 3.5 An agreement for sale, in relation to land on which there are two or more homes, is for the acquisition of the whole of the property if, the purchaser or transferee:
- (a) will be entitled to occupy one home on the land as an exclusive occupancy,
 - (b) will be the only person with a right of occupancy of that home, and
 - (c) will have an unconditional right to sell the exclusive occupancy, without regard to the interest of owners of other homes on the land.
- 3.6 A ***home*** for the purposes of this instrument means a dwelling which may lawfully be occupied and which, in the opinion of the Chief Commissioner, is suitable for occupation, and includes where applicable the land on which the home is built. It includes the following dwelling types:
- (a) house,
 - (b) townhouse,

- (c) strata unit (including associated utility lots),
 - (d) company title unit, or
 - (e) flat or duplex.
- 3.7 In this Part, a **utility lot** means a lot designed to be used primarily for storage or accommodation of motor vehicles or goods, and an **associated utility lot** means a utility lot if:
- (a) the utility lot is transferred with the strata unit,
 - (b) its use is restricted to the owner or occupier of the strata unit, and
 - (c) it is not suitable to be used for human occupation as a residence, office, shop or similar.
- Note: Eligibility to participate in the Scheme is dependent on a Panel Financier providing approval for a loan for the property, based on their lending policies. This may mean that certain dwelling types, such as company title units, or certain properties may not be eligible to participate.*
- 3.8 An **eligible comprehensive home building contract** is a signed contract:
- (a) with a licensed or registered builder who is not a related person of the applicant,
 - (b) under which the builder undertakes to build a home on land from the inception of the building work to the point where the home is ready for legal occupation, and
 - (c) that specifies a fixed price sum for the construction of the home.

Property price thresholds

- 3.9 A transaction will satisfy the **property price threshold** if the greater of the total property price or the current property valuation at the signing of an agreement for sale is no more than:
- (a) \$950,000 in Sydney and major regional centres (including Newcastle & Lake Macquarie, Illawarra and North Coast of NSW), or
 - (b) \$600,000 in other regional areas of NSW.
- 3.10 For strata units, associated utility lots will contribute to the total property price and the current property valuation of the property.
- 3.11 For transactions that involve an eligible comprehensive home building contract, the current property valuation is as if the work were completed.
- 3.12 The Chief Commissioner, if satisfied that an applicant has deliberately entered into material post-contract variations to allow the total property price at the signing of an agreement for sale to satisfy the property price threshold (per clause 3.9), can determine the sum for the construction works under the eligible comprehensive home building contract to include any additional contracts or variations even if agreed to after the purchaser has signed the eligible comprehensive home building contract.
- 3.13 To determine the relevant property price threshold in clause 3.9, the ABS' Greater Capital City Statistical Area is used to define Sydney (which includes the Central Coast). Major regional centres of Newcastle & Lake Macquarie and Illawarra align with the ABS' statistical area level 4 (SA4) definitions. The North Coast of NSW is defined to align with the following ABS SA4 definitions:
- (a) Mid-North Coast,
 - (b) Coffs Harbour-Grafton, and
 - (c) Richmond-Tweed.

Property valuations

- 3.14 Property valuations are required for the purposes of administering the Scheme. A full valuation must include:

- (a) a physical inspection of the property,
 - (b) photos of the property,
 - (c) examination of property conditions and zoning restrictions,
 - (d) a report on the valuer's findings and assessment, and
 - (e) any other details that the Chief Commissioner deems necessary for the administration of the Scheme.
- 3.15 For full valuations that involve construction works under an eligible comprehensive home building contract, the valuation will include an assessment of the value of the property as if the work were completed.
- 3.16 The cost of a property valuation for the purposes of the Scheme is:
- (a) incurred by the State where:
 - (i) the participant applies to make a voluntary payment or the Chief Commissioner requires a payment so that the participant acquires part or all of the Scheme interest and one of the five subsidised valuations (as per clause 8.3) are available, or
 - (ii) the Chief Commissioner requires a post-modification valuation, and
 - (b) incurred by the participant where:
 - (i) the value of the property at the signing of an agreement for sale is being determined,
 - (ii) a pre-modification valuation is to be undertaken,
 - (iii) the participant seeks to re-finance their Panel Financier loan, and this is not done in connection with a payment that would meet the conditions of clause 3.16(a)(i),
 - (iv) the participant applies to make a voluntary payment or the Chief Commissioner requires a payment of part or all of the Scheme interest and no subsidised valuations referred to in 3.16(a)(i) are available, or
 - (v) the participant sells the property, including a valuation of the property to assess the reduction in value as a result of failure to undertake reasonable maintenance (per clause 6.14) and unapproved modifications (per clause 6.24).

Note: The Chief Commissioner has certain powers to require a valuation and recover costs in specific situations under section 36A of the Act.

Part 4 – Entering the Scheme

- 4.1 To participate in the Scheme, an eligible person undertaking an eligible property transaction (in accordance with clause 3.1) must:
- (a) require a Scheme Amount from the State (which will give the State an interest in the property) to acquire the property (that is, the applicant must not have the financial capacity to be able to acquire the property with a loan and their financial assets),
 - (b) secure final loan approval for the Scheme from a Panel Financier,
 - (c) subject to clause 2.9, meet all other conditions for final approval in the Scheme (including conditions in the Participation Agreement), and
 - (d) sign a Participation Agreement and a Scheme mortgage with the Chief Commissioner in respect of the home to be funded under the Scheme.
- 4.2 In the case of a spouse who is a joint applicant to participate in the Scheme but who will not be a joint owner of the property, they will not be required to meet the criteria in clause 4.1(c) and (d).
- 4.3 The Chief Commissioner may approve the participation of the applicant into the Scheme subject to the

availability of a Scheme place (as per clause 1.17).

- 4.4 To determine the requirement for a Scheme amount in clause 4.1(a), a Panel Financier will assess an applicant's ability to acquire the property with a non-Scheme loan and reasonable use of their financial assets as a financial contribution (as per clause 2.20).

Note: The Chief Commissioner has the function of establishing application processes, including pre-approval and final approval processes, relating to participation in the Scheme under the Act.

Part 5 – Scheme amount and Scheme interest

- 5.1 The **Scheme amount** is the amount of money provided, and where applicable expected to be provided for construction works, by the State at the time of settlement, in exchange for a Scheme interest in the property.
- 5.2 The **Scheme interest** is the proportion of the property value that the State holds an interest in through the Scheme. The Scheme interest is secured in the form of a registered mortgage, referred to as a Scheme mortgage, ranking behind the mortgage of the Panel Financier and before the interest of the participant.

Scheme amount calculation

- 5.3 The **maximum Scheme amount** is the total property price multiplied by:
- (a) 30 per cent for an established home, or
 - (b) 40 per cent for a new home.
- Note: The Scheme amount provided by the State might not be the maximum Scheme amount as the Scheme amount is calculated in clause 5.10.*
- 5.4 For the Scheme mortgage between the State and the participant, no payments (of rent, interest or otherwise) are required on the Scheme interest in the property whilst the participant complies with ongoing Scheme eligibility criteria and obligations.
- 5.5 A **new home** for the purposes of this Part is a home that has not been previously occupied or sold as a place of residence, and includes:
- (a) a newly built home,
 - (b) a home built on previously vacant land (using an eligible comprehensive home building contract),
 - (c) a newly built home purchased off-the-plan within 90 days before settlement or completed construction,
 - (d) a substantially renovated home, or
 - (e) a home built to replace demolished premises (using an eligible comprehensive home building contract).
- 5.6 A **home built on previously vacant land** includes a house and land package and a land and separate contract to build a home.
- (a) A house and land package is a new home where the home is purchased by entering into a contract of sale to purchase land from the same person (including persons within the same corporate group) as the person who is contracted to build the home. These can either be in the same contract or two separate contracts.
 - (b) A land and separate contract to build a home is a new home where the home is purchased by entering into a contract of sale to purchase land from a different person (including persons within the same corporate group) to the person who is contracted to build the home.
- 5.7 **Vacant land** has the same meaning as in section 25(8) of the *Duties Act 1997*.
- 5.8 A **substantially renovated home** for the purpose of clause 5.5 is a home that has been created through renovations in which all, or substantially all, of a building is removed or replaced (whether or not the renovations involve the removal or replacement of foundations, external walls, interior supporting walls, floors or staircases), and as renovated, has not been previously occupied or sold as a place of residence.

- 5.9 A **home built to replace demolished premises** for the purpose of clause 5.5 is where a home has been built to replace a demolished premises on the same land and the participant did not occupy the demolished premises as a place of residence before it was demolished.
- 5.10 **Scheme amount calculation** – The Scheme amount will be determined by:
- the total property price,
 - less the maximum loan for which the Panel Financier has given final approval,
 - less the financial contribution of the applicant, which is required to be no less than:
 - the minimum financial contribution of two per cent of the total property price (per clause 2.19), plus
 - any excess savings the Chief Commissioner has determined are required to be used as a financial contribution (per clause 5.11), and
 - up to the maximum Scheme amount in clause 5.3.
- 5.11 If the applicant is eligible for the Scheme based on the asset test (clause 2.22), the Chief Commissioner, in determining the Scheme amount, has the discretion to require the applicant to use some or all of any ‘excess savings’ as part of their financial contribution towards the total property price (increasing the applicant’s required financial contribution and reducing the Scheme amount). **Excess savings** are the financial assets of the applicant greater than \$100,000 in aggregate. The Chief Commissioner will consider what is reasonable in the circumstances based on the intended use of the excess savings.
- 5.12 Any savings of the applicant that are not required by the Chief Commissioner to be used under clause 5.11, or not required by the Panel Financier as part of their loan assessment, can be used at the discretion of the applicant, as long as the financial contribution of the applicant meets the two per cent minimum requirement and all acquisition costs are funded by the applicant.
- 5.13 On application, the applicant will be credited any financial contribution that was paid prior to settlement by the applicant to the vendor that is:
- in excess of the applicant’s financial contribution under clause 5.10(c), and
 - to a maximum of the acquisition costs at settlement (see clause 2.21) plus any funds necessary to refund temporary borrowings that were used to pay the vendor.
- Note: A credit of a financial contribution will not be paid to the applicant if the eligible transaction does not settle. Temporary borrowings include refundable gifts and private market loans.*
- 5.14 If the calculated Scheme amount is zero or negative, then the applicant will fail to meet clause 4.1(a) and does not require a Scheme amount from the State to acquire the property.

Scheme interest calculation

- 5.15 The Scheme interest, at the time of settlement, is the Scheme amount divided by the lesser of the total property price or the current property valuation. Where an eligible comprehensive home building contract is involved, the current property valuation is as if the work were completed.

$$\text{Scheme interest} = \frac{\text{Scheme amount}}{\text{Lesser of Total property price or Current property valuation}}$$

Note: The Scheme interest can exceed 40 per cent for a new home and 30 per cent for an established home if the current property valuation is less than the total property price.

- 5.16 The Scheme interest is adjusted if:
- a payment of part of the Scheme interest has occurred (see clause 8.6),
 - the Chief Commissioner approves construction works cost overruns (see clause 5.19),

- (c) an approved modification is completed (see clause 6.23),
- (d) a modification that is not permitted reduces the value of the property (see clause 6.25), or
- (e) the property has not been maintained, repaired, altered, or made good and this has a detrimental impact on the value of the property (see clause 6.18).

5.17 The **Scheme interest amount** is the amount of money that is required to pay for the Scheme interest (following any adjustments as per clause 5.16), which would result in Scheme exit. The Scheme interest amount, at any point in time, is calculated as follows:

$$\text{Scheme interest amount} = \text{Scheme interest} \times \text{Greater of Current property valuation or Sales price}$$

- (a) The current property valuation is applied to calculate the Scheme interest amount when the participant is paying the Scheme interest and is not selling the property. In the event of sale of the property, the greater of the sales price and the current property valuation is applied to calculate the Scheme interest amount.

Construction works

5.18 Where an eligible comprehensive home building contract is involved:

- (a) construction works must commence within 12 months of the transfer of the land upon which a home will be built to the participant, and
- (b) construction works must be completed within 24 months of the transfer of the land upon which a home will be built to the participant.

On application, the construction works time periods may be extended if the Chief Commissioner determines it is reasonable in the circumstances and approval has been provided by the Panel Financier.

5.19 If following settlement, the construction costs are estimated to exceed the fixed price sum of construction works under the eligible comprehensive home building contract and the increased costs are not variations caused by a participant decision (cost overruns), the Chief Commissioner, on application, may approve the contribution by the State of an increased Scheme amount and an adjustment to the Scheme interest where:

- (a) all available funding from the participant and Panel Financier has been exhausted,
- (b) the increased Scheme amount in totality, does not exceed the maximum Scheme amount, and
- (c) the Chief Commissioner is satisfied that the increased Scheme amount is necessary for completion of the construction works.

5.20 If an adjustment to the Scheme interest is approved in clause 5.19, the Scheme interest is adjusted at the time the State commits to providing an additional Scheme amount, as follows:

$$\text{Scheme interest}_{\text{adjusted}} = \frac{\text{Scheme amount}_{\text{settlement}} + \text{Scheme amount}_{\text{increase}}}{\text{Lesser of [Total property price}_{\text{settlement}} + \text{Cost overruns}] \text{ or Property valuation}_{\text{settlement}}}$$

Part 6 – Ongoing eligibility and obligations

6.1 Participants must meet the ongoing requirements in this Part to remain eligible for the Scheme. These include compliance with the:

- (a) obligations for all relevant participants,
- (b) ongoing eligibility criteria,
- (c) property obligations, and
- (d) reporting obligations for a change in circumstance.

Obligations for all relevant participants

- 6.2 The obligations for all relevant participants are:
- (a) all relevant participants that are an owner of the property are required to be a party to the Participation Agreement involving that property,
 - (b) there can be a maximum of two relevant participants, provided that one participant is the spouse of the other participant, and
 - (c) where an owner of the property has a spouse that is not an owner of the property, they must provide all relevant information of their spouse when requested by the Chief Commissioner and meet reporting obligations for a change in circumstance.
- 6.3 A relevant participant is:
- (a) each person who is an owner of all or any part of the property, and
 - (b) the spouse of a person who is an owner of all or any part of the property.
- 6.4 The Chief Commissioner may approve a change in the ownership structure of a property and participation in the Scheme to reflect a change in spousal relationships. However, where there is a change in spousal relationships and the Chief Commissioner considers that a change in ownership structure or participation in the Scheme to preserve the obligation under clause 6.2 would not be appropriate or would jeopardise payment of the Scheme interest, the Chief Commissioner may determine alternative obligations under clause 6.2 or require payment of the Scheme interest amount. The Chief Commissioner may not approve any increase in the Scheme amount as a result of a change in ownership structure or participation in the Scheme.

Ongoing eligibility criteria

- 6.5 The ongoing eligibility criteria for participants in the Scheme are:
- (a) not exceeding the relevant income threshold in two consecutive full financial years, where:
 - (i) the relevant income threshold is per clause 2.10 and adjusted for each financial year in accordance with clause 2.15,
 - (ii) a reference to an applicant in clauses 2.10 to 2.13 is to be read as a reference to a participant for the purposes of ongoing eligibility, and
 - (iii) the relevant period in clause 0 for a participant is each full financial year immediately prior to a periodic review.
 - (b) being an Australian citizen or permanent resident (in accordance with clause 2.2(c)), which is to be met by at least one participant,
 - (c) not owning other land (in accordance with clause 2.2), which is to be met by all participants, and
 - (d) occupancy as a principal place of residence, which is to be met by at least one participant (see clause 6.7).
- 6.6 These ongoing eligibility criteria are applied to all relevant participants (per clause 6.3) taking account of any changes in spousal relationship status (per clause 6.4).
- 6.7 **Occupancy as principal place of residence** – The participant is required to occupy the property as their principal place of residence for the entire duration of their participation in the Scheme, allowing for a property that is subject to a lease under clause 3.3(e)(ii). Subject to clauses 6.8 to 6.11, a home is a participant's principal place of residence if the home, and no other home, is continuously used and occupied by the participant for residential purposes and for no other purposes.
- 6.8 For the purposes of the principal place of residence requirement (clause 6.7), if the home contains a residential occupancy other than that of the participant, the residential occupancy may be disregarded if:
- (a) the residential occupancy is an excluded residential occupancy, and

- (b) the home contains (out of a total of all rooms in the home) not more than one of those excluded residential occupancies (not including the occupancy of the participant), even if income is derived from the residential occupancy from a lease.
- 6.9 For the purposes of clause 6.8, each of the following residential occupancies is an excluded residential occupancy:
- (a) one room,
 - (b) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy,
 - (c) one flat,
 - (d) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, and one room,
 - (e) one flat and one room, or
 - (f) two rooms, each of which is separately occupied.
- 6.10 **Other principal place of residence concessions** – For the purposes of the principal place of residence requirement (clause 6.7), there are concessions as follows:
- (a) **Incidental business use** – If a home is used and occupied by the participant primarily for residential purposes but not more than one room is used primarily for business purposes, the use may be disregarded if the business is primarily conducted elsewhere, even if income is derived from the business use.
 - (b) **Full time care** – Any period the participant is in full time care (resides at a hospital, mental hospital, aged care establishment, with a carer eligible for carer payment) they will be regarded as meeting the principal place of residence requirement for the home, if the Chief Commissioner is satisfied that:
 - (i) the participant used and occupied the home as their principal place of residence for a continuous period of at least six months prior to entering into full-time care, and
 - (ii) since the participant entered full time care, no income has been derived from the home except from an excluded residential occupancy (clause 6.9) or income from a person occupying the home if the income is no more than reasonably necessary to cover the property outgoings (clause 6.12) and maintenance (clause 6.14).
 - (c) **Absence from principal place of residence** – On application, the Chief Commissioner may approve a period of up to three years (absence period) during which time the participant may be absent from the home, but the home will be treated as the participant's principal place of residence, if the Chief Commissioner is satisfied that the following eligibility criteria will be met during the absence period. The eligibility criteria are:
 - (i) the participant used and occupied the home as their principal place of residence for a continuous period of at least six months prior,
 - (ii) during the absence period, no income will be derived from the home except from an excluded residential occupancy (clause 6.9) or income from a person occupying the home if the income is no more than reasonably necessary to cover the property outgoings (clause 6.12) and maintenance (clause 6.14), and
 - (iii) within 12 months of the end of the absence period, the participant will have lawfully recommenced occupation of the home as their principal place of residence and will continuously occupy the home for at least six months.
 - (d) **Unoccupied to allow construction works** – On application, the Chief Commissioner may approve unoccupied land to be treated as a principal place of residence for a continuous period of up to two years (construction period) if the Chief Commissioner is satisfied that the following eligibility criteria will be met during the construction period. The eligibility criteria are:

- (i) the land is unoccupied to allow works to be carried out to enable the land to be used as the principal place of residence of the participant,
- (ii) within 12 months of settlement of the land upon which a home will be built, the works will physically commence, or significant steps will be taken to allow the works to physically commence,
- (iii) within 24 months of settlement of the land upon which a home will be built, works will be completed,
- (iv) during the construction period, no income will be derived from the land, and the participant does not own any other land used and occupied as their principal place of residence, and
- (v) within 12 months of the end of the construction period, the participant will have lawfully started to occupy the home as their principal place of residence and have continuously occupied the home for at least six months.

The Chief Commissioner may extend the construction period in this clause if the Chief Commissioner is satisfied it is reasonable in the circumstances.

- (e) **Period to commence occupation** – A home will be treated as a principal place of residence for a period of up to 12 months (commencement period) following settlement if the following eligibility criteria will be met. The eligibility criteria are:
 - (i) during the commencement period no income is derived from the home except by a tenant under a lease entered into by the previous owner, and
 - (ii) the participant will continuously occupy the home for at least six months, with that occupation starting within the commencement period.
- 6.11 If the participant fails to meet the eligibility criteria for the principal place of residence concessions in clause 6.10 where an approval is given by the Chief Commissioner, the approval is revoked and the participant is reassessed for the period to which the approval applied.

Property obligations

- 6.12 **Property outgoings** – The participant is responsible for all costs associated with the ownership of the property. These costs include insurance, utilities, body corporate fees and charges, council rates, duty and other taxes and charges assessed against the property.
- 6.13 **Panel Financier loan** – The participant will need to meet all repayments on their loan, and where applicable, their construction loan, with the Panel Financier.
- 6.14 **Property maintenance** – The participant is required to cover the costs of, and make all reasonable efforts to:
 - (a) maintain the property to an acceptable standard,
 - (b) keep the property in good working order, carry out repairs or make alterations where relevant, and
 - (c) make good any damage or defects to the property.
- 6.15 No approval from the Chief Commissioner is required to carry out maintenance work. However, the participant must notify the Chief Commissioner of any damage or defect that may impact the property value within three months of such damage or defect occurring.
- 6.16 The participant, after having received reasonable notice from the Chief Commissioner, must:
 - (a) permit the Chief Commissioner to inspect the condition and state of repair of the property, and
 - (b) carry out repairs, maintenance, alterations or making good of the property at their own cost, if such works are directed by the Chief Commissioner.
- 6.17 If the participant does not comply with a notice to carry out works in clause 6.16, the Chief Commissioner may procure a third party to carry out the works and the participant must pay the costs incurred.

- 6.18 If the Chief Commissioner determines that the participant has not made all reasonable efforts to ensure the property is maintained, repaired, altered or made good consistent with clause 6.14, then on exit from the Scheme, the Scheme interest must be adjusted to compensate for failure to meet this requirement as below. A valuation (***reasonable maintenance valuation***) to assess the reduction in value caused by the participant's failure to comply with this obligation must be obtained with the valuation on exit from the Scheme.

$$\text{Scheme interest}_{\text{adjusted}} = \text{Scheme interest}_{\text{pre-adjustment}} \times \frac{\text{Property valuation}_{\text{reasonable maintenance}}}{\text{Property valuation}_{\text{current}}}$$

- (a) The cost of this valuation is incurred by the participant, as noted in clause 3.16.

- 6.19 **Insurance of property** – The property must always be insured for the full reinstatement or replacement value evidenced with a certificate of insurance for the property. The insurance policy must be taken out with an authorised insurer and must note the Panel Financier and State's interest as mortgagees of the property. The property must be insured against loss or damage from fire (including bushfire), lightning, flood, storm, tempest, earthquake, water damage, explosion, malicious damage and other risks usually covered under a comprehensive insurance policy.

- 6.20 **Significant modifications** – Significant modifications that will potentially affect the value of the property require approval from the Chief Commissioner. These are modifications that:

- (a) cost at least \$20,000, incurred within a 12-month period, or
- (b) require council approval (including complying development).

- 6.21 The Chief Commissioner may only approve a significant modification if the Chief Commissioner is satisfied that:

- (a) the modifications are not repairs, maintenance, alterations or making good of the property consistent with clause 6.14,
- (b) the costs of the modification are not overstated,
- (c) the modification will be value adding or value neutral, and
- (d) all consents and authorisations necessary for the proposed works have been obtained.

- 6.22 A full valuation, consistent with the requirements in clause 3.14, will be required for the property before and after an approved significant modification (see clause 6.21). The pre-modification valuation report must include an estimate of the post-modification value excluding the impact of expected general market movements before and after the modification. If the Chief Commissioner is satisfied that the modification has been completed consistently with its approval, the Chief Commissioner may accept the pre-modification valuation report on the estimated post-modification valuation for the purposes of calculating the adjusted Scheme interest.

- 6.23 The Scheme interest will be adjusted at the time of the modification's completion to take into account the change in property value after the modification, excluding the impact of general market movements between the two property valuations and excluding the impact of any repairs, maintenance, alterations or making good of the property consistent with clause 6.14, as follows:

$$\text{Scheme interest}_{\text{post-modification}} = \text{Scheme interest}_{\text{pre-modification}} \times \frac{\text{Property valuation}_{\text{pre-modification}}}{\text{Property valuation}_{\text{post-modification}}}$$

- (a) The pre-modification valuation costs are incurred by the participant and any post-modification valuation costs are incurred by the State, as referred to in clause 3.16.

- 6.24 No adjustment to the Scheme interest will be made for unapproved modifications that increase the value of the property.

- 6.25 Any reduction in the value of the property as a result of any modifications undertaken by the participant that are not permitted under the Scheme will adjust the Scheme interest to compensate for failure to meet Scheme requirements as below. A valuation to assess the reduction in value caused by the participant's failure to comply with Scheme requirements must be obtained with the valuation on exit from the Scheme.

$$\text{Scheme interest}_{\text{adjusted}} = \text{Scheme interest}_{\text{pre-adjustment}} \times \frac{\text{Property valuation without-modification}}{\text{Property valuation as-modified}}$$

Reporting obligations for a change in circumstance

- 6.26 In addition to the obligation to contact the Chief Commissioner in this Part, the participant must notify the Chief Commissioner within three months if there is a change in circumstance where the participant:
- (a) ceases to be an Australian citizen or permanent resident,
 - (b) becomes the owner of an interest in any land in Australia or overseas (including as beneficiary under a trust and excluding land which is held by a person solely as trustee of a trust or as the executor of a will) other than the one property the participant owns as part of the Scheme,
 - (c) ceases to satisfy the requirements of a principal place of residence, or
 - (d) has any change of spousal relationship status.

Note: The Chief Commissioner may impose a penalty under section 45 of the Act for a failure to notify a change of circumstance required as a condition of participation.

Part 7 – Periodic review

- 7.1 The Chief Commissioner must conduct, and participants must comply with, periodic reviews of the participant's ongoing eligibility and obligations under Part 6.

Periodic reviews

- 7.2 **Review cycle** – A review of the participant's eligibility under Part 6 is to be conducted by the Chief Commissioner:
- (a) initially, two years after the date of settlement or, at the determination of the Chief Commissioner, a later date up to five years after the date of settlement, and
 - (b) subsequently, two years after the date of the previous review or, at the determination of the Chief Commissioner, a later date up to five years after the date of the previous review.
- 7.3 **Change of circumstance review** – The Chief Commissioner may, at any point in time, review a participant following a change in circumstances under 6.26(a), (b) and (c) or other circumstances relevant to ongoing eligibility as determined by the Chief Commissioner.
- 7.4 **Other triggers for reviews** – Circumstances that may trigger a review include the following:
- (a) if the participant repays the Panel Financier loan in full or the Panel Financier mortgage is discharged (except for when the participant is refinancing with another Panel Financier, exiting the Scheme due to the sale of the property or due to re-financing with a non-Scheme lender), and
 - (i) at subsequent reviews, if there is no Panel Financier loan, the participant will be assessed for their capacity to pay part or all of the Scheme interest and will be required to pay such an amount if it is determined that they have the ability to do so, and
 - (b) non-compliance with a condition under the Participation Agreement.

- 7.5 **Review of incomes** – Review of compliance with the income threshold is only conducted at a review, taking into account the income of all relevant participants (per clause 6.3). The Chief Commissioner will determine whether the relevant income threshold is exceeded in the two consecutive financial years immediately prior to the review.

Note: For example, if a participant's gross income exceeds the relevant income threshold in the two consecutive financial years immediately prior to the review, they will be required to make a payment and acquire all or part

of the Scheme interest if they are assessed as having the ability to do so. If the single participant had subsequently married or entered into a de facto relationship, then the joint participants' income threshold applies and the gross income of the partner is included in aggregate for any relevant financial year.

Review process

- 7.6 **Eligibility and capacity to pay review** – The Chief Commissioner in conducting a review must assess whether the participant remains eligible for the Scheme under Part 6. If the participant is assessed as not eligible under Part 6, or if they have become ineligible under clause 7.4, then the participant is required to make a payment to acquire part or all of the Scheme interest if they are assessed as having the ability to do so.
- 7.7 An outcome of a previous review where a participant is determined to be no longer eligible for the Scheme does not prevent a participant becoming eligible for the Scheme at a subsequent review.
- 7.8 **Capacity to pay** – If the participant is not eligible under Part 6 or under clause 7.4, the Chief Commissioner must assess whether the participant (including all relevant participants) has a reasonable capacity to make a payment and acquire at least an amount equal to five percentage points of the Scheme interest, taking into account any facts or circumstances which the Chief Commissioner considers relevant.
 - (a) This assessment will be primarily informed by a requirement for a participant (including all relevant participants) to be assessed by a Panel Financier, and any other non-Scheme lender the participant wants to engage, to re-finance their loan to the maximum amount available at such time.
 - (b) In the case that the participant may not be able to re-finance their loan or be able to commence a new loan if they had repaid their loan in full, the assessment will consider whether the participant's (including all relevant participants') available financial assets could be used to pay part or all of the Scheme amount subject to the ability of the participant (including all relevant participants) to meet reasonable ongoing living expenses with reasonable savings in the remaining financial assets after such a payment.
 - (c) The Chief Commissioner may waive the requirement for a participant to be assessed for re-financing or to re-finance, if the Chief Commissioner is satisfied it is reasonable in the circumstances.

Part 8 – Transitioning from the Scheme

- 8.1 Payment of the Scheme interest amount may occur in the following ways:
 - (a) voluntary payment by the participant,
 - (b) sale of the property, or
 - (c) a required payment following a review of the participant by the Chief Commissioner under Part 7.

Payment amount

- 8.2 **Minimum payment of the Scheme interest** – Any payment must reduce the Scheme interest by at least five percentage points, except where the remaining Scheme interest is less than five percentage points and the participant is making the final payment to exit the Scheme.
- 8.3 **Valuations** – The calculation of the impact of a payment on the Scheme interest requires a current property valuation. The State will subsidise (i.e. incur liability for the cost of) five independent full valuations per property for a voluntary payment or where the Chief Commissioner requires a payment after assessing that the participant is no longer eligible for the Scheme.
- 8.4 **Payment notice** – Once a current property valuation is available, the Chief Commissioner must advise the participant of the required payment amount based on capacity to pay (with the corresponding Scheme interest in percentage points) which may be greater than the minimum payment of five percentage points of the Scheme interest. The participant must have a period of not less than one month to pay that amount.
- 8.5 **Scheme interest reduction calculation** – Once the payment of a part of the Scheme interest has occurred, the calculation of the remaining Scheme interest must be undertaken as follows:

$$\text{Scheme interest}_{\text{after payment}} = \text{Scheme interest}_{\text{before payment}} - \frac{\text{Amount paid}}{\text{Current property valuation}}$$

Re-financing

- 8.6 **Lenders for re-financing to increase current scheduled loan balance** – A participant may work with their current Panel Financier to determine the extent to which they can re-finance, by increasing the current scheduled loan balance, to pay an amount and acquire, in full or in part, the Scheme interest. The current scheduled loan balance includes the current loan balance and any accessible redraw facility. The participant may also work with another Panel Financier or a non-Scheme lender noting that when re-financing with a:
- (a) Panel Financier (acting as a Panel Financier) – the re-financing arrangement may extinguish the Scheme interest in full or in part, subject to the minimum five percentage point reduction, and
 - (b) Non-Scheme lender (not acting as a Panel Financier) – the re-financing arrangement must extinguish the Scheme interest in full.
- 8.7 Re-financing the Panel Financier loan for the property is subject to approval from the Panel Financier that is re-financing and the Chief Commissioner.
- 8.8 A participant must not, without prior approval from the Chief Commissioner, re-finance the Panel Financier loan to increase the current scheduled loan balance except in relation to:
- (a) a voluntary payment,
 - (b) a required payment,
 - (c) an approved significant modification, or
 - (d) the application of hardship policies or principles of the Panel Financier.
- 8.9 **Lenders for re-financing with no change to the current scheduled loan balance** – A participant must not re-finance the Panel Financier loan, where the current scheduled loan balance is not increased, unless the lender is a Panel Financier, or the re-financing extinguishes the Scheme interest. If the initial loan term was less than 30 years after the date of acquisition of the property a participant may re-finance with a Panel Financier to extend the loan term so that it is up to 30 years after the date of acquisition of the property.
- 8.10 **Re-financing costs** – The participant must pay for any re-financing costs, including any discharge or registration costs for the mortgage and the discharge of the Scheme mortgage if the Scheme interest is extinguished.
- (a) The State is not liable for the cost of property valuations related to re-financing, unless the re-financing is done in connection with a payment that would meet the conditions of clause 3.16(a)(a)(i).

Sale of property

- 8.11 **Notifications on sale of property** – Where the participant decides to sell the home, they must, among other things:
- (a) notify the Chief Commissioner of their intention to sell,
 - (b) notify their conveyancer or solicitor of their participation in the Scheme and the Scheme interest in the property,
 - (c) notify the Chief Commissioner upon the exchange of contract for the sale of land so the Chief Commissioner can assess the required payment to extinguish the Scheme interest, and
 - (d) instruct their conveyancer or solicitor on the distribution of funds at settlement of the property based on an assessment from Revenue NSW and the outstanding Panel Financier loan (if applicable).
- 8.12 In the event of the sale of the property, the participant would need to obtain a full valuation from an independent valuer (per clause 3.14), including an assessment of the property obligation for reasonable maintenance and

make good of the property in clause 6.18, and any unapproved modifications that have reduced the value of the property in clause 6.24.

(a) The participant must not sell the property to a related person for below the current property valuation.

8.13 The required payment to exit the Scheme is determined in the Scheme interest amount in clause 5.17.

8.14 **Priority of payment on sale** – The order of payout of the proceeds from the sale will be as follows:

1. Panel Financier for up to the outstanding loan amount,
2. the State for up to the Scheme interest amount at the time of sale together with any other amount that is owed to the State in relation to the Scheme,
3. each person with a legal or equitable claim on the property with priority over the participant, and
4. the participant.

8.15 **Costs on sale** – The State and the participant are responsible for their own legal costs in the sale of the property. The participant must pay for all other costs for the sale of the property, including the cost of valuation, the real estate agent fees and commissions, and costs to discharge the Scheme mortgage on exit from the Scheme.

Failure to pay

8.16 If the participant does not make any required payment, the Chief Commissioner may commence debt recovery action under the *State Debt Recovery Act 2018*.

8.17 If the current property valuation is used in relation to commencing a debt recovery action, the valuation remains current for a period of 12 months from the date the debt recovery action has commenced.

Note: An amount that is required to be repaid under the conditions of the shared equity scheme is a referable debt under section 46 of the Act.

Schedule 1 – Dictionary

Act – see clause 1.4

applicant – see clause 1.7

asset limit – see clause 2.22 and 2.22A

Australian citizen – see clause 2.2(c)(i)

Chief Commissioner – see clause 1.6

current property valuation – see clause 1.13

dependent child – see clause 2.4(a)

domestic and family violence victim-survivor – see clause 2.6A

eligible agreement for sale – see clause 3.3

eligible comprehensive home building contract – see clause 3.8

eligible transferee – see clause 2.2

excess savings – see clause 5.11

financial assets – see clause 0

financial contribution – see clause 2.20

gross annual income – see clause 2.13

home – see clause 3.6

home built on previously vacant land – see clause 5.6

income threshold – see clause 2.10 and 2.10A

joint applicant – see clause 1.7

joint participant – see clause 1.8

maximum Scheme amount – see clause 5.3

Panel Financier – see clause 1.10

participant – see clause 1.8

Participation Agreement – see clause 1.11

permanent resident – see clause 2.2(c)(ii)

property price threshold – see clause 3.9

related person – see clause 3.4

relevant participant – see clause 6.3

Scheme – see clause 1.5

Scheme amount – see clause 5.1

Scheme interest – see clause 5.2

Scheme interest amount – see clause 5.17

significant modifications – see clause 6.20

single person – see clause 2.3

spouse – see clause 2.3(a)

State – see clause 1.9

total property price – see clause 1.12

vacant land – see clause 5.7