



New South Wales

Help to Buy (Commonwealth Powers) Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) for the purposes of the Constitution of the Commonwealth, section 51(xxxvii)—
 - (i) to adopt certain provisions of the *Help to Buy Act 2024* of the Commonwealth (the ***Commonwealth Help to Buy Act***), and
 - (ii) to refer matters relating to amendments to that Act to the Parliament of the Commonwealth,
- (b) to make consequential amendments to other Acts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act and the purposes of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Adoption of versions of Commonwealth Help to Buy Act

Clause 4 provides for the adoption, within the meaning of the Constitution of the Commonwealth, section 51(xxxvii), of certain provisions of the Commonwealth Help to Buy Act 2024.

Clause 5 clarifies that it is the intention of the State Parliament that the Commonwealth Help to Buy Act may be amended after the commencement of clause 4 if the amendment is based on legislative power that the Commonwealth Parliament has apart from the referral in clause 6.

Clause 6 refers limited and specific power to the Commonwealth Parliament to enact laws about certain matters relating to the provision of Commonwealth financial assistance under a Help to Buy arrangement.

Clause 7 deals with the termination of an adoption specified in clause 4 and the referral specified in clause 6.

Clause 8 deals with the effect of terminating of the referral specified in clause 6 before the termination of an adoption specified in clause 4.

Part 3 Miscellaneous

Clause 9 sets out matters declared to be excluded matters for the purposes of the Commonwealth Help to Buy Act, section 41A, which deals with circumstances where the Commonwealth Help to Buy program does not apply because of the exclusion of a matter by the law of a State or Territory.

Clause 10 provides that the Minister administering the proposed Act may, for the purposes of the Commonwealth Help to Buy Act, section 46(1), object to regulations or legislative instruments being made under that Act. The Commonwealth Help to Buy Act, section 46 deals with requirements for the approval of States and Territories regulations and other legislative instruments are made under that Act.

Clause 11 enables the Governor to make regulations for the purposes of the proposed Act, including regulations of a savings or transitional nature.

Schedule 1 Amendment of other legislation

Schedule 1.1–1.5 make consequential amendments to the following—

- (a) the *Duties Act 1997*,
- (b) the *Duties Regulation 2022*,
- (c) the *First Home Owner Grant and Shared Equity Act 2000*,
- (d) the *Land Tax Management Act 1956*,
- (e) the *Property Tax (First Home Buyer Choice) Act 2022*.



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Contents

	Page
Part 1 Preliminary	
1 Name and purpose of Act	2
2 Commencement	2
3 Definitions	2
Part 2 Adoption of versions of Commonwealth Help to Buy Act	
4 Adoption	4
5 Commonwealth laws not otherwise affected	4
6 Amendment reference	4
7 Termination of adoption and amendment reference	5
8 Effect of termination of amendment reference before termination of adoption of primary version or residual version	5
Part 3 Miscellaneous	
9 Declaring certain matters to be excluded matters	6
10 State's objection to matters	6
11 Regulations	7
Schedule 1 Amendment of other legislation	8

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Help to Buy (Commonwealth Powers) Bill 2025

No. _____, 2025

A Bill for

An Act to adopt certain provisions of the *Help to Buy Act 2024* of the Commonwealth, to refer matters relating to amendments to that Act to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Commonwealth Constitution, to make consequential amendments to other Acts; and for other purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name and purpose of Act

- (1) This Act is the *Help to Buy (Commonwealth Powers) Act 2025*.
- (2) The purposes of this Act are as follows—
 - (a) adopt specified provisions of the *Help to Buy Act 2024* of the Commonwealth for the purposes of the Commonwealth Constitution, section 51(xxxvii),
 - (b) refer legislative power of the State in the form of an amendment reference to the Parliament of the Commonwealth to make amendments to the *Help to Buy Act 2024* of the Commonwealth for the purposes of the Commonwealth Constitution, section 51(xxxvii), and
 - (c) consequentially amend the following—
 - (i) the *Duties Act 1997*,
 - (ii) the *Duties Regulation 2022*,
 - (iii) the *First Home Owner Grant and Shared Equity Act 2000*,
 - (iv) the *Land Tax Management Act 1956*,
 - (v) the *Property Tax (First Home Buyer Choice) Act 2022*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

- (1) In this Act—

adoption means the adoption under section 4(1)(a) or (b).

amendment matters means—

 - (a) matters relating to the provision of Commonwealth financial assistance for the purpose of assisting individuals to buy a home, where the financial assistance is provided under a Help to Buy arrangement that—
 - (i) relates to residential property located in a State, and
 - (ii) is entered into while the State is a participating State, and
 - (b) without limiting paragraph (a), matters relating to the following—
 - (i) entering into Help to Buy arrangements that satisfy the conditions mentioned in paragraph (a)(i) and (ii),
 - (ii) administering Help to Buy arrangements of that kind,
 - (iii) monitoring compliance with Help to Buy arrangements of that kind, and
 - (iv) doing anything incidental or conducive to anything mentioned in subparagraph (i), (ii) or (iii).

amendment reference means the reference of matters under section 6(1).

Commonwealth Help to Buy Act means the *Help to Buy Act 2024* of the Commonwealth.

express amendment of the Commonwealth Help to Buy Act—

 - (a) means the direct amendment of the text of that Act, whether by insertion, omission, repeal, substitution or relocation of words or matter, by another Commonwealth Act or by an instrument under a Commonwealth Act, but

(b)	does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth Help to Buy Act.	1 2 3
	Help to Buy arrangement has the same meaning as in the Commonwealth Help to Buy Act.	4 5
	Help to Buy program has the same meaning as in the Commonwealth Help to Buy Act.	6 7
	Housing Australia has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	8 9
	primary version means the relevant version of the Commonwealth Help to Buy Act as originally enacted and as amended from time to time before the commencement of section 4, other than—	10 11 12
(a)	that Act, Part 2, Divisions 2 and 3, and	13
(b)	that Act, sections 24(1)(a)(ii), 25(3)(b) and (c) and 38.	14
	residential property has the same meaning as in the Commonwealth Help to Buy Act.	15 16
	residual version means the relevant version of the Commonwealth Help to Buy Act as originally enacted and as amended from time to time before the commencement of section 4, other than—	17 18 19
(a)	that Act, Part 2, Divisions 1 and 3, and	20
(b)	that Act, sections 24(1)(a)(i), 25(3)(a) and (c) and 38.	21
	Note— The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	22 23
(2)	Unless the contrary intention appears, words defined in the Commonwealth Help to Buy Act and otherwise used in this Act have the same meaning in this Act as in the Commonwealth Help to Buy Act.	24 25 26

Part 2	Adoption of versions of Commonwealth Help to Buy Act	1
4	Adoption	2
(1)	The following versions of the Commonwealth Help to Buy Act are adopted within the meaning of the Commonwealth Constitution, section 51(xxxvii)—	3 4
(a)	the primary version,	5
(b)	the residual version.	6
(2)	The operation of each paragraph of subsection (1) is not affected by the other paragraph.	7 8
(3)	The adoption has effect for a period—	9
(a)	beginning when subsection (1) comes into operation, and	10
(b)	ending at the end of the day fixed under section 7(1)(a) or (b).	11
5	Commonwealth laws not otherwise affected	12
	To avoid doubt, it is the intention of the Parliament of the State that the Commonwealth Help to Buy Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of section 4—	13 14 15
(a)	by a provision of a Commonwealth Act the operation of which is based on legislative power that the Parliament of the Commonwealth has apart from under the amendment reference, and	16 17 18
(b)	by a provision of an instrument made under the Commonwealth Help to Buy Act or under a provision referred to in paragraph (a).	19 20
6	Amendment reference	21
(1)	The amendment matters are referred to the Parliament of the Commonwealth, but only to the extent of making laws about those matters by making express amendments of the Commonwealth Help to Buy Act.	22 23 24
(2)	The reference in subsection (1) to making laws does not include making a law that would have the effect of—	25 26
(a)	giving Housing Australia, after a State stops being a participating State, the function of entering into, or the power to enter into, shared equity arrangements that relate to residential property located in the State, or	27 28 29
(b)	substantively removing or overriding—	30
(i)	a provision of the Commonwealth Help to Buy Act that requires approval of the State before certain things are done, or	31 32
(ii)	the Commonwealth Help to Buy Act, section 41, 41A or 42.	33
(3)	The reference of a matter under subsection (1) has effect only—	34
(a)	if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth, otherwise than by a reference for the purposes of the Commonwealth Constitution, section 51(xxxvii), and	35 36 37
(b)	if and to the extent that the matter is included in the legislative power of the Parliament of the State.	38 39
(4)	The amendment reference has effect for a period—	40
(a)	beginning when subsection (1) comes into operation, and	41
(b)	ending at the end of the day fixed under section 7(1)(c).	42

7	Termination of adoption and amendment reference	1
(1)	The Governor, at any time, by proclamation published in the Gazette, may fix a day on which—	2 3
(a)	the adoption of any or all of the primary version is to terminate, or	4
(b)	the adoption of any or all of the residual version is to terminate, or	5
(c)	the amendment reference is to terminate.	6
(2)	The Governor, by proclamation published in the Gazette, may revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken, for the purposes of section 4 or 6, never to have been made and published.	7 8 9
(3)	A revoking proclamation made under subsection (2) has effect only if made and published before the day fixed under subsection (1).	10 11
(4)	The revocation of a proclamation referred to in subsection (1) does not prevent the making and publication of a further proclamation under that subsection.	12 13
8	Effect of termination of amendment reference before termination of adoption of primary version or residual version	14 15
(1)	If the amendment reference terminates before the adoption of the primary version is terminated, the termination of the amendment reference does not affect—	16 17
(a)	laws that were made under that reference before that termination, whether or not they have come into operation before that termination, or	18 19
(b)	the continued operation in the State of the Commonwealth Help to Buy Act as in operation immediately before that termination or as subsequently amended or affected by—	20 21 22
(i)	laws referred to in paragraph (a) that come into operation after that termination, or	23 24
(ii)	provisions referred to in section 5.	25
(2)	Accordingly, if the amendment reference terminates, it continues to have effect for the purposes of subsection (1) unless the adoption of the primary version is terminated.	26 27 28
(3)	If the amendment reference terminates before the adoption of the residual version is terminated, the termination of the amendment reference does not affect—	29 30
(a)	laws that were made under that reference before that termination, whether or not they have come into operation before that termination, or	31 32
(b)	the continued operation in the State of the Commonwealth Help to Buy Act as in operation immediately before that termination or as subsequently amended or affected by—	33 34 35
(i)	laws referred to in paragraph (a) that come into operation after that termination, or	36 37
(ii)	provisions referred to in section 5.	38
(4)	Accordingly, if the amendment reference terminates, it continues to have effect for the purposes of subsection (3) unless the adoption of the residual version is terminated.	39 40 41

Part 3 Miscellaneous

9 Declaring certain matters to be excluded matters

- (1) The following matters are declared to be excluded matters for the purposes of the Commonwealth Help to Buy Act, section 41A in relation to the Help to Buy program—
 - (a) approved shared equity schemes under the *Duties Act 1997*,
 - (b) the First Home Buyers Assistance Scheme under the *Duties Act 1997*, Chapter 2, Part 8, Division 1,
 - (c) first home owner grants and shared equity schemes under the *First Home Owner Grant and Shared Equity Act 2000*,
 - (d) the administration and governance, including by the exercise of compliance functions, of the grants and schemes referred to in paragraphs (a)–(c),
 - (e) another matter prescribed by the regulations.
- (2) The declaration of a matter to be an excluded matter under subsection (1) for the purposes of the Commonwealth Help to Buy Act, section 41A applies only to the extent to which the excluded matter would, but for this section, be inconsistent with the Commonwealth Help to Buy Act in relation to the Help to Buy program.

10 State's objection to matters

- (1) For the purposes of the Commonwealth Help to Buy Act, section 46(1), the Minister on behalf of the State, by notice given to the Commonwealth Minister during either the minimum consultation period or the extended consultation period, may object to a matter for the purposes of the Commonwealth Help to Buy Act.
- (2) After giving notice to the Commonwealth Minister under subsection (1), the Minister must ensure the notice is published in the Gazette as soon as practicable.
- (3) A notice under subsection (1) is to be taken as constituting the State's objection to a matter for the purposes of the Commonwealth Help to Buy Act.
- (4) The Minister on behalf of the State, by notice given to the Commonwealth Minister, may withdraw an objection to a matter under subsection (1).
- (5) After giving notice to the Commonwealth Minister under subsection (4), the Minister must ensure the notice is published in the Gazette as soon as practicable.
- (6) A notice under subsection (4) is to be taken as constituting the State's withdrawal of an objection to a matter for the purposes of the Commonwealth Help to Buy Act.
- (7) For the purposes of the Commonwealth Help to Buy Act, section 46(4), the Minister on behalf of the State, by notice given to the Commonwealth Minister during the minimum consultation period, may require an additional 15 business days to consider a matter for the purposes of the Commonwealth Help to Buy Act.
- (8) After giving notice to the Commonwealth Minister under subsection (7)—
 - (a) the Minister must ensure the notice is published in the Gazette as soon as practicable, and
 - (b) the extended consultation period applies for the purposes of giving notice to the Commonwealth Minister under subsection (1).
- (9) The validity of a notice given to the Commonwealth Minister under subsection (1), (4) or (7) is not affected by a failure to publish the notice in the Gazette.
- (10) In this section—

<i>Commonwealth Minister</i> means the Minister referred to in the Commonwealth Help to Buy Act, section 46.	1 2
11 Regulations	3
(1) The Governor may make regulations about a matter that is—	4
(a) required or permitted by this Act to be prescribed, or	5
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.	6 7
(2) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—	8 9
(a) a provision of this Act, or	10
(b) a provision amending this Act.	11
(3) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.	12 13
(4) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.	14 15
(5) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—	16 17
(a) for a provision of this Act—the date of assent to this Act, or	18
(b) for a provision amending this Act—the date of assent to the amending Act.	19
(6) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—	20 21
(a) affect the rights of a person existing before the publication in a way prejudicial to the person, or	22 23
(b) impose liabilities on a person for anything done or omitted to be done before the publication.	24 25
(7) In this section—	26
<i>person</i> does not include the State or an authority of the State.	27

Schedule 1	Amendment of other legislation	1
1.1	Duties Act 1997 No 123	2
[1]	Section 53B	3
	Insert after section 53A—	4
53B	Land under Help to Buy arrangement	5
(1)	For the purposes of assessing liability for duty on a transfer of, or an agreement for the sale or transfer of, land purchased under a Help to Buy arrangement, no account is to be taken of an interest the Commonwealth or Housing Australia has in the land.	6 7 8 9
(2)	In this section— <i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth. <i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	10 11 12 13 14
[2]	Section 312A	15
	Insert after section 312—	16
312A	Disclosure of information in connection with Help to Buy arrangement	17
(1)	A tax officer, within the meaning of the <i>Taxation Administration Act 1996</i> , is authorised to disclose information obtained under or in relation to the administration of this Act, to the Commonwealth or Housing Australia to assist in determining whether a person is ineligible to enter into a Help to Buy arrangement.	18 19 20 21 22
(2)	The <i>Taxation Administration Act 1996</i> , section 84 does not apply to information obtained from a tax officer under this section.	23 24
(3)	In this section— <i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth. <i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	25 26 27 28 29
1.2	Duties Regulation 2022	30
[1]	Section 4 Excluded transactions	31
	Omit “scheme.” from section 4(1)(m). Insert instead—	32
	scheme,	33
	(n) a change in an interest in dutiable property that occurs as a result of an increase in a person’s share percentage in land purchased under a Help to Buy arrangement.	34 35 36
[2]	Section 4(2)	37
	Insert in alphabetical order—	38
	<i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	39 40

1.3 First Home Owner Grant and Shared Equity Act 2000 No 21	1
[1] Section 13C	2
Insert after section 13B—	3
13C Owners of land under Help to Buy arrangement	4
(1) For the purposes of assessing eligibility for a first home owner grant for land purchased, or to be purchased, under a Help to Buy arrangement, no account is to be taken of an interest the Commonwealth or Housing Australia has, or will have, in the land.	5 6 7 8
(2) In this section—	9
<i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	10 11
<i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	12 13
[2] Section 47 Protection of confidential information	14
Insert after section 47(3)(b)—	15
(b1) to the Commonwealth or Housing Australia to assist in determining whether a person is ineligible to enter into a Help to Buy arrangement because the person is receiving assistance under a State or Territory home buyer scheme, or	16 17 18 19
[3] Section 47(4)	20
Insert after section 47(3)—	21
(4) In this section—	22
<i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	23 24
<i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	25 26
<i>State or Territory home buyer scheme</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	27 28
1.4 Land Tax Management Act 1956 No 26	29
Section 84	30
Insert after section 83—	31
84 Owners of land under Help to Buy arrangement	32
(1) For the purposes of assessing land tax on land purchased under a Help to Buy arrangement, no account is to be taken of an interest the Commonwealth or Housing Australia has in the land.	33 34 35
(2) In this section—	36
<i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	37 38
<i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	39 40

1.5 Property Tax (First Home Buyer Choice) Act 2022 No 60	1
Section 56	2
Insert after section 55—	3
56 Owners of land under Help to Buy arrangement	4
(1) For the purposes of assessing property tax on land purchased, or to be purchased, under a Help to Buy arrangement, no account is to be taken of an interest the Commonwealth or Housing Australia has, or will have, in the land.	5 6 7
(2) In this section—	8
<i>Help to Buy arrangement</i> has the same meaning as in the <i>Help to Buy Act 2024</i> of the Commonwealth.	9 10
<i>Housing Australia</i> has the same meaning as in the <i>Housing Australia Act 2018</i> of the Commonwealth.	11 12