

## EXPLANATORY STATEMENT

### AUSTRALIAN CAPITAL TERRITORY HOUSING ASSISTANCE ORDINANCE 1987

No. 36 of 1987

The Housing Assistance Ordinance enables alignment of the funding and administration of housing assistance in the Australian Capital Territory with the States and the Northern Territory under the Commonwealth State Housing Agreement. This is achieved by the establishment of a new office of the Commissioner for Housing for the Australian Capital Territory, who is vested with powers to administer all public housing in the Australian Capital Territory.

The Ordinance empowers the Commissioner to prepare and administer housing assistance programs, subject to the approval of the Minister. In exercising these powers the Commissioner may elect to be bound by the principles which govern the Commonwealth State Housing Agreement and thereby qualify those programs for funding under the Agreement.

The Housing Ordinance 1928 is repealed by this Ordinance.

Details of the Ordinance are as follows:

#### PART I - PRELIMINARY

##### Short title

Section 1 provides that the Ordinance may be cited as the Housing Assistance Ordinance 1987.

##### Commencement

Section 2 provides for the commencement of the Ordinance.

##### Interpretation

Section 3 deals with matters of interpretation.

## PART II - THE COMMISSIONER FOR HOUSING

### Division 1 - Administration

#### Commissioner for Housing

Section 4 provides for the appointment, by the Minister, of a Commissioner for Housing for the Australian Capital Territory. The person appointed to the office must be a public servant.

#### Termination of office

Subsection 5(1) empowers the Minister to terminate the appointment of the Commissioner. The termination of an appointment will not affect the tenure of that person's appointment as a public servant.

Subsections 5(2) and (3) provide that the Commissioner may resign provided that the resignation is in writing, signed by the person and delivered to the Minister. A resignation has no effect until it is accepted by the Minister.

Subsection 5(4) provides that a person appointed as Commissioner ceases to hold office where that person ceases to be a public servant.

#### Acting appointments

Subsections 6(1), (2) and (3) empower the Minister to appoint a person to act as Commissioner where the office of Commissioner is vacant, where the Commissioner is absent from duty, or absent from the Territory, or is unable to perform the functions of the office. A person appointed to act during a vacancy in the office of Commissioner may not continue to act for more than 12 months. The appointment may be expressed to have effect only in such circumstances as are specified in the instrument of appointment. A person appointed to act as Commissioner must be a public servant.

Subsection 6(4) empowers the Minister to terminate such an appointment at any time.

Subsection 6(5) provides that where a person is acting in the office of Commissioner and that office becomes vacant, then, subject to any circumstances specified in the instrument of appointment, that person may continue to act until the Minister otherwise directs, or the vacancy is filled, or a period of 12 months from the date on which the vacancy occurred expires, whichever occurs first.

Subsection 6(6) provides that a person appointed to act as Commissioner may resign from the appointment provided that the resignation is in writing, signed by the person and delivered to the Minister.

Subsection 6(7) provides that a person appointed to act as Commissioner will cease to hold office where he or she ceases to be a public servant.

Subsection 6(8) provides that a person appointed to act as Commissioner has all the powers and functions of the Commissioner under the Ordinance or any other law in force in the Territory.

Subsection 6(9) provides that any irregularity in the appointment of an Acting Commissioner, the failure to appoint or the cessation of the appointment, does not invalidate the acts of a person purporting to act as the Acting Commissioner.

#### Commissioner a corporation sole

Subsection 7(1) provides that the Commissioner is a corporation sole under the name of the Commissioner for Housing for the Australian Capital Territory. The Commissioner:

- . has perpetual succession;
- . is required to have an official seal; and
- . is capable of acquiring, holding and disposing of personal and real property and of suing and being sued.

Subsection 7(2) provides that all courts, judges and persons acting judicially are required to take judicial notice of the official seal where it is affixed to a document.

#### Division 2 - Powers and functions of Commissioner

##### Functions of Commissioner

Subsection 8(1) specifies the functions of the Commissioner as being to administer, on behalf of the Commonwealth, programs and funding arrangements for the delivery of housing assistance in relation to public rental housing, home ownership and income-related assistance to home owners and tenants and such other provision for housing assistance as the Minister may approve.

Subsection 8(2) provides that the Commissioner shall perform his or her functions in accordance with any directions given by the Minister.

##### Powers of Commissioner

Subsection 9(1) empowers the Commissioner to do all things necessary or convenient to be done for or in connection with the performance of his or her functions, and in particular:

- . To hold land on lease from the Commonwealth, whether granted by the Commonwealth or transferred by the previous lessee.

- . To acquire, control, manage and make arrangements for the disposal of unleased Commonwealth land and to acquire, control, manage and dispose of land leased by the Commissioner.
- . To purchase and sell housing.
- . To construct, maintain, renovate and demolish buildings on land held by the Commissioner subject to any law in force in the Territory, as for example the Building Ordinance 1972 and the Buildings (Design and Siting) Ordinance 1964.
- . To enter into an arrangement with any person for the construction, maintenance, renovation or demolition of housing on land held by the Commissioner.
- . To enter into contracts.
- . To participate in the formation of a company, to acquire an interest in a company, to enter into and participate in a partnership or joint venture.
- . To enter into a tenancy agreement in relation to any dwelling on land held by the Commissioner and to exercise any power conferred on the Commissioner by virtue of such a tenancy agreement.
- . To advance money for the purpose of assisting a person to purchase a dwelling, re-finance the purchase of a dwelling, erect or modify a dwelling, re-finance the erection or modification of a dwelling or to purchase land for the purpose of erecting a dwelling.
- . To enter into an agreement to secure money advanced for the purposes set out in the preceding sub-paragraph and to exercise any power conferred on the Commissioner by virtue of such an agreement.

Subsection 9(2) requires the Commissioner to obtain the written approval of the Minister before he or she may enter into a contract involving the payment or receipt of an amount exceeding \$500,000.

Subsection 9(3) requires the Commissioner to obtain the written approval of the Minister, after consultation between that Minister and the Minister of State for Finance, before he or she may participate in the formation of a company, acquire an interest in a company, or enter into and participate in a partnership or joint venture.

Subsection 9(4) provides that in subsection 9(1) a reference to land held by the Commissioner includes a reference to land placed under the control of, or held under lease by, the Commissioner in accordance with section 16 and to land deemed to be owned, controlled or held by the Commissioner under subsection 24(1).

Subsection 9(5) provides that in subsection 9(1) "person" includes a body, co-operative, group or other organisation whether incorporated or not.

#### Delegation

Section 10 empowers the Commissioner to delegate, by instrument in writing, to a public servant, any of the Commissioner's powers under the Ordinance except the power of delegation.

### **Division 3 - Protection and liability of Commissioner**

#### Protection and liability of Commissioner

Subsection 11(1) provides that the Commissioner and former officer holders are not liable personally in any proceedings in relation to an act done or omitted to be done provided that the act or omission complained of was done in good faith and in relation to the Commissioner's functions and powers.

Subsection 11(2) provides that a person is entitled to sue the Commissioner or a person acting or purporting to act in good faith for the Commissioner where the person suing has sustained a loss or injury attributable to an act or omission of the Commissioner, or a person acting or purporting to act in good faith for the Commissioner. The person suing is entitled to the same remedy against the Commissioner in his corporate capacity as the person suing would be entitled to against a natural person. The liability of the Commissioner will be discharged by the Commonwealth.

### **PART III - HOUSING ASSISTANCE**

#### Housing assistance programs

Subsections 12(1) and (2) empower the Commissioner to prepare, or vary, in the form of an instrument in writing, a housing assistance program. A program may not be implemented unless it is approved by the Minister.

Subsection 12(3) provides that the Minister may grant his or her approval of a program or variation of a program subject to such requirements, conditions or directions as he or she thinks fit.

Subsection 12(4) provides that the Commissioner may revoke a program with the approval of the Minister.

Subsections 12(5) and (6) provide that in approving a program the Minister will be required to have regard to the Commonwealth State Housing Agreement principles set out in Schedule 1 of the Ordinance where the Commissioner specifies in the relevant instrument that the principles set out in that Schedule apply.

Subsection 12(7) provides that where the Minister approves a program; or a variation of a program; Schedule 1 does not apply except as specified in the relevant instrument.

Subsection 12(8) provides that where the Minister grants or refuses to grant an approval under this section then the Minister shall signify his or her approval or refusal, in the case of a program or program variation, in writing signed by the Minister on the relevant instrument. In the case of a revocation of a program, this will be signified by an instrument in writing.

Subsection 12(9) provides that a program may provide for review by the Administrative Appeals Tribunal of such decisions as are specified in the instrument detailing the program.

Subsection 12(10) defines certain terms used in this section.

#### Notice in relation to housing assistance program

Subsection 13(1) requires the Commissioner to publish in the Gazette any instrument comprising a program, variation or revocation of a program, which has been approved by the Minister in accordance with section 12 of the Ordinance.

Subsection 13(2) provides that any program, or variation or revocation of a program, does not take effect until the relevant instrument is published in the Gazette.

#### Tabling requirements in relation to housing assistance program

Subsection 14(1) requires the Minister to lay before each House of the Parliament a copy of a housing assistance program within 15 sitting days of the program being published in the Gazette.

Subsection 14(2) provides that where a program is not laid before each House in accordance with subsection 14(1) it is void and of no effect.

Subsection 14(3) provides that where a program is laid before each House, the provisions of subsections 12(4) to (7) of the Seat of Government (Administration) Act 1910 apply as if a reference to an Ordinance in those provisions is a reference to a housing assistance program.

Subsection 14(4) provides that in so far as subsections 12(6) and (6A) of the Seat of Government (Administration) Act 1910 apply, a reference in those subsections to subsection 12(3) of that Act shall be read as a reference to subsection 14(2) of the Ordinance.

Subsection 14(5) defines the term "housing assistance program" for the purposes of this section.

### Rent charge under housing assistance program

Subsection 15(1) provides that where a rate or amount of rent in relation to rental housing assistance is fixed under a program, it shall be at least equal to the rate or amount which would be determined by reference to the formula set out in Schedule 2 of the Ordinance.

Subsection 15(2) provides that where a notice of variation of a program is published in the Gazette in accordance with subsection 13(1) and as a consequence the rate or amount of rent to be charged is varied, the notice must specify the day from which the new rate or amount of rent is to be charged.

Subsection 15(3) provides that the Commissioner is required to review the rate or amount of rent charged under a program at least annually.

### Unleased land

Subsection 16(1) empowers the Minister, by instrument in writing, to place unleased Commonwealth land under the control of the Commissioner.

Subsection 16(2) empowers the Commissioner to manage, on behalf of the Commonwealth, land placed under his control and, in particular:

- . To authorise the entry of persons on the land.
- . To use the land in performance of his or her functions as he or she thinks fit.
- . To make arrangements for the grant of a lease of, or licence to occupy, the land to another person.
- . To make arrangements to obtain, in the name of the Commissioner, a lease in respect of that land and to transfer any such lease.

Subsection 16(3) provides that a lease or a licence shall not be granted in relation to unleased land under the control of the Commissioner, except with the consent in writing of the Commissioner.

Subsection 16(4) provides that where unleased land that has been placed under the control of the Commissioner is no longer required, the Commissioner may, by instrument under seal, surrender control of that land back to the Commonwealth.

### Transfer of land subject to tenancy agreement

Subsection 17(1) empowers the Minister to place under the control of the Commissioner, by instrument in writing, unleased Commonwealth land where rental housing is already provided by the Commonwealth on that land.

Subsection 17(2) provides that an instrument executed by the Minister for the purposes of the preceding subsection shall state that the land comprised in the instrument is subject to any tenancy under the Leases Ordinance 1918 in force immediately before the date of execution of the instrument.

Subsection 17(3) empowers the Commissioner to exercise all the rights and powers previously exercisable by the Commonwealth in relation to such land prior to the execution of the instrument referred to in subsection 17(1).

Subsection 17(4) provides that, subject to this section, a lease or licence may not be granted over unleased Commonwealth land placed under the control of the Commissioner under subsection 17(1), unless it is with the written consent of the Commissioner. Any land brought under the control of the Commissioner by virtue of this section which is no longer required, may, by instrument under seal, be surrendered back to the control of the Commonwealth.

Subsection 17(5) provides that where the Commissioner enters into an agreement with a person under 18 years of age for a lease to occupy premises, the agreement will have effect as if that person had attained the age of 18 years. This will enable the Commissioner to provide rental accommodation under a legally binding lease to applicants under 18 years of age.

Subsection 17(6) defines the term "unleased land" for the purposes of this section.

#### **PART IV - MISCELLANEOUS**

##### **Financial arrangements**

Section 18 provides that money payable to the Commissioner in relation to the exercise of his or her powers and in performance of his or her functions under the Ordinance is money payable for the purposes of the Australian Capital Territory Housing Assistance Fund, established by the Minister for Finance as a trust account under section 62A of the Audit Act 1901. The Commissioner is required to pay into the Fund any moneys received in the exercise of his or her powers and in performance of his or her functions under the Ordinance.

##### **Accounts**

Section 19 requires the Commissioner to keep accounts and prepare financial statements in such form as the Minister of State for Finance may determine.

##### **Information to Minister**

Section 20 requires the Commissioner to comply with any request by the Minister for information in relation to the Commissioner's operations under the Ordinance.

### Annual report and financial statement

Section 21 requires the Commissioner to prepare and furnish an annual report to the Minister as soon as practicable after 30 June of each year.

### Amendment of Ordinances

Section 22 amends the provisions of those Ordinances specified in Schedule 3 of the Ordinance.

### Repeal

Section 23 repeals the Housing Ordinance 1928.

### Transitional

Subsection 24(1) provides that land or other property held by the Commissioner for Housing under the Housing Ordinance 1928 immediately before the commencement of the Ordinance shall, after that commencement, be deemed to be either owned, controlled or held, as the case requires, by the Commissioner under the Ordinance.

Subsection 24(2) provides that a scheme for providing or assisting in providing dwelling houses in force under section 3 of the Housing Ordinance 1928, immediately before the commencement of the Ordinance is, after that commencement, deemed to be a housing assistance program in force for the purposes of the Ordinance.

Subsection 24(3) provides that the person holding office as Commissioner for Housing, or as Acting Commissioner, under the Housing Ordinance 1928 immediately before the commencement of the Ordinance shall, on and from the date of commencement of the Ordinance, hold office as Commissioner for Housing for the Australian Capital Territory or as Acting Commissioner for Housing for the Australian Capital Territory, as the case requires.

### SCHEDULE 1

#### Principles for operation of housing assistance programs

Schedule 1 sets out the principles governing the operation of a housing assistance program where the Commissioner declares that these principles apply. This has the effect of aligning the program with the principles set out in the Commonwealth State Housing Agreement.

## SCHEDULE 2

### Cost rent formula

Schedule 2 sets out the formula to be used in determining the minimum real cost rents, in order to accord with the requirements of the Commonwealth State Housing Agreement.

## SCHEDULE 3

### Amendment of Ordinances

Schedule 3 provides for consequential amendments. The Commonwealth Dwellings (Rent) Ordinance 1961 is amended to provide that it does not apply to leases in respect of which the rate or amount of rent is fixed under a housing assistance program in force under the Ordinance. The Protection of Lands Ordinance 1937 is amended to provide that it does not apply to or in relation to any lands under the control of the Commissioner by virtue of the Ordinance.

---