

Australian Capital Territory

Housing Assistance Act 1987

A1987-36

Republication No 4A

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Housing Assistance Act 1987* effective 25 May 1998 to 11 September 2001.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



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HOUSING ASSISTANCE ACT 1987

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

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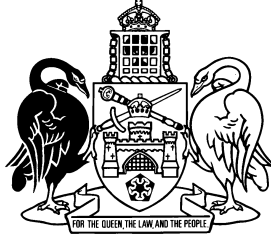
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Australian Capital Territory

HOUSING ASSISTANCE ACT 1987

An Act to make provision with respect to housing assistance and for related purposes

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Housing Assistance Act 1987*.¹

2. Commencement

This Act shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.¹

3. Interpretation

In this Act, unless the contrary intention appears—

“Commissioner” means—

- (a) the public servant for the time being performing the functions of the Commissioner for Housing by virtue of section 4; or
- (b) the Commissioner in its corporate capacity under section 7;

“dwelling” means a dwelling-house or flat and includes such fences, outbuildings and other improvements and such connections for sewerage, drainage, water, electricity, gas and other services as are provided or are reasonably required to be provided for the dwelling-house or flat;

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“housing” means residential housing including dwellings and other forms of residential accommodation;

“Housing Agreement” means an agreement described in section 11A as varied from time to time;

“housing assistance program” means a housing assistance program referred to in section 12 and includes such a program as varied in accordance with that section.

3A. Objects

(1) The objects of this Act are—

- (a) to maximise the opportunities for everyone in the Territory to have access to housing which is affordable, secure and appropriate to their needs;
- (b) to facilitate the provision of housing assistance for those in most need;
- (c) to maximise value for money in the provision of housing assistance;
- (d) to promote a choice of forms of assistance and providers of assistance for persons eligible for assistance;
- (e) to facilitate the provision of rental housing which—
 - (i) has adequate amenity, is of an adequate size and is appropriately located in relation to employment opportunities and necessary services and facilities; and
 - (ii) is coordinated with any support services (provided under other laws) required by consumers of housing assistance to live in the community;
- (f) to facilitate the provision of an adequate supply of affordable home finance for persons in receipt of low and moderate incomes;
- (g) to promote the development of flexible and innovative financial arrangements to facilitate access to home ownership for persons in receipt of low and moderate incomes;
- (h) to promote the growth of a community housing sector as a viable alternative to public and private rental and home ownership; and
- (i) to promote the establishment of appropriate mechanisms and forums to allow input to housing policy by consumers, and potential consumers, of housing assistance and by representative non-government agencies involved in housing policy and provision;

and this Act shall be construed accordingly.

(2) In the administration of this Act regard shall be had to the objects of this Act to the maximum extent practicable with available resources.

PART II—THE COMMISSIONER FOR HOUSING

Division 1—Administration

4. Commissioner for Housing

- (1) There shall be a Commissioner for Housing.
- (2) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the Commissioner for Housing.
- (3) The Commissioner shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).

7. Commissioner a corporation sole

- (1) The Commissioner—
- (a) is a corporation sole by the name of the Commissioner for Housing for the Australian Capital Territory;
 - (b) has perpetual succession;
 - (c) shall have an official seal; and
 - (d) is capable, in the corporate name of the Commissioner, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commissioner affixed to a document and shall presume that it was duly affixed.

Division 2—Powers and functions of Commissioner

8. Functions of Commissioner

- (1) The functions of the Commissioner are to administer, on behalf of the Territory, programs and funding arrangements for the delivery of housing assistance in the Territory in relation to—
- (a) public rental housing;

- (b) home ownership;
- (c) income-related assistance to home owners and tenants; and
- (d) such other provision for housing assistance and services relating to housing assistance as the Minister may from time to time approve.

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

9. Powers of Commissioner

(1) Subject to this Act, the Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Commissioner's functions and, in particular, without limiting the generality of the foregoing—

- (a) to hold land on lease from the Commonwealth, whether the lease is granted to the Commissioner by the Executive on behalf of the Commonwealth or is transferred to the Commissioner by the previous holder of the lease;
- (b) to acquire, control, manage and dispose of land;
- (c) to purchase and sell housing;
- (d) subject to any law in force in the Territory, to construct, maintain, renovate and demolish buildings situated on land held by the Commissioner;
- (e) to enter into an arrangement with any person for the construction, maintenance, renovation or demolition of housing on land held by the Commissioner;
- (f) to enter into a contract with any person;
- (g) to do any of the following:
 - (i) to participate in the formation of a company and to acquire an interest in a company;
 - (ii) to enter into, and participate in, a partnership with another person;
 - (iii) to enter into, and participate in, a joint venture;
- (h) 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 any such agreement;
- (i) to advance money for the purpose of assisting a person—

- (i) to purchase a dwelling;
- (ii) to re-finance the purchase of a dwelling;
- (iii) to erect or modify a dwelling;
- (iv) to re-finance the erection or modification of a dwelling; or
- (v) to purchase land for the purpose of erecting a dwelling; and
- (j) to enter into an agreement to secure money advanced as referred to in paragraph (i) and to exercise any power conferred on the Commissioner by any such agreement.

(1A) Nothing in subsection (1) shall be read as conferring on the Commissioner a power to enter into a contract of employment.

(2) The Commissioner shall not, except with the approval in writing of the Minister, exercise a power referred to in paragraph (1) (f) involving the payment or receipt of an amount exceeding \$1,500,000.

(3) The Commissioner shall not exercise a power referred to in paragraph (1) (g) except with the approval of the Minister given in writing after consultation between that Minister and the Treasurer.

(4) In subsection (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).

(5) In subsection (1)—

“person” includes a body, co-operative, group or other organisation whether incorporated or not.

10. Delegation

(1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, in writing delegate to a public servant any of the Commissioner’s powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Division 3—Protection and liability of Commissioner

11. Protection and liability of Commissioner

(1) A person who holds, or has held, the office of Commissioner is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the person as the holder of that office.

(2) Where, by an act or omission of the Commissioner or another person acting or purporting to act in good faith for the Commissioner, a person sustains a loss or injury that would have entitled that person to a remedy in respect of the loss or injury if the act or omission were an act or omission of a natural person—

- (a) the person sustaining the loss or injury is entitled to the same remedy against the Commissioner in the corporate capacity of the Commissioner as the person would have been entitled to against a natural person; and
- (b) the liability of the Commissioner shall be discharged by the Territory.

PART IIA—HOUSING AGREEMENT

11A. Housing Agreement or variations

Where the Territory enters into, or varies, an agreement with the Commonwealth in relation to the granting of financial assistance to the Territory for housing assistance—

- (a) the Minister shall lay the agreement or variation before the Legislative Assembly within 15 sitting days of the making of the agreement; and
- (b) the Commissioner shall cause to be published in the *Gazette* notice of the making of the agreement or variation together with—
 - (i) a statement about the commencement of the agreement or variation pursuant to section 11B; and
 - (ii) a statement indicating where and when the Housing Agreement is available for inspection.

11B. Commencement

A provision of the Housing Agreement, or of a variation to the Housing Agreement, comes into effect—

- (a) if the Housing Agreement or variation specifies a date of commencement for that provision, or for the whole Housing Agreement or variation—on that date, or on the date of publication in the *Gazette* of the relevant notice under paragraph 11A (b), whichever is later; or
- (b) in any other case—on the date of publication in the *Gazette* of the relevant notice under paragraph 11A (b).

11C. Public access

The Commissioner shall ensure that the Housing Agreement is available for public inspection free of charge.

PART III—HOUSING ASSISTANCE

12. Housing Assistance Programs

- (1) The Commissioner may, for the purposes of this Act, from time to time prepare, in the form of an instrument in writing, a housing assistance program or a variation of such a program.
- (2) A program or variation shall not be implemented except with the approval of the Minister.
- (3) Subject to subsection (6), the Minister may, in his or her discretion, grant or refuse to grant approval of a program or variation and may grant approval subject to such requirements, conditions or directions as the Minister thinks fit.
- (4) The Commissioner may, with the approval of the Minister, revoke a program.
- (5) The Commissioner may, in preparing a program or variation, specify in the relevant instrument that the Housing Agreement shall apply in relation to the program to which the instrument relates.
- (6) Where the Commissioner has specified in a relevant instrument that the Housing Agreement shall apply in relation to the program to which the instrument relates, the Minister, in considering whether to grant his or her approval of the program or variation, shall have regard to the principles set out in the Housing Agreement.
- (7) Where the Minister grants his or her approval of a program or variation, the Housing Agreement does not apply in relation to the program (or program as varied) except as specified in the relevant instrument.

(8) Where the Minister grants or refuses to grant an approval for the purposes of this section, the Minister shall signify that approval or refusal—

- (a) in the case of a program or variation—in writing on the relevant instrument and shall affix his or her signature; or
- (b) in the case of a revocation of a program—by instrument in writing.

(9) A relevant instrument prepared by the Commissioner and approved by the Minister in accordance with this section may—

- (a) provide for the reconsideration of decisions of the Commissioner that are specified in the instrument; and
- (b) provide for application to be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner that are specified in the instrument.

(9A) A relevant instrument is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(10) In this section—

“program” means a housing assistance program prepared by the Commissioner pursuant to subsection (1);

“relevant instrument” means—

- (a) a program or a variation; or
- (b) a determination of fees made by the Commissioner under a housing assistance program, or a variation or revocation of such a determination;

“variation” means a variation of a program prepared by the Commissioner pursuant to subsection (1).

15. Rent charge under housing assistance program

(1) The amount of rent to be charged in relation to rental housing assistance under a housing assistance program shall be an amount equivalent to market rent.

(1A) A reference in subsection (1) to market rent, in relation to a property at a particular time, shall be read as a reference to the rent which would be payable if the property were then let by a willing landlord to a willing tenant—

- (a) who had dealt with each other at arm’s length; and

- (b) each of whom had acted knowledgeably, prudently and without compulsion.

(2) A variation of a housing assistance program prepared under section 12 that alters the amount of rent to be charged shall specify a day, not being a day earlier than the publication of the instrument of variation in the *Gazette*, from which the alteration is to take effect.

(3) The Commissioner shall, annually, undertake a review of the rent of each dwelling or dwellings included in each relevant class of dwellings, as the case may be, in respect of which an amount of rent is charged under a housing assistance program.

16. Unleased land

(1) The Executive may, by instrument in writing, place unleased land under the control of the Commissioner.

(2) Where unleased land is placed under the control of the Commissioner, the Commissioner is empowered, subject to this section, to manage the land and may—

- (a) authorise the entry of persons on the land;
- (b) make such use of the land in the performance of the Commissioner's functions as the Commissioner thinks fit;
- (c) make arrangements for the grant to another person of a lease of, or licence to occupy, that land; and
- (d) make arrangements to obtain, in the name of the Commissioner, a lease in respect of that land, and to transfer any such lease.

(2A) The Commissioner may exercise any power under the *Recovery of Lands Act 1929* in relation to land placed under his or her control that the Territory may exercise under that Act on behalf of the Commonwealth.

(3) A lease or licence shall not be granted by any person in relation to unleased land under the control of the Commissioner pursuant to subsection (1) except with the consent in writing of the Commissioner.

(4) Where unleased land that has been placed under the control of the Commissioner pursuant to subsection (1) is no longer required by the Commissioner for the purposes of this Act, the Commissioner may, by instrument under the official seal of the Commissioner, surrender the control of the land to the Executive.

17. Transfer of land subject to tenancy agreement

(1) Where rental housing is provided by the Territory on unleased land, the Executive is empowered, subject to subsection (2), to place that land, by instrument in writing, under the control of the Commissioner.

(2) An instrument executed by the Executive for the purposes of subsection (1) shall state that the land comprised in the instrument is placed under the control of the Commissioner subject to any tenancy under the *Leases Act 1918* as in force immediately before the date of execution of the instrument.

(3) Upon the execution of an instrument referred to in subsection (1), the Commissioner is empowered to exercise, in relation to the land comprised in the instrument, all the rights and powers that were exercisable by the Territory in relation to that land immediately before the execution of the instrument.

(4) Subject to this section, the provisions of subsections 16 (3) and (4) apply in relation to land placed under the control of the Commissioner pursuant to this section as if that land were so placed under such control pursuant to subsection 16 (1).

(6) In this section—

“unleased land” means land vested in the Commonwealth that is not the subject of any lease or licence under any law authorising the occupation or use of land vested in the Commonwealth, other than a lease that purports to entitle a person to occupy premises on a fortnightly tenancy as the lessee of the Commonwealth under the *Leases Act 1918*.

PART IV—MISCELLANEOUS

17A. Persons under 18

Where a person under the age of 18 years enters into an agreement with the Commissioner for a lease to occupy premises, the agreement shall have effect as if that person had attained the age of 18 years.

18. Financial arrangements

All moneys receivable or payable by the Commissioner for the purposes of this Act (including money receivable under a Housing Agreement) shall be paid into or out of (as the case requires) an appropriate account opened under section 33 or 34 of the *Financial Management Act 1996*.

20. Information to Minister

If the Minister requests the Commissioner at any time to provide to the Minister information concerning any matter relating to the Commissioner's operations, the Commissioner shall comply with the request.

23. Repeal

The *Housing Ordinance 1928* is repealed.

24. Transitional

(1) Land or other property owned by or under the control of, and any interest in land or other property held by, the Commissioner for Housing under the *Housing Ordinance 1928* immediately before the commencement of this Act shall, on and after that commencement, be deemed to be owned, controlled or held, as the case requires, by the Commissioner under this Act.

(2) 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 this Act shall, on and after that commencement, be deemed to be a housing assistance program in force under this Act.

(3) The person who held office as Commissioner for Housing, or as Acting Commissioner, under the *Housing Ordinance 1928* as in force immediately before the commencement of this Act shall, on and from that commencement—

- (a) if the person held office as Commissioner—hold office as Commissioner for Housing for the Australian Capital Territory; or
- (b) if the person held office as Acting Commissioner—act as Commissioner for Housing for the Australian Capital Territory;

under this Act as if that person had been appointed to be Commissioner for Housing for the Australian Capital Territory, or to act as Commissioner, as the case may be, under this Act.

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NOTES

1. The *Housing Assistance Act 1987* as shown in this reprint comprises Act No. 36, 1987 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Housing Assistance Ordinance 1987</i>	36, 1987	29 July 1987	19 Aug 1987 (see <i>Gazette</i> 1987, No. S213)	—
<i>Housing Assistance (Amendment) Ordinance 1988</i>	66, 1988	21 Sept 1988	21 Sept 1988	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

Self-Government day 11 May 1989

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Housing Assistance (Amendment) Act 1990</i>	11, 1990	17 May 1990	17 May 1990	—
<i>Housing Assistance (Amendment) Act 1991</i>	59, 1991	29 Oct 1991	29 Oct 1991	—

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NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Housing Assistance (Amendment) Act 1992</i>	77, 1992	24 Dec 1992	Ss. 4 and 8: 1 Jan 1993 S. 7: (a) Remainder: 24 Dec 1992	S. 9
<i>Statute Law Revision Act 1994</i>	26, 1994	31 May 1994	31 May 1994	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
(Reprinted as at 28 February 1995)				
<i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>	25, 1995	5 Sept 1995	5 Sept 1995	—
<i>Housing Assistance (Amendment) Act 1996</i>	27, 1996	1 July 1996	S. 11: 1 July 1996 (see s. 2 (2)) Remainder: 1 July 1996	S. 14
(Reprinted as at 31 December 1997)				
<i>Residential Tenancies (Consequential Provisions) Act 1998</i>	4, 1998	25 May 1998	25 May 1998 (see s. 2)	—

(a) Subsection 2 (3) of the *Housing Assistance (Amendment) Act 1992* provides as follows:

“(3) Section 7 commences in accordance with subsection 9 (4).”

The date on which section 7 commenced in accordance with subsection 9 (4) was 1 January 1993 (see *Gazette* 1993, No. S10, p. 4).

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NOTES—continued

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3.....	am. No. 38, 1989; Act No. 11, 1990; No. 77, 1992; No. 97, 1994; No. 27, 1996
S. 3A	ad. Act No. 27, 1996
S. 4.....	rs. Act No. 97, 1994
Ss. 5, 6.....	rep. Act No. 97, 1994
S. 8.....	am. No. 38, 1989
S. 9.....	am. No. 38, 1989; Act No. 77, 1992; No. 38, 1994
S. 11.....	am. No. 38, 1989
Part IIA (ss. 11A-11C).....	ad. Act No. 27, 1996
Ss. 11A-11C.....	ad. Act No. 27, 1996
S. 12.....	am. No. 38, 1989; Act No. 11, 1990; No. 59, 1991; No. 77, 1992
Ss. 13, 14.....	rep. No. 38, 1989
S. 15.....	am. Act No. 11, 1990; No. 27, 1996; No. 4, 1998
S. 16.....	am. Act No. 27, 1996
S. 17.....	am. No. 38, 1989; Act No. 27, 1996
S. 17A	ad. Act No. 27, 1996
S. 18.....	rs. Act No. 77, 1992 am. No. 26, 1994 rs. No. 27, 1996
S. 19.....	am. No. 38, 1989 rep. Act No. 27, 1996
S. 21.....	rs. No. 66, 1988 am. No. 38, 1989 rep. Act No. 25, 1995
S. 22.....	rs. Act No. 11, 1990 rep. No. 26, 1994
Schedule 1	rs. Act No. 11, 1990; No. 77, 1992 rep. Act No. 27, 1996
Schedule 2	rep. Act No. 11, 1990
Schedule 3	am. Act No. 11, 1990 rep. No. 26, 1994