



Australian Capital Territory

Housing Assistance Amendment Act 2008

A2008-33

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Australian Capital Territory

Housing Assistance Amendment Act 2008

A2008-33

An Act to amend the *Housing Assistance Act 2007*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Housing Assistance Amendment Act 2008*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Housing Assistance Act 2007*.

**4 Housing commissioner—functions
New section 11 (1) (a) (v)**

insert

(v) affordable housing;

**5 Housing commissioner—delegation
Section 17**

after

this Act

insert

, other than under section 25A (3),

6 Sections 26 and 27

omit

7 New part 4A

Part 4A Affordable and community housing

Division 4A.1 Affordable and community housing providers

25A Affordable and community housing providers—registration

- (1) The housing commissioner may, on application, register an eligible entity as—
 - (a) an affordable housing provider; or
 - (b) a community housing provider.

Note If a form is approved under s 39 for this provision, the form must be used.

- (2) Registration may be subject to conditions.
- (3) The housing commissioner may determine a process for the registration of housing providers.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The housing commissioner must not delegate the commissioner's function under subsection (3).

- (6) The housing commissioner must prepare a written notice of a decision to register an entity as an affordable housing provider or a community housing provider.
- (7) A notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

25B Affordable and community housing providers—refusal to register

The housing commissioner must refuse to register an entity as a housing provider if the entity does not satisfy the eligibility criteria.

Note Eligibility criteria for affordable and community housing providers are set out in s 25F and s 25G.

25C Affordable and community housing providers—register

- (1) The housing commissioner must keep a register of—
 - (a) registered affordable housing providers; and
 - (b) registered community housing providers.
- (2) The register must include the following information:
 - (a) the name and address of each housing provider;
 - (b) the name of a contact person for the housing provider;
 - (c) the telephone and fax numbers, and email address, of the contact person;
 - (d) the date the housing provider is registered;
 - (e) whether the housing provider is registered as an affordable housing provider or community housing provider;
 - (f) the conditions (if any) of the registration.

25D Public access—register

- (1) The housing commissioner must make the register available for inspection during ordinary office hours at the office of the housing commissioner.
- (2) A person may, without charge, inspect the register during ordinary office hours.
- (3) On request, the housing commissioner must give a person a copy of all, or any part, of the register.

Note A fee may be determined under s 38 for this provision.

25E Notice about changes of particulars in register

- (1) This section applies if the information about a registered housing provider recorded in the register changes.
- (2) The registered housing provider must tell the housing commissioner, in writing, about the change within 14 days after the day the change happens.

25F Affordable housing provider—eligibility criteria

- (1) An entity is eligible to be registered as an affordable housing provider if the entity—
 - (a) is either—
 - (i) an incorporated body under the Corporations Act that is—
 - (A) a company limited by guarantee; or
 - (B) a company limited by shares; or
 - (ii) incorporated under the *Cooperatives Act 2002*; and
 - (b) operates on a not-for-profit basis; and

- (c) is registered as an exempt charity or public benevolent institution under the *Income Tax Assessment Act 1997* (Cwlth); and
 - (d) has a constitution—
 - (i) an objective of which is the provision of community or affordable housing; and
 - (ii) that allows the board to approve financing of housing projects; and
 - (e) is operating within an acceptable level of risk.
- (2) For subsection (1) (e), an entity is operating within an acceptable level of risk if the housing commissioner is satisfied that the entity's operations are sound taking into consideration the level of risk to which the operations are exposed in relation to the following:
- (a) business planning;
 - (b) financial and risk management;
 - (c) service quality;
 - (d) portfolio planning;
 - (e) procurement of properties;
 - (f) land, housing development and property management.

25G Community housing provider—eligibility criteria

An entity is eligible to be registered as a community housing provider if the entity—

- (a) is an incorporated body; and
- (b) operates on a not-for-profit basis; and

- (c) has a constitution an objective of which is to provide tenancy or asset management services for—
 - (i) affordable housing; or
 - (ii) community housing; and
- (d) manages not less than 10 residential housing properties; and
- (e) satisfies the standards under section 25I.

25H Affordable and community housing providers—trustees and subsidiaries

- (1) The housing commissioner may register an eligible entity that acts as trustee as an affordable housing provider, or community housing provider, if satisfied that the role of trustee does not adversely affect the entity’s ability to comply with the eligibility criteria.
- (2) The housing commissioner may register an eligible entity that is a subsidiary of a body other than an eligible entity as an affordable housing provider, or community housing provider, if satisfied that the entity’s status as a subsidiary does not adversely affect its ability to comply with the eligibility criteria.

25I Community housing providers—standards

- (1) The housing commissioner may determine standards (the *standards*) for a community housing provider.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) The standards may include, but are not limited to, provisions in relation to the following:
 - (a) tenancy management;
 - (b) tenant rights and participation in the general management of community housing provision;

- (c) governance and organisational management;
 - (d) management systems, including human resource management.
- (3) A standard is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

25J Community housing providers—compliance with standards

A community housing provider must comply with the standards that apply to the housing provider.

25K Affordable and community housing providers—monitoring guidelines

- (1) The housing commissioner may determine guidelines (the *monitoring guidelines*) for monitoring the operation of affordable and community housing providers.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

- (2) The housing commissioner may use the monitoring guidelines to decide whether a provider continues to comply with the eligibility criteria for the provider's registration.

Note Eligibility criteria for affordable and community housing providers are set out in s 25F and s 25G.

- (3) Without limiting subsection (1), the monitoring guidelines may make provision in relation to the following:
- (a) compliance by a provider with the objects of the provider's constitution or rules;
 - (b) business planning;
 - (c) financial and risk management;

- (d) service quality;
 - (e) portfolio planning;
 - (f) procurement of properties;
 - (g) land, housing development and property management.
- (4) A guideline is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 The housing commissioner's power under this section cannot be delegated (see s 17).

**25L Affordable and community housing providers—
compliance with monitoring guidelines**

A housing provider must comply with the monitoring guidelines for the housing provider.

**25M Affordable and community housing providers—
monitoring standards, guidelines etc**

The housing commissioner may monitor a registered housing provider's compliance with—

- (a) for an affordable housing provider—the monitoring guidelines for the provider; and
- (b) for a community housing provider—
 - (i) the monitoring guidelines for the provider; and
 - (ii) the standards for the provider; and
 - (iii) any other standards prescribed by regulation.

25N Affordable and community housing providers—report to housing commissioner

- (1) A registered housing provider must report to the housing commissioner—
 - (a) annually, not later than 28 days after the housing provider's annual general meeting; and
 - (b) at any other reasonable time if asked by the housing commissioner.
- (2) The report must include—
 - (a) the housing provider's compliance with its objectives; and
 - (b) information that supports the housing provider's continued compliance with the eligibility criteria for the provider's registration; and
 - (c) the housing provider's audited financial statements; and
 - (d) any other matter required under a contract, to which the Territory and the provider are parties, that relates to housing arrangements.

25O Affordable and community housing providers—changes to constitution or rules

- (1) This section applies if a registered housing provider proposes to change its constitution or rules.
- (2) The provider must, at least 28 days before the change to its constitution or rules, apply to the housing commissioner for approval for the change.
- (3) The housing commissioner must refuse to approve a change to the constitution or rules if satisfied that the change would make the provider ineligible for registration.

-
- (4) The housing commissioner must not unreasonably refuse to give approval under this section.

25P Exemption from requirement or approval—changes to constitution or rules

- (1) A registered housing provider need not apply to the housing commissioner for approval for a minor change to its constitution or rules.
- (2) The housing commissioner may determine what is a minor change to the constitution or rules of a registered housing provider.
- (3) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Division 4A.2 Affordable and community housing programs

25Q Affordable and community housing programs—housing commissioner may give assistance

- (1) The housing commissioner or another Territory entity may give assistance to a registered housing provider.

Examples—assistance by housing commissioner

- 1 a grant of money
- 2 a transfer of land
- 3 a lease of land or property for use as long-term affordable rental housing
- 4 a commercial partnership or joint venture between the housing commissioner and registered housing provider

Examples—assistance by Territory entity

- 1 a secured loan
- 2 a tax concession

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Assistance may be given subject to conditions.
- (3) Nothing in this section requires the housing commissioner or the Territory to give assistance to a registered housing provider.

**25R Affordable and community housing programs—
requirement for information etc**

- (1) The housing commissioner may, by written notice given to a registered housing provider, require the housing provider to give the commissioner relevant information or documents that the commissioner reasonably requires for this part.
- (2) The notice must state—
 - (a) the information or document required by the commissioner; and
 - (b) where or how the information or document is to be given to the commissioner; and
 - (c) the reasonable time within which the information or document must be given to the commissioner.

Division 4A.3 Housing commissioner's functions

**25S Housing commissioner's functions—housing
commissioner may intervene**

- (1) The housing commissioner may intervene in the business of a registered housing provider if the housing provider—
 - (a) fails to adequately manage risk; or
 - (b) fails to comply with another condition of registration; or
 - (c) fails to comply with an instruction issued by the housing commissioner under this Act; or

- (d) makes changes to its rules so that the housing provider—
 - (i) no longer complies with the registration requirements; or
 - (ii) cannot provide affordable housing.
- (2) If the housing commissioner proposes to intervene in the business of a registered housing provider, the commissioner must give the housing provider written notice stating—
 - (a) the reasons for the proposed intervention; and
 - (b) how the commissioner proposes to intervene; and
 - (c) the reasonable time within which the housing provider may make representations to the commissioner about the proposed intervention.
- (3) The housing commissioner must not intervene in the business of a registered housing provider unless the commissioner—
 - (a) has considered any representations made to the commissioner within the time stated in the notice given under subsection (2); and
 - (b) is satisfied on reasonable grounds that the intervention is appropriate in the circumstances and in accordance with the intervention guidelines.
- (4) The housing commissioner may intervene in the business of the registered housing provider by taking 1 or more of the following actions:
 - (a) appointing people to the board of the housing provider;
 - (b) appointing an administrator to control and direct the operation of the housing provider;
 - (c) appointing an administrator to wind up the housing provider and distribute its assets.

(5) The housing commissioner must determine guidelines (the *intervention guidelines*) for intervening in the business of a registered housing provider.

(6) The intervention guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(7) This section is declared to be a corporations legislation displacement provision for the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws).

Note Subsection (5) ensures that any provision of the Corporations Act or the *Australian Securities and Investment Commission Act 2001* (Cwlth) with which this section would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

25T Affordable and community housing providers—removal from register

(1) The housing commissioner may remove a registered housing provider from the register if satisfied the provider—

(a) has breached a requirement of this part or a condition of the provider's registration; or

(b) no longer satisfies the eligibility criteria.

Note Eligibility criteria for affordable and community housing providers are set out in s 25F and s 25G.

(2) The housing commissioner must prepare a written notice of a decision to remove a housing provider from the register.

(3) The notice must include a statement of the reasons for the decision.

(4) A notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

25U Affordable and community housing programs—housing commissioner to report to Minister

- (1) The housing commissioner must, if asked by the Minister, give the Minister a written report about programs for affordable housing and community housing.
- (2) If the housing commissioner gives the Minister a report mentioned in subsection (1), the Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

8 New part 6A

insert

Part 6A Review

31A AAT review

An entity mentioned in table 31A, column 3 may apply to the administrative appeals tribunal for review of a decision by the housing commissioner mentioned in column 2 for the entity.

Table 31A Reviewable decisions

| column 1 item | column 2 decision | column 3 affected entity |
|------------------|--|-----------------------------|
| 1 | s 24—refusing application for housing assistance | the applicant |
| 2 | s 25—suspending or cancelling all or part of housing assistance being provided to entity | the entity |
| 3 | s 25A (2)—registering entity as housing provider on conditions | the entity |

| column 1 item | column 2 decision | column 3 affected entity |
|------------------|--|-----------------------------|
| 4 | s 25B—refusing to register entity as housing provider | the entity |
| 5 | s 25O (2) or (3)—refusing to approve change to constitution or rules of housing provider | the applicant |
| 6 | s 25S—deciding to intervene in business of housing provider | the housing provider |
| 7 | s 25T—removing housing provider from register | the housing provider |

31B Notice of reviewable decisions

- (1) The housing commissioner must give written notice of a decision mentioned in table 31A, column 2 to the entity mentioned in column 3 for the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

9 Dictionary, new definitions

insert

affordable housing means housing that is affordable by people on low or moderate incomes.

company limited by guarantee—see the Corporations Act, section 9.

company limited by shares—see the Corporations Act, section 9.

housing provider means—

- (a) an affordable housing provider; or
- (b) a community housing provider.

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or the *Cooperatives Act 2002*.

monitoring guidelines, for a housing provider—see section 25K.

standards, for a community housing provider—see section 25I

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 May 2008.

2 Notification

Notified under the Legislation Act on 2 September 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Housing Assistance Amendment Bill 2008, which was passed by the Legislative Assembly on 19 August 2008.

Clerk of the Legislative Assembly

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