

2006

**LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

HOUSING ASSISTANCE BILL 2006

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Housing**

EXPLANATORY STATEMENT

This explanatory statement relates to the *Housing Assistance Bill 2006* (the Bill) as introduced into the ACT Legislative Assembly.

Overview

The purpose of the Bill is to replace the *Housing Assistance Act 1987* (the old Act) with new legislation, which provides a more contemporary legislative framework for the provision of housing assistance in the ACT. It includes a definition of 'housing assistance' for the first time in ACT legislation.

The legislation is focussed on building a better system, which more clearly defines the powers and limitations of the Commissioner for Social Housing. It includes provisions in relation to the entering into of joint ventures, the giving of Ministerial directions, delegation of powers and the making of regulations. Financial arrangements in relation to payments made to the Commissioner are also clarified. The title of the Commissioner has been changed in order to accurately reflect the position's role in relation to both the public and community housing sectors.

The new legislative scheme also provides the Commissioner with the power to make formal determinations under Programs established through the Act, as well as the ability to issue operational guidelines to assist staff to interpret and implement provisions of the Act or its programs. This places current practices with regard to the Act and its programs on a much clearer legislative footing.

The Bill provides power for the Commissioner to seek information from the people receiving housing assistance, and require that information to be provided. This will ensure that the ability to effectively provide ongoing assistance and manage the housing system as a whole is enhanced.

The legislation includes new provisions for the protection of the personal information of entities receiving housing assistance. As the largest single landlord in the Territory, the ACT Government has a particular responsibility to ensure that the personal details of its tenants are not inappropriately released into the public arena or misused in any way which may adversely affect their lives. These restrictions also apply to requests by the Minister.

Revenue/Cost Implications

The legislation will be implemented within existing financial resources.

Notes on Clauses

PART 1 PRELIMINARY

This part includes the introductory information relating to the Act.

Clause 1 Name of Act

This clause provides that the name of this Act is the *Housing Assistance Act 2006*.

Clause 2 Commencement

The Act will commence on a day fixed by the Minister, unless the Minister has not commenced the Act within 6 months of its notification day. In that case, the Act will commence automatically on the first day after that 6-month period.

Clause 3 Dictionary

This clause provides that the dictionary of terms at the end of the Act forms part of the Act.

Clause 4 Notes

This clause explains that notes included in the Act are for explanatory purposes only and do not form part of the Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause explains that the Criminal Code applies in relation to offences against the Act.

PART 2 OBJECTS AND IMPORTANT CONCEPTS

This part includes information on the objectives of the Act, and provides definition of the key term ‘housing assistance’.

Clause 6 Objects

The objects in the Act provide the context for the operation of the social housing system and for decision makers within the system. They include a focus on maximising opportunities for access to housing, focussing on those most in need of assistance, promoting choice, seeking value for money, matching housing supply to demand, the co-ordination of support services, the promotion of community housing and mechanisms to involve consumers. The objects of the new Act are similar to those in section 3A of the old Act, and are consistent with the objectives of the Commonwealth-State Housing Agreement, through which financial assistance is provided to the ACT for housing assistance programs.

Clause 7 What is *housing assistance*?

For the first time, the term “housing assistance” has been defined in ACT legislation. This is important as it allows for some boundaries to be drawn around the provision of housing assistance. For the purposes of this Act, it means “*services, programs, assets, rebates and amounts, provided under an approved housing assistance program to help entities who are eligible for assistance under the program to meet their emergency, short-term, medium-term and long-term housing needs.*”

This covers the wide range of activities undertaken by the Commissioner. Including a definition in the Act will provide much greater clarity in relation to the areas in which housing assistance programs may be developed and in which housing assistance services may be provided.

The definition of “entity” in the *Legislation Act 2001*, includes a person, corporation or unincorporated body.

Clause 8 When is someone eligible for housing assistance?

This clause explains that an entity is eligible to receive housing assistance if they meet the eligibility criteria outlined in an approved housing assistance program. The nature of these criteria are a part of each program (see clause 18), and may relate to things such as income levels or circumstances.

PART 3 HOUSING COMMISSIONER

This part establishes the framework through which the system of housing assistance is provided, that is the Commissioner for Social Housing. It provides details of how the position of Commissioner is established and what they are, and are not, allowed to do.

Clause 9 Housing Commissioner - establishment

This clause creates the position of Commissioner for Social Housing and indicates that it is a body corporate and must have a seal, which means the Commissioner has a separate legal identity to the ACT Government. It also indicates that the Chief Executive responsible for the administration of the Act (as named in the Administrative Arrangements Orders, issued under the *Public Sector Management Act 1994*) also holds the position of Commissioner for Social Housing. This section is similar to sections 4 and 7 of the old Act.

The title of the Commissioner has been changed to reflect the Commissioner’s role in relation to both public and community housing.

Clause 10 Housing Commissioner - powers generally

This clause gives the powers of a natural person (at common law) to the Commissioner for Social Housing. This power provides for the Commissioner to administer the social housing system in the ACT. These powers may include, amongst others, the power to enter into a contract, own and dispose of property, sue and be sued. This clause is similar to section 9 of the old Act.

This clause also provides for the Commissioner for Social Housing to enter into arrangements for the provision of housing assistance by entities, on her or his behalf. Such entities may include community service organisations, charities or businesses.

Clause 11 Housing Commissioner - functions

This clause gives responsibility to the Commissioner for Social Housing for the administration of programs and funding arrangements to deliver housing assistance in the ACT. This assistance may be delivered through public housing, community housing, home ownership and financial assistance. These areas are similar to those in section 8 of the old Act. Under the *Legislation Act 2001*, a ‘function’ includes an authority, duty and power. An example of a ‘program’ is the Public Rental Housing Assistance Program.

The responsible Minister may also approve housing assistance services, for which the Commissioner is responsible for administering. The notification of any such services will be through a Notifiable Instrument on the ACT Legislation Register.

Clause 12 Housing Commissioner - no power for contracts of employment

This clause prohibits the Commissioner from employing staff. This is the same as section 9(2) of the old Act. Those public servants responsible for administering the Act on behalf of, or with the delegation of, the Commissioner are employed under the *Public Sector Management Act 1994*.

Clause 13 Limits on Housing Commissioner - joint ventures

This clause requires the Commissioner for Social Housing to obtain the written approval of the Minister, prior to entering into negotiations relating to a joint venture. The written approval of the Executive is then required for the Commissioner to enter into an agreement for a joint venture. The Executive may approve joint ventures generally or in a specific instance, and may impose conditions or restrictions on such ventures. This provision is a further development of section 9(1)(g)(iii) of the old Act.

Clause 14 Notice of joint ventures

This clause requires the Commissioner to provide the responsible Minister with a written statement of the joint venture no later than two weeks after the day on which the agreement is entered into. The statement must include the details and reasons relating to the joint venture. The Minister must then present that statement to the ACT Legislative Assembly no later than six sitting days after which it is provided to the Minister.

The statement does not need to include any information which is commercially sensitive. However if such information is excluded, then a further statement must be provided by the Minister to the Assembly which provides details about the general nature of the sensitive information, and the reasons for leaving it out of the original statement. These provisions are consistent with similar requirements which existed in the *Planning and Land Act 2002*.

Clause 15 Limit on Housing Commissioner - large contracts

This clause updates the previous requirement at section 9(3) of the old Act, with a higher figure of \$5m, which reflects the operational reality of managing a \$3 billion property portfolio, while also allowing the Minister to maintain an oversight of significant expenditures undertaken by the Commissioner for Social Housing.

Clause 16 Housing Commissioner - ministerial directions

This clause allows the Minister to give directions to the Commissioner for Social Housing, which are Notifiable Instruments. The functions of the Commissioner must be exercised in accordance with any directions by the Minister. This is the same as section 8(2) of the old Act.

Clause 17 Housing Commissioner - delegation

This clause allows the Commissioner for Social Housing to delegate their functions under this Act or any other territory law to a public servant. Under the *Legislation Act 2001*, a ‘function’ includes an authority, duty and power, and a ‘public servant’ means a person employed in the public service. This is similar to section 10 of the old Act.

PART 4 HOUSING ASSISTANCE PROGRAMS

This part establishes the vehicle through which housing assistance is delivered, that is housing assistance programs approved by the Minister. It also outlines the Commissioner’s powers in relation to the seeking of information from applicants or recipients of housing assistance. This part also provides a definition of the terms ‘housing assistance program’ and ‘market rent’.

Clause 18 What is a *housing assistance program*?

This clause states that a housing assistance program must include the kind of assistance to be provided, the eligibility criteria for those entities seeking assistance and how decisions of the Commissioner for Social Housing, under the program may be reviewed. This is similar to section 12 of the old Act. Housing assistance programs are the core of the social housing system, as they establish the parameters of the housing assistance to be provided, to whom and the basis on which it will be provided.

Clause 19 Approved housing assistance programs

This clause indicates that the responsible Minister may approve a housing assistance program, and that such approvals are a Disallowable Instrument. This means that the programs must be notified on the ACT Legislation Register and presented to the ACT Legislative Assembly. This simplifies the process contained in section 12(9) of the old Act.

Clause 20 Approved housing assistance programs - determinations

This clause allows an approved housing assistance program to contain a provision for the Commissioner for Social Housing to make determinations for the program. Determinations could, for example, relate to what is defined as income in an income test under a program. Any such determination is a Notifiable Instrument.

Clause 21 Approved housing assistance programs - operational guidelines

This clause allows the Commissioner for Social Housing to issue guidelines which outline the manner in which the Act or a program should be interpreted or applied. Such guidelines must not be inconsistent with the Act itself, and are also Notifiable Instruments. These guidelines will provide certainty for tenants and staff in relation to the manner in which the Act and its programs are interpreted and implemented. These guidelines will relate specifically to housing assistance programs and are not intended to apply to the general administration of the administrative unit responsible for the Act.

Clause 22 Approved housing assistance programs - market rent

This clause requires that housing being rented under a housing assistance program should be charged at market rent. Market rent is the level of rental payment which a willing lessor to a willing tenant, if they had acted at arm's length and without compulsion. A housing assistance program may provide for a rebate of rent in accordance with the program. This is similar to section 15 of the old Act.

Clause 23 Approved housing assistance programs - rent review

This clause requires the Commissioner for Social Housing to review the level of market rent at least once a year. This is similar to section 15(3) of the old Act.

Clause 24 Housing assistance applicants - requirement for further information

This clause allows the Commissioner for Social Housing to require an entity which has applied for housing assistance to give the Commissioner further information in order to reasonably decide on the application for assistance. Such a power is necessary in relation to the need for complete information to be provided by an applicant prior to their application for housing assistance being properly assessed.

If the Commissioner has in writing, required further information and provided at least seven days for that information to be provided and the information has not been provided, then the Commissioner may refuse the application for housing assistance. This will allow the Commissioner to close off those applications which are incomplete and where the required further information has not been provided, rather than keep them open as active applications for an indefinite period.

Clause 25 Housing assistance recipients - requirement for information

This clause allows the Commissioner for Social Housing to require that an entity receiving housing assistance provide stated information that the Commissioner reasonably needs to provide or review the assistance being provided, for the good management of the housing assistance program or assets or to otherwise exercise their functions. This will, for instance, allow the Commissioner to collect information from market renters in relation to the financial circumstances, which has not been possible.

If the Commissioner has in writing, required further information and provided at least seven days for that information to be provided and the information has not been provided, then the Commissioner may suspend or cancel the housing assistance by written notice. The written notice must indicate that the housing assistance has been

suspended or cancelled, when the action takes effect and, if suspended, for what period of time the suspension will last.

Clause 26 Requirements for information - AAT review

This clause allows the applicants or entities referred to in Clause 24 and 25 to apply to the Administrative Appeals Tribunal for a review of the decision to refuse an application for, or suspend or cancel, housing assistance.

Clause 27 Requirements for information - Notice of reviewable decisions

This clause requires the Commissioner for Social Housing to give written notice of a decision to decision to refuse an application for, or suspend or cancel, housing assistance, under Clauses 24 or 25, and requires that such a notice be in accordance with the code of practice issued under the *Administrative Appeals Tribunal Act 1989*.

PART 5 PROTECTION OF INFORMATION

This part outlines the manner in which the personal information of applicants and recipients of housing assistance and housing assistance properties is to be protected from inappropriate public release. Consequential amendments at Schedule 1, part 1.2 also amend the *Freedom of Information Act 1989* to apply protections to similar documents held by other agencies.

Clause 28 Meaning of *protected information*

This clause defines what is protected information under this Act. Protected information includes information which identifies an entity as an applicant, recipient or previous recipient of housing assistance, or would identify a housing assistance property or the personal details of a housing assistance recipient (including telephone number or address), or something which would allow this information to be worked out.

Clause 29 FOI Act exemption - documents containing protected information

This clause exempts information referred to as personal information in clause 28 and in the possession of the Commissioner for Social Housing, from release under the *Freedom of Information Act 1989*. However, this exemption does not apply if the personal information relates to the same person who is making the request. This recognises the special position of the ACT Government as the largest single landlord in the Territory.

PART 6 COMMONWEALTH-TERRITORY FUNDING AGREEMENTS

This part outlines what a Commonwealth-Territory funding agreement is and outlines what must occur if one is entered into. This part includes a definition of the term ‘Commonwealth-Territory funding agreement’.

Clause 30 **What is a *Commonwealth-Territory funding agreement*?**

This clause outlines the definition of a Commonwealth-Territory funding agreement, to mean an agreement between the Australian Government and the ACT Government for financial assistance to be provided by the former to the latter, for the purposes of housing assistance or to promote the objects of the Act (as outlined at clause 6). This is similar to section 11A of the old Act.

Clause 31 **Notification of Commonwealth-Territory funding agreements**

This clause requires that any Commonwealth-Territory funding agreement, or amendment to such an agreement, is notified on the ACT Legislation Register. This is similar to section 11A(2) of the old Act.

PART 7 **MISCELLANEOUS**

This part addresses various matters, including the arrangements in relation to unleased land, information provision to the Minister, financial arrangements and fees, forms and regulations, the protection of officials from liability, the amendment of other Acts and the repeal of the old Act. This part includes definitions of the terms ‘existing tenancy’, ‘unleased territory land’ and ‘official’.

Clause 32 **Placing unleased land under housing commissioner’s control**

This clause allows the Executive to direct the ACT Planning and Land Authority to place unleased Territory land under the control of the Commissioner for Social Housing. Such land may be subject to an existing tenancy and the Commissioner may exercise their powers in relation to such tenancies. The provision of such land is notifiable on the ACT Legislation Register. This is similar to sections 16 and 17 of the old Act.

Clause 33 **Unleased land placed under housing commissioner’s control - powers**

This clause outlines the powers of the Commissioner for Social Housing in relation to unleased land. These powers include managing or using the land, authorising people to enter the land, arranging leases or licences in relation to the land, transferring the lease into the name of the Commissioner. This is similar to section 16 of the old Act.

Clause 34 **Unneeded land may be returned**

This clause allows the Commissioner for Social Housing to surrender control of land which isn’t needed to the ACT Planning and Land Authority. The surrender of such land is notifiable on the ACT Legislation Register.

Clause 35 **Information to Minister**

This clause requires the Commissioner for Social Housing to provide the responsible Minister with information on any matter relating to the Commissioner’s operations. This includes personal information as outlined in clause 28, which may be required for the Minister to respond to contact from tenants to his office seeking assistance. This is similar to section 20 of the old Act.

Clause 36 Financial arrangements

This clause clarifies financial arrangements in relation to funds payable, paid or owing to the Commissioner for Social Housing. Any such amounts paid to or by the Commissioner must be into or out of a banking account within the meaning of the *Financial Management Act 1996*. Any amount owed to or paid to the Commissioner are amounts owed to or paid to the Territory. This is similar to section 18 of the old Act.

Clause 37 Protection of officials from liability

This clause protects the Commissioner for Social Housing and anyone else exercising a function under the Act from liability resulting from anything done or omitted in the exercise of a function under the Act or in the exercise of a function under the Act, as long as it was done honestly and without recklessness. Any such liability attaches to the Territory instead. This is similar to section 11 of the old Act.

Clause 38 Determination of fees

This clause allows the Minister to determine fees for the Act. Any such determination of fees is a Disallowable Instrument. This means that they must be notified on the ACT Legislation Register and presented to the ACT Legislative Assembly.

Clause 39 Approved forms

This clause allows the Commissioner for Social Housing to approve forms for the Act. Any such approved forms must be used for that purpose. Any such forms are notifiable on the ACT Legislation Register.

Clause 40 Regulation-making power

This clause allows the Executive to make regulations for the Act.

Clause 41 Legislation Amended - sch 1

This clause indicates that the legislation in Schedule 1 is amended as outlined. These amendments are as a consequence of the changes made in this Act, from the old Act.

Clause 42 Legislation repealed

This clause repeals the *Housing Assistance Act 1987* and all associated legislative instruments.

PART 10 TRANSITIONAL - HOUSING ASSISTANCE ACT 1987

This part includes the legislative provisions necessary to transition from the Housing Assistance Act 1987 to the Housing Assistance Act 2006. It includes definitions of ‘old Act’, ‘old housing assistance program’ and ‘ACT legislation register’.

Clause 100 Definitions - pt 10

This clause defines the ‘old Act’ as the *Housing Assistance Act 1987* and an ‘old housing assistance program’ as a program made under that Act, for the purposes of the part.

Clause 101 Transitional - rights and liabilities under old Act

This clause preserves any rights or liabilities which an entity may have had under the old Act, until they are amended or ended under this or another Act. The repeal of the old Act does not affect any rights or liabilities. This clause is subject to clauses 102 and 109.

Clause 102 Transitional - corresponding housing assistance programs and things

This clause allows the Commissioner for Social Housing to declare that a housing assistance program or a thing in that program under the old Act corresponds with a housing assistance program or a thing in that program under the new Act. It addresses how such declarations shall be dealt with and allows the Commissioner to give directions about how such declarations shall be applied. Any such declaration is notifiable on the ACT Legislation Register.

Clause 103 Transitional - uncompleted applications for AAT review

This clause allows for uncompleted Administrative Appeals Tribunal reviews to continue, provided that they have not yet ended, and that they relate to a declared new thing under Clause 102.

Clause 104 Transitional - sensitive information under old Act

This clause ensures the protection of personal information (as defined in clause 28) received under the old Act.

Clause 105 Transitional - notification of existing Commonwealth-Territory funding agreements

This clause allows for the notification on the ACT Legislation Register of any Commonwealth-Territory funding agreement in force immediately before the commencement of this section.

Clause 106 Transitional - land placed under control of housing commissioner under old Act

This clause ensures that the treatment of unleased land placed under the control of the Commissioner under the old Act, is treated in accordance with this Act.

Clause 107 Transitional - standard residential tenancy terms, cl 36

This clause updates the terms ‘commissioner for housing’ and ‘*Housing Assistance Act 1987*’, which may be in use in residential tenancy agreements made under the *Residential Tenancies Act 1997*, with the new terms of ‘housing commissioner’ and ‘Housing Assistance Act 2006’, respectively.

Clause 108 Transitional - outdated references to old Act

This clause ensures that any reference to the ‘Housing Assistance Act 1987’ in an Act, instrument made under an Act, document or reference to anything to which this Act applies, is a reference to the new Act. A reference to a thing which no longer exists because of the repeal of the old Act, but where there is a corresponding thing in the new Act, is taken to be a reference to the new thing where appropriate and if the context allows.

Clause 109 Transitional regulations

This clause allows regulations to be made which prescribe transitional matters necessary or convenient because of the enactment of this Act. This section is particularly important, as it has been difficult to back-capture all of the exact details relating to the amendment of housing assistance programs, dating back to before self-government, and therefore unanticipated issues may arise which require a prompt resolution.

Clause 110 Expiry - pt 10

This clause expires this part one year after the day on which it commences.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

This Schedule is given effect by Clause 41, and relates to the amending of legislation, the need for which has arisen because of this new Act.

Part 1.1 Duties Act 1999

Amendment 1.1 updates the title of the Commissioner in section 64(1)(a).

Part 1.2 Freedom of Information Act 1989

Amendment 1.2 inserts a new section 6AA into the *Freedom of Information Act 1989*, which provides a general exemption for documents which are, or contain lists of housing assistance properties which may be in the possession of ACT Government agencies.

Amendment 1.3 renumbers the new and existing sections.

Amendment 1.4 inserts a new note in part 4 of the *Freedom of Information Act 1989* in relation to the exemption of documents containing personal information, as referred to in clause 29.

Part 1.3 Land (Planning and Environment) Act 1991

Amendment 1.5 updates the title of the Commissioner and the Act in section 159A(1)(c)(ii).

Part 1.4 Land (Planning and Environment) Regulation 1992

Amendment 1.6 updates the title of the Commissioner in section 19.

Amendment 1.7 updates the title of the Commissioner in section 19(1)(a).

Amendment 1.8 updates the title of the Commissioner in section 22(2)(b).

Amendment 1.9 updates the title of the Commissioner in section 30.

Amendment 1.10 updates the title of the Commissioner in section 30(a).

Part 1.5 Land Tax Act 2004

Amendment 1.11 updates the title of the Commissioner and the Act in section 10(1)(c).

Part 1.6 Legislation Act 2001

Amendment 1.12 removes the former definition of the Commissioner from the Dictionary.

Amendment 1.13 inserts a new definition of the housing commissioner in the Dictionary.

Part 1.7 Magistrates Court Act 1930

Amendment 1.14 restructures section 147B and updates the title of the Commissioner.

Amendment 1.15 restructures section 154 and updates the title of the Commissioner.

Part 1.8 Residential Tenancies Act 1997

Amendment 1.16 updates references to the Act and approved housing assistance programs, in section 107A(6).

Amendment 1.17 updates references to the Act and approved housing assistance programs, in section 127A(3).

Amendment 1.18 restructures clause 36 of Schedule 1 and updates the title of the Commissioner and the Act.

Amendment 1.19 updates the title of the Commissioner in sections 10(5), 15(5), 15(6), 107C(2) and 127A(2).

Part 1.9 Supreme Court Act 1933

Amendment 1.20 updates the title of the Commissioner in section 49A(3).

Part 1.10 Uncollected Goods Act 1996

Amendment 1.21 updates the title of the Commissioner in sections 13(c) and 27A.

Part 1.11 Victims of Crime (Financial Assistance) Act 1983

Amendment 1.22 updates the title of the Commissioner in section 63.

Dictionary

This section includes definitions of the following key terms used in the Act:

Those already defined throughout the Act - approved housing assistance program; Commonwealth-Territory funding agreement; eligible; housing assistance; housing assistance program; housing commissioner; and protected information.

Those not elsewhere defined in the Act - community housing; housing; and information.