

AUSTRALIAN CAPITAL TERRITORY

Housing Assistance Ordinance 1987

No. 36 of 1987

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AUSTRALIAN CAPITAL TERRITORY

Housing Assistance Ordinance 1987

No. 36 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 22 July 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

G. SCHOLES
Minister of State for Territories

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

PART I—PRELIMINARY

Short title

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

Commencement

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

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears:

“Commissioner” means the Commissioner for Housing appointed under section 4;

“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;

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

“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;

“public servant” means a person who is an officer or employee within the meaning of the *Public Service Act 1922*.

PART II—THE COMMISSIONER FOR HOUSING

Division 1—Administration

Commissioner for Housing

4. (1) For the purposes of this Ordinance, there shall be a Commissioner for Housing for the Australian Capital Territory.

(2) The Minister shall appoint a person to be the Commissioner.

(3) A person is not eligible for appointment as Commissioner unless the person is a public servant.

Termination of office

5. (1) The Minister may at any time terminate the appointment of a person as Commissioner.

(2) A person appointed as Commissioner may, by writing signed by the person and delivered to the Minister, resign from that appointment.

(3) A resignation under subsection (2) does not have effect until accepted by the Minister.

(4) Where a person appointed as Commissioner ceases to be a public servant, the person ceases to hold office as Commissioner.

Acting appointments

6. (1) The Minister may appoint a person to act as Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person is not eligible for appointment under this section unless the person is a public servant.

(3) The appointment of a person under this section may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) The Minister may at any time terminate the appointment of a person under this section.

(5) Where a person is acting in the office of Commissioner in accordance with paragraph (1) (b) and that office becomes vacant while that person is so acting, then, subject to subsection (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act as Commissioner ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) If a person appointed to act as Commissioner ceases to be a public servant, the appointment of the person so to act ceases to have effect.

(8) While a person is acting as Commissioner, the person has, and may exercise, all the powers and shall perform all the functions of the Commissioner under this Ordinance or any other law in force in the Territory and, for the purposes of the exercise of those powers and the performance of those functions, this Ordinance or that other law has effect as if a reference to the Commissioner included a reference to a person acting in the office of Commissioner.

(9) The validity of any thing done by a person purporting to act under this section shall not be called in question on the ground that the occasion for the

appointment of the person had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Commissioner a corporation sole

7. (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

Functions of Commissioner

8. (1) The functions of the Commissioner are to administer, on behalf of the Commonwealth, 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.

Powers of Commissioner

9. (1) Subject to this Ordinance, 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 Commonwealth or is transferred to the Commissioner by the previous holder of the lease;
- (b) to acquire, control, manage and dispose of land, whether unleased Commonwealth land or land referred to in paragraph (a);
- (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; and
 - (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.

(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 \$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 Minister of State for Finance.

(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.

Delegation

10. (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 Ordinance, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, 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

Protection and liability of Commissioner

11. (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 Commonwealth.

PART III—HOUSING ASSISTANCE

Housing assistance programs

(1) The Commissioner may, for the purposes of this Ordinance, 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 Schedule 1 shall apply in relation to the program to which the instrument relates.

(6) Where the Commissioner has specified in a relevant instrument that Schedule 1 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 Schedule 1.

(7) Where the Minister grants his or her approval of a program or variation, Schedule 1 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 provide for application to be made to the Administrative Appeals Tribunal for review of such decisions as are specified in the instrument.

(10) In this section:

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

“relevant instrument” means an instrument relating to a program or a variation prepared by the Commissioner pursuant to subsection (1);

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

Notice in relation to housing assistance program

13. (1) Where the Minister has granted an approval under section 12 in relation to a housing assistance program, or the variation or revocation of such a program, the Commissioner shall cause the instrument comprising that program or variation, or revoking that program, as the case may be, to be published in the *Gazette* as so approved by the Minister.

(2) A housing assistance program, or the variation or revocation of such a program, shall not take effect before the day on which the instrument by which approval of that program, variation or revocation is granted is published in the *Gazette* in accordance with subsection (1).

Tabling requirements in relation to housing assistance program

14. (1) The Minister shall cause a copy of a housing assistance program to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the program was published in the *Gazette* in accordance with subsection 13 (1).

(2) If a copy of a housing assistance program is not laid before each House of the Parliament in accordance with subsection (1), the program shall be void and of no effect.

(3) The provisions of subsections 12 (4) to (7) (inclusive) of the *Seat of Government (Administration) Act 1910* apply in relation to a housing assistance program laid before a House of the Parliament under subsection (1) as if the references in those sections to an Ordinance were references to such a program.

(4) In the application, by virtue of subsection (3), of the provisions of subsections 12 (6) and (6A) of the *Seat of Government (Administration) Act 1910*, references in those subsections to subsection 12 (3) of that Act shall be read as references to subsection (2) of this section.

(5) In this section, “housing assistance program” means the instrument comprising a housing assistance program or variation, or revoking such a program, as the case may be, as referred to in subsection 13 (1).

Rent charge under housing assistance program

15. (1) Where, under a housing assistance program, a rate or amount of rent to be charged is fixed in relation to rental housing assistance, the rate or amount of that rent shall be at least equal to the rate or amount that would result from the use of the formula set out in the Schedule 2.

(2) Where:

- (a) notice of the variation of a housing assistance program is published in the *Gazette* in accordance with subsection 13 (1); and
- (b) a rate or amount of rent to be charged is altered by virtue of that variation;

the notice shall specify a day on and from which the rate or amount of rent as so altered is to be charged.

(3) The Commissioner shall, at least 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 a rate or amount of rent is charged under a housing assistance program.

Unleased land

16. (1) The Minister 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 on behalf of the Commonwealth 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.

(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 Ordinance, the Commissioner may, by instrument under the official seal of the Commissioner, surrender the control of the land to the Commonwealth.

Transfer of land subject to tenancy agreement

17. (1) Where rental housing is provided by the Commonwealth on unleased land, the Minister 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 Minister 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 Ordinance 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 Commonwealth 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).

(5) Where a person under the age of 18 years enters into an agreement with the Commissioner for a lease to occupy premises, being an agreement to which this section applies, the agreement shall have effect as if that person had attained the age of 18 years.

(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 Ordinance 1918*.

PART IV—MISCELLANEOUS

Financial arrangements

18. (1) In this section, “the Fund” means the Australian Capital Territory Housing Assistance Fund established by the Minister of State for Finance as a Trust Account under section 62A of the *Audit Act 1901*.

(2) Money payable by any person to the Commissioner in relation to the exercise of the Commissioner’s powers and the performance of his or her functions under this Ordinance is payable by that person for the purposes of the Fund.

(3) Money received by the Commissioner in the exercise of his or her powers and the performance of his or her functions under this Ordinance shall be paid into the Fund by the Commissioner for the purposes of the Fund.

Accounts

19. In respect of the Commissioner’s operations under this Ordinance, the Commissioner shall keep accounts and prepare financial statements in such form as the Minister of State for Finance may determine from time to time.

Information to Minister

20. 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.

Annual report and financial statement

21. The Commissioner shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Commissioner during the period of 12 months ending on that day, together with financial statements in respect of that period.

Amendment of Ordinance

22. The provisions of the Ordinances specified in Schedule 3 are amended as set out in that Schedule.

Repeal

23. The *Housing Ordinance 1928* is repealed.

Transitional

24. (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 Ordinance shall, on and after that commencement, be deemed to be owned, controlled or held, as the case requires, by the Commissioner under this Ordinance.

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

(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 Ordinance 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 Ordinance 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 Ordinance.

SCHEDULE 1

Section 12

PRINCIPLES FOR OPERATION OF HOUSING ASSISTANCE PROGRAMS

1. The primary principle is to ensure that every person in the Australian Capital Territory has access to adequate and appropriate housing at a price within his or her capacity to pay by seeking to:

- alleviate housing-related poverty; and
- ensure that housing assistance is, as far as possible, delivered equitably to persons resident in different forms of housing tenure.

2. In implementing this principle, assistance provided under housing assistance programs will also reflect the following detailed principles:

(a) Assistance generally

the primary consideration in delivering housing assistance will be the needs of people, rather than to attach assistance to particular dwellings or categories of dwellings;

housing assistance provided will be available to all sections of the community irrespective of age, sex, marital status, race, religion, disability or life situation. However, priority in granting assistance shall be determined by the need for assistance;

in delivering housing assistance, as far as possible, people should be given an equal choice between the types of housing assistance available;

housing assistance programs should be designed so that maximum social benefit is derived from previous investment in housing;

housing assistance programs under this Ordinance should be co-ordinated with other housing assistance programs.

(b) Public rental housing

programs and funding arrangements should seek to develop the public housing sector as a viable and diversified form of housing choice and refrain from discrimination;

programs and funding arrangements shall be developed so as to increase progressively the availability of public housing to a level commensurate with the need for it in the community;

public housing should reflect general community housing standards and should be accessible to community and other services. Poor location of dwellings, an inadequate range of choice of dwellings, and stigmatisation of the status of public tenants should be avoided to the maximum extent practicable;

public housing stock should, as far as possible, be designed to cater for the needs and preferences of current and likely future applicants;

clear recognition should be accorded to the separate but complementary roles of:

- capital expenditure on constructing and acquiring dwellings;
- financing of rental operations;
- managing rental operations including assistance for tenants; and
- sales of dwelling;

the design, style and siting of public housing will, to the maximum extent practicable:

- reflect the need for accessibility and suitability for habitation by disabled persons, Aboriginals, youth, the elderly, or other identified groups; and
- support the energy conservation policies of the Commonwealth;

the Commissioner should ensure that tenants have maximum opportunity to participate in the management of their dwellings and estates and in the development of public housing policies;

(c) Income-related assistance to tenants

programs developed under this Ordinance should recognise the problems created by the inability of some tenants to afford adequate rental accommodation in both public and private rental sectors;

assistance measures in the public rental sector should be co-ordinated with assistance to private tenants and should recognise the income support nature of the assistance and the inter-relationship of this assistance with Commonwealth assistance to pensioners and other beneficiaries under the *Social Security Act 1947*;

(d) Home ownership assistance

assistance shall seek to provide home ownership opportunities for those unable to obtain or maintain affordable finance from the private sector or from sources other than housing assistance programs under this Ordinance;

(e) Implementation

the Commissioner will be able to exercise maximum autonomy and flexibility in developing the administrative arrangements necessary to achieve these principles.

SCHEDULE 2

Section 15

COST RENT FORMULA

The following formula is to be used to determine real cost rents for public rental accommodation. The Commissioner is to charge rents at least equal to those resulting from the use of this formula. The formula is not to be applied to the costs of individual dwellings but rather to the total cost pool of the rental stock. In allocating the total cost rent pool to individual tenancies the Commissioner will have regard to variation in housing standards and locations within the constraints of available administrative arrangements for assessing these variations.

1. Recovery of operating expenses

The costs to be recovered in this area include:

- (a) administration;
- (b) rates;
- (c) insurance;
- (d) specific operating expenses associated with particular types of units;
- (e) annual maintenance;
- (f) yearly allowance for rent arrears and debts written off;
- (g) yearly allowance for vacancies;
- (h) leasing expenses related to land and dwellings;

SCHEDULE 2—continued

- (i) operating expenses of community facilities;
 - (j) any other operating costs as the Minister may direct.
2. Interest charges
Interest payable on loan funds invested in public rental housing.
3. Depreciation
- (a) depreciation rate is to reflect a life of between 40 and 75 years of the capital improvements on the land;
 - (b) the value of capital improvement will be based on the estimated current capital improved value;
 - (c) the minimum annual depreciation rate will be not less than the rate resulting from a term of 75 years.

SCHEDULE 3

Section 22

AMENDMENT OF ORDINANCES

Commonwealth Dwellings (Rent) Ordinance 1961

Subsection 3 (1):

Omit “This Ordinance”, substitute “Subject to subsection (3), this Ordinance”.

Section 3

Add at the end the following subsection:

“(3) This Ordinance does not apply in relation to a lease in respect of which a rate or amount of rent is fixed under a housing assistance program in force under the *Housing Assistance Ordinance 1987*.”.

Protection of Lands Ordinance 1937

After section 2 insert the following:

Application

“2A. This Ordinance does not apply to or in relation to any lands placed under the control of the Commissioner for Housing for the Australian Capital Territory pursuant to the *Housing Assistance Ordinance 1987*.”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 29 July 1987.