



Australian Capital Territory

Housing Assistance Act 2007

A2007-8

Republication No 8

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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 2007* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises 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 Act 2001*, s 115 and s 117). 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.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Housing Assistance Act 2007

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Australian Capital Territory

Housing Assistance Act 2007

An Act to provide for housing assistance, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Housing Assistance Act 2007*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*housing assistance*—see section 7.' means that the term 'housing assistance' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Objects and important concepts

6 Objects of Act

- (1) The main objects of this Act are—
- (a) to maximise the opportunities for everyone in the ACT to have access to housing that is affordable, secure and appropriate to their needs; and
 - (b) to facilitate the provision of housing assistance for those most in need; and
 - (c) to maximise value for money in the provision of housing assistance; and
 - (d) to promote a choice of forms of housing assistance, and providers of housing assistance, for entities eligible for housing assistance; and

Note **Entity** includes a person—see the Legislation Act, dict, pt 1.

- (e) to facilitate the provision of rental housing that—
 - (i) has adequate amenity, is of an adequate size and is appropriately located for 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; and
- (f) to facilitate the provision of an adequate supply of affordable home finance for people on low and moderate incomes; and
- (g) to promote the development of flexible and innovative financial arrangements to facilitate access to home ownership for people on low and moderate incomes; and

- (h) to promote the growth of a community housing sector as a viable alternative to public and private rental housing and home ownership; and
 - (i) to promote the establishment of appropriate mechanisms and forums to allow input into housing policy by consumers, and potential consumers, of housing assistance and by representative non-government agencies involved in housing policy and provision.
- (2) A person administering this Act must have regard to the objects of the Act to the maximum extent practicable considering the resources available to the person.

7 What is *housing assistance*?

In this Act:

housing assistance 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.

Note *Approved housing assistance program*—see s 19.

8 When is someone *eligible* for housing assistance?

For this Act, an entity is *eligible* for housing assistance if the entity meets the eligibility criteria under an approved housing assistance program.

Note *Entity* includes a person—see the Legislation Act, dict, pt 1.

Part 3 Housing Commissioner

9 Housing commissioner—establishment

(1) There is a Commissioner for Social Housing (the *housing commissioner*).

(2) The housing commissioner is a corporation and must have a seal.

Note For provisions about proof of seals, see the *Evidence Act 1995* (Cwlth), s 150 and s 151.

(3) The director-general is the housing commissioner.

10 Housing commissioner—powers generally

(1) The housing commissioner has all the powers of a person, unless expressly excluded by this Act.

Examples of powers

- 1 to enter into a contract
- 2 to own and dispose of property
- 3 to sue and be sued
- 4 to act as a trustee

Note 1 **Person** includes an individual and a corporation (see Legislation Act, dict, pt 1).

Note 2 See s 12 to s 15 for limits on the housing commissioner's powers.

Note 3 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) Without limiting subsection (1), the housing commissioner may enter into arrangements with entities to provide housing assistance.

Note **Entity** includes a person—see the Legislation Act, dict, pt 1.

11 Housing commissioner—functions

- (1) The housing commissioner has the following functions:
- (a) administering, on behalf of the Territory, programs and funding arrangements for delivering housing assistance in the ACT by way of—
 - (i) public rental housing; and
 - (ii) home ownership; and
 - (iii) financial assistance to home owners and tenants; and
 - (iv) community housing; and
 - (v) affordable housing;
 - (b) administering, on behalf of the Territory, any services relating to housing assistance that the Minister approves under subsection (2).

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) The Minister may approve stated services relating to housing assistance.
- (3) An approval is a notifiable instrument.

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

12 Housing commissioner—no power for contracts of employment

The housing commissioner does not have the power to employ staff on a contract of employment.

13 Limits on housing commissioner—joint ventures

- (1) The housing commissioner must not—
 - (a) enter into negotiations for a joint venture without the Minister’s prior written approval; or
 - (b) enter into an agreement for a joint venture without the Executive’s prior written approval.
- (2) An approval under subsection (1)—
 - (a) may apply generally or may relate to a particular proposed joint venture; and
 - (b) may be given subject to the conditions or restrictions stated in the approval.

14 Notice of joint ventures

- (1) This section applies if the housing commissioner enters into an agreement for a joint venture.
- (2) The housing commissioner must, not later than 14 days after the day the commissioner enters into the agreement, give the Minister a written statement (the *commissioner’s statement*) setting out the details of, and the reasons for entering into, the agreement.
- (3) The Minister must present a copy of the commissioner’s statement to the Legislative Assembly not later than 6 sitting days after the day the Minister is given the statement.
- (4) However, the copy of the commissioner’s statement presented to the Legislative Assembly need not include any material that is commercially sensitive.
- (5) If commercially sensitive information is not included in the presented copy of the commissioner’s statement, the Minister must, when presenting the statement to the Legislative Assembly, also present a further statement setting out the general nature of the

commercially sensitive information and the reason for it not being included in the presented statement.

15 Limit on housing commissioner—large contracts

The housing commissioner must not, without the Minister’s prior written approval, enter into a contract which involves the payment or receipt of a total amount larger than \$5 million.

16 Housing commissioner—Ministerial directions

- (1) The Minister may give a direction to the housing commissioner about the exercise of the commissioner’s functions.
- (2) The housing commissioner must exercise the commissioner’s functions in accordance with any direction given by the Minister.
- (3) A direction is a notifiable instrument.

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

17 Housing commissioner—delegation

The housing commissioner may delegate the commissioner’s functions under this Act, other than under section 25A (3), or another territory law to a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Part 4 Housing assistance programs

18 What is a *housing assistance program*?

In this Act:

housing assistance program means a program for providing housing assistance that includes the following:

- (a) the kind of assistance that may be provided under the program;
- (b) the eligibility criteria for assistance under the program;
- (c) how decisions of the housing commissioner under the program may be reviewed.

Note 1 **Housing assistance**—see s 7.

Note 2 Power given under an Act to make a statutory instrument (including a program) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

19 Approved housing assistance programs

- (1) The Minister may approve a housing assistance program.
- (2) An approved housing assistance program is a disallowable instrument.

Note 1 Power given under an Act to make a statutory instrument (including a program) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

Note 2 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

20 Approved housing assistance programs—determinations

- (1) An approved housing assistance program may provide for the housing commissioner to make determinations for the program.

- (2) A determination under subsection (1), and each amendment (if any) of a determination, is a notifiable instrument.

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

21 Approved housing assistance programs—operational guidelines

- (1) The housing commissioner may issue guidelines (*housing operation guidelines*) outlining procedures for the management or operation of approved housing assistance programs.

- (2) Housing operation guidelines—

- (a) may deal with matters also dealt with elsewhere under this Act; but
- (b) must not be inconsistent with this Act (including approved housing assistance programs).

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any approved housing assistance program or regulation (see Legislation Act, s 104).

- (3) A housing operation guideline, and each amendment (if any) of a guideline, is a notifiable instrument.

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

22 Approved housing assistance programs—market rent

- (1) If housing is being rented to an entity under an approved housing assistance program, the entity must be charged market rent for the housing.
- (2) However, an approved housing assistance program may provide for a rebate of rent in accordance with the program.

(3) In this section:

market rent, for housing, means the rent that would be charged by the lessor for the housing if the housing were rented by a willing lessor to a willing tenant—

- (a) dealing with each other at arm's length; and
- (b) each of whom had acted knowledgeably, sensibly and without compulsion.

23 Approved housing assistance programs—rent review

The housing commissioner must review the rent charged for housing rented under an approved housing assistance program at least once each year.

24 Housing assistance applicants—requirement for further information

- (1) This section applies if an entity applies for housing assistance.
- (2) The housing commissioner may require the entity to give the commissioner further stated information that the commissioner reasonably needs to decide the application.

Note **Information** includes a document—see the dictionary.

- (3) The housing commissioner may, by written notice to the entity, refuse the application if—
 - (a) the requirement is made in writing; and
 - (b) the requirement states a reasonable time (of at least 7 days after the day the requirement is given to the entity) for providing the information; and
 - (c) the entity does not provide the information in accordance with the requirement.

25 Housing assistance recipients—requirement for information

- (1) This section applies if an entity is receiving housing assistance.
- (2) The housing commissioner may, at any time, require the entity to give the commissioner stated information that the commissioner reasonably needs—
 - (a) to review the housing assistance being provided to the entity; or
 - (b) to provide housing assistance to the entity; or
 - (c) for the good management of an approved housing assistance program or of assets held by the commissioner; or
 - (d) to otherwise exercise the commissioner’s functions under this Act.

Note **Information** includes a document—see the dictionary.

- (3) The housing commissioner may suspend or cancel all or part of the entity’s housing assistance if—
 - (a) the requirement is made in writing; and
 - (b) the requirement states a reasonable time (of at least 7 days after the day the requirement is given to the entity) for giving the information; and
 - (c) the entity does not give the information in accordance with the requirement.

Note The decision to suspend or cancel all or part of an entity’s housing assistance is a reviewable decision (see s 31A), and the housing commissioner must give a reviewable decision notice to the entity (see s 31B).

- (4) The reviewable decision notice given to the entity must include—
- (a) a statement that the housing assistance is suspended or cancelled; and
 - (b) when the suspension or cancellation begins; and
 - (c) if housing assistance is suspended—when the suspension ends.

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.

Part 5 Protection of information

28 Meaning of *protected information*—pt 5

- (1) For this part, information is *protected information* if it—
- (a) identifies an entity that has applied for housing assistance as having applied for housing assistance; or
 - (b) identifies an entity that is or has been a housing assistance recipient as a housing assistance recipient or former housing assistance recipient; or
 - (c) identifies land that is a housing assistance property as a housing assistance property; or
 - (d) is protected personal information about an entity that—
 - (i) has applied for housing assistance; or
 - (ii) is or has been a housing assistance recipient; or
 - (e) is information prescribed by regulation for this definition; or
 - (f) would allow something to which paragraph (a), (b), (c), (d) or (e) applies to be worked out.

Note **Entity** includes a person—see the Legislation Act, dict, pt 1.

- (2) In this section:

housing assistance property means—

- (a) land owned, controlled or held by the housing commissioner; or
- (b) land used by an entity contracted by the commissioner to provide housing assistance.

**Example of land controlled or held by the housing commissioner—
par (a)**

land leased by the commissioner from a private landlord to provide public rental housing

Example of entity contracted by the housing commissioner—par (b)

a community organisation that is contracted by the commissioner to operate a refuge

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).

housing assistance recipient means an entity receiving housing assistance.

Examples of housing assistance recipients

- 1 a tenant of a housing assistance property
- 2 a person accommodated at a refuge or other residential facility that is operated by a community organisation receiving housing assistance to provide the accommodation

protected personal information, about an entity that is or has been a housing assistance recipient, means—

- (a) the entity's name, telephone number or address; or
- (b) any other information prescribed by regulation for this definition.

29 FOI Act exemption—documents containing protected information

- (1) For the purposes of the *Freedom of Information Act 1989* (the ***FOI Act***), a document is an exempt document if—
 - (a) the document is in the possession of the housing commissioner; and
 - (b) its disclosure under the FOI Act would involve the disclosure of protected information.
- (2) However, subsection (1) does not apply in relation to a request under either of the following sections of the FOI Act if the request is made by a person to whom the document relates:
 - (a) section 14 (Requests for access);

- (b) section 48 (Persons may make application for amendment of records).
- (3) To remove any doubt, subsection (1) is additional to, and does not limit, the operation of the FOI Act, part 4 (Exempt documents).

Part 6 Commonwealth-Territory funding agreements

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

In this Act:

Commonwealth-Territory funding agreement means an agreement between the Commonwealth and the Territory for the Commonwealth to give financial assistance to the Territory for housing assistance or to promote the objects of this Act.

31 Notification of Commonwealth-Territory funding agreements

- (1) This section applies if the Territory enters into or amends a Commonwealth-Territory funding agreement.
- (2) The agreement or amendment is a notifiable instrument.

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

Part 6A Notification and review of decisions

31A Meaning of *reviewable decision*—pt 6A

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

31B Reviewable decision notices

If the housing commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The housing commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

31C Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 7 Miscellaneous

32 Placing unleased land under housing commissioner's control

- (1) The Executive may direct the planning and land authority to place unleased territory land under the control of the housing commissioner.
- (2) However, if land that is placed under the housing commissioner's control under subsection (1) is subject to an existing tenancy, the land is placed under the commissioner's control subject to the tenancy.
- (3) To remove any doubt, the housing commissioner may exercise the commissioner's powers under section 33 in relation to a tenancy to which subsection (2) applies, including, for example, by ending the tenancy.

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).

- (4) A direction under subsection (1) is a notifiable instrument.

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

- (5) In this section:

existing tenancy, for land placed under the housing commissioner's control, means a tenancy that was in force immediately before the land was placed under the commissioner's control.

unleased territory land means territory land that is not leased under the *Planning and Development Act 2007* or the *Unit Titles Act 2001*.

33 Unleased land placed under housing commissioner's control—powers

- (1) This section applies to land placed under the control of the housing commissioner under section 32.

- (2) The housing commissioner may do 1 or more of the following in relation to the land:
- (a) manage the land;
 - (b) authorise people to enter the land;
 - (c) use the land in any way the commissioner considers appropriate for the commissioner's functions;
 - (d) arrange for the grant to someone else of a lease of, or licence to occupy, the land;
 - (e) obtain a lease for the land in the name of the housing commissioner and transfer the lease;
 - (f) if the land is held by an entity under a lease—
 - (i) do anything in relation to the land that the Territory could do in relation to the land immediately before the land was placed under the commissioner's control; or
 - (ii) exercise any power under the *Recovery of Lands Act 1929* that the Territory may exercise for the land under that Act on behalf of the Commonwealth.

Note 1 The *Recovery of Lands Act 1929* provides for the Territory to end a lease and take action against people. However, it does not apply to leases under the *Residential Tenancies Act 1997*.

Note 2 See also the *Planning and Development Act 2007*, s 312 for the recovery of land from a former licensee.

- (3) However, a lease or licence must not be granted by anyone for the land except with the housing commissioner's prior written agreement.

34 Unneeded land may be returned

- (1) This section applies if the housing commissioner is satisfied that unleased land that has been placed under the commissioner's control under section 32 is no longer needed for this Act.

- (2) The housing commissioner may, by instrument, surrender control of the land to the planning and land authority.
- (3) An instrument under subsection (2) is a notifiable instrument.

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

35 Information to Minister

- (1) If the Minister asks the housing commissioner at any time to give the Minister information (including protected information) about any matter relating to the commissioner's functions, the commissioner must comply with the request.

- (2) In this section:

protected information—see section 28.

36 Financial arrangements

- (1) All amounts paid to or by the housing commissioner for this Act (including amounts paid under a Commonwealth-Territory funding agreement) must be paid into or out of a directorate banking account, or territory banking account, within the meaning of the *Financial Management Act 1996*.
- (2) To remove any doubt, amounts owed to, or paid to or by, the housing commissioner are amounts owed to, or paid to or by, the Territory.

37 Protection of officials from liability

- (1) In this section:

official means—

- (a) the housing commissioner; or
- (b) anyone else exercising a function under this Act.

- (2) An official is not personally liable for anything done or omitted to be done honestly and without recklessness—

- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any liability that would, apart from this section, attach to an official attaches instead to the Territory.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any approved housing assistance program or regulation (see Legislation Act, s 104).

38 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

39 Approved forms

- (1) The housing commissioner may approve forms for this Act.
- (2) If the housing commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

40 Regulation-making power

The Executive may make regulations for this Act.

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

Schedule 1 Reviewable decisions

(see pt 6A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	24	refuse application for housing assistance	applicant
2	25	suspend or cancel all or part of housing assistance provided to entity	entity
3	25A (2)	register entity as housing provider on conditions	entity
4	25B	refuse to register entity as housing provider	entity
5	25O (2) or (3)	refuse to approve change to constitution or rules of housing provider	applicant
6	25S	decide to intervene in business of housing provider	housing provider
7	25T	remove housing provider from register	housing provider

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- director-general (see s 163)
- entity
- exercise
- function
- Minister (see s 162)
- planning and land authority
- reviewable decision notice
- territory land
- year.

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

approved housing assistance program means a housing assistance program approved under section 19.

Commonwealth-Territory funding agreement—see section 30.

community housing means rental housing for—

- (a) people on low and moderate incomes or with special needs; or
- (b) nonprofit community organisations.

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

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

eligible, for housing assistance—see section 8.

housing—

- (a) means residential housing and other forms of residential accommodation; and
- (b) includes the fences, outbuildings and other improvements and the connections for utilities and other services provided or reasonably required for the accommodation.

housing assistance—see section 7.

housing assistance program—see section 18.

housing commissioner means the Commissioner for Social Housing established under 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*.

information includes a document.

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

protected information, for part 5 (Protection of information)—see section 28.

reviewable decision, for part 6A (Notification and review of decisions)—see section 31A.

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

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Housing Assistance Act 2007 A2007-8

notified LR 10 May 2007

s 1, s 2 commenced 10 May 2007 (LA s 75 (1))

remainder commenced 10 November 2007 (s 2 and LA s 79)

as modified by

Housing Assistance Regulation 2008 SL2008-7 ss 3-5

notified LR 18 March 2008

s 1, s 2 commenced 18 March 2008 (LA s 75 (1))

remainder commenced 19 March 2008 (s 2)

as amended by

Housing Assistance Amendment Act 2008 A2008-33

notified LR 2 September 2008

s 1, s 2 commenced 2 September 2008 (LA s 75 (1))

remainder commenced 2 March 2009 (s 2 and LA s 79)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.56

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.56 commenced 2 March 2009 (s 2 (2) and see A2008-33, s 2 and LA s 79)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.42

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.42 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.39

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.39 commenced 17 December 2009 (s 2)

Statute Law Amendment Act 2010 A2010-18 sch 3 pt 3.8

notified LR 13 May 2010

s 1, s 2 commenced 13 May 2010 (LA s 75 (1))

sch 3 pt 3.8 commenced 3 June 2010 (s 2)

**Administrative (One ACT Public Service Miscellaneous Amendments)
Act 2011 A2011-22 sch 1 pt 1.81**

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.81 commenced 1 July 2011 (s 2 (1))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Offences against Act—application of Criminal Code etc

s 5 om A2010-18 amdt 3.9

Objects of Act

s 6 hdg sub A2009-49 amdt 3.89

Housing commissioner—establishment

s 9 am A2011-22 amdt 1.251

Housing commissioner—functions

s 11 am A2008-33 s 4

Housing commissioner—delegation

s 17 am A2008-33 s 5

Housing assistance recipients—requirement for information

s 25 am A2008-37 amdt 1.241

Affordable and community housing

pt 4A hdg ins A2008-33 s 7

Affordable and community housing providers

div 4A.1 hdg ins A2008-33 s 7

Affordable and community housing providers—registration

s 25A ins A2008-33 s 7

Affordable and community housing providers—refusal to register

s 25B ins A2008-33 s 7

Affordable and community housing providers—register

s 25C ins A2008-33 s 7

Public access—register

s 25D ins A2008-33 s 7

Notice about changes of particulars in register

s 25E ins A2008-33 s 7

Affordable housing provider—eligibility criteria

s 25F ins A2008-33 s 7

Endnotes

4 Amendment history

Community housing provider—eligibility criteria

s 25G ins A2008-33 s 7

Affordable and community housing providers—trustees and subsidiaries

s 25H ins A2008-33 s 7

Community housing providers—standards

s 25I ins A2008-33 s 7

Community housing providers—compliance with standards

s 25J ins A2008-33 s 7

Affordable and community housing providers—monitoring guidelines

s 25K ins A2008-33 s 7

Affordable and community housing providers—compliance with monitoring guidelines

s 25L ins A2008-33 s 7

Affordable and community housing providers—monitoring standards, guidelines etc

s 25M ins A2008-33 s 7

Affordable and community housing providers—report to housing commissioner

s 25N ins A2008-33 s 7

Affordable and community housing providers—changes to constitution or rules

s 25O ins A2008-33 s 7

Exemption from requirement or approval—changes to constitution or rules

s 25P ins A2008-33 s 7

Affordable and community housing programs

div 4A.2 hdg ins A2008-33 s 7

Affordable and community housing programs—housing commissioner may give assistance

s 25Q ins A2008-33 s 7

Affordable and community housing programs—requirement for information etc

s 25R ins A2008-33 s 7

Housing commissioner's functions

div 4A.3 hdg ins A2008-33 s 7

Housing commissioner's functions—housing commissioner may intervene

s 25S ins A2008-33 s 7

Affordable and community housing providers—removal from register

s 25T ins A2008-33 s 7

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

s 25U ins A2008-33 s 7

Requirements for information—AAT review

s 26 om A2008-33 s 6

Requirements for information—notice of reviewable decisions

s 27 om A2008-33 s 6

Notification and review of decisionspt 6A hdg ins A2008-33 s 8
sub A2008-37 amdt 1.242**Meaning of *reviewable decision*—pt 6A**s 31A ins A2008-33 s 8
sub A2008-37 amdt 1.242**Reviewable decision notices**s 31B ins A2008-33 s 7
sub A2008-37 amdt 1.242**Applications for review**

s 31C ins A2008-37 amdt 1.242

Placing unleased land under housing commissioner's control

s 32 am A2009-49 amdt 3.90

Unleased land placed under housing commissioner's control—powers

s 33 am A2009-49 amdt 3.91

Financial arrangements

s 36 am A2009-49 amdt 3.92; A2011-22 amdt 1.252

Legislation amended—sch 1

s 41 om LA s 89 (3)

Legislation repealed

s 42 om LA s 89 (3)

Transitional—Housing Assistance Act 1987

pt 10 hdg exp 10 November 2008 (s 110)

Definitions—pt 10s 100 exp 10 November 2008 (s 110)
def ***old Act*** exp 10 November 2008 (s 110)
def ***old housing assistance program*** exp 10 November 2008
(s 110)

Endnotes

4 Amendment history

Transitional—rights and liabilities under old Act

s 101 mod SL2008-7 s 3
(1)-(3), (4) exp 10 November 2008 (s 110 (LA s 88 declaration applies))
(3A)-(3C) exp 10 November 2008 (s 101 (3C))

Transitional—corresponding housing assistance programs and things

s 102 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional—mentions of commissioner

s 102A ins as mod SL2008-7 s 4
exp 10 November 2008 (s 102A (2))

Transitional—uncompleted applications for AAT review

s 103 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional—other uncompleted proceedings

s 103A ins as mod SL2008-7 s 5
exp 10 November 2008 (s 103A (5) (LA s 88 declaration applies))

Transitional—sensitive information under old Act

s 104 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional—notification of existing Commonwealth-Territory funding agreements

s 105 exp 10 November 2008 (s 110)

Transitional—land placed under control of housing commissioner under old Act

s 106 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional—standard residential tenancy terms, cl 36

s 107 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional—outdated references to old Act

s 108 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Transitional regulations

s 109 exp 10 November 2008 (s 110 (LA s 88 declaration applies))

Expiry—pt 10

s 110 exp 10 November 2008 (s 110)

Reviewable decisions

sch 1 ins A2008-37 amdt 1.243
am A2009-20 amdt 3.99, amdt 3.100; items renum R5 LA

Consequential amendments

sch 1 pt 1.1 om LA s 89 (1) (b)
sch 1 pts 1.2-1.11 om LA s 89 (3)

Dictionary

dict	am A2008-37 amdt 1.244; A2009-49 amdt 3.93, amdt 3.94; A2011-22 amdt 1.253
	def affordable housing ins A2008-33 s 9
	def company limited by guarantee ins A2008-33 s 9
	def company limited by shares ins A2008-33 s 9
	def housing provider ins A2008-33 s 9
	def incorporated association ins A2008-33 s 9
	def monitoring guidelines ins A2008-33 s 9
	def reviewable decision ins A2008-37 amdt 1.245
	def standards ins A2008-33 s 9

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 10 Nov 2007	10 Nov 2007– 18 Mar 2008	not amended	new Act
R2 19 Mar 2008	19 Mar 2008– 10 Nov 2008	not amended	modification by SL2008-7
R3 11 Nov 2008	11 Nov 2008– 1 Mar 2009	<u>A2008-37</u>	commenced expiry
R4 2 Mar 2009	2 Mar 2009– 21 Sept 2009	A2008-37	amendments by A2008-33 and A2008-37
R5 22 Sept 2009	22 Sept 2009– 16 Dec 2009	A2009-20	amendments by A2009-20
R6 17 Dec 2009	17 Dec 2009– 2 June 2010	A2009-49	amendments by A2010-49

R8
01/07/11

Housing Assistance Act 2007
Effective: 01/07/11-29/02/12

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R7 3 June 2010	3 June 2010– 30 June 2011	A2010-18	amendments by A2010-18

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