

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Housing)

Housing Assistance Amendment Bill 2008

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(As presented)

(Minister for Housing)

Housing Assistance Amendment Bill 2008

A Bill for

An Act to amend the *Housing Assistance Act 2007*

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

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

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

14 **3 Legislation amended**

15 This Act amends the *Housing Assistance Act 2007*.

16 **4 Housing commissioner—functions**
17 **New section 11 (1) (a) (v)**

18 *insert*

19 (v) affordable housing;

20 **5 Housing commissioner—delegation**
21 **Section 17**

22 *after*

23 this Act

24 *insert*

25 , other than under section 25A (2),

1 **6** **What is a *housing assistance program*?**
2 **Section 18, definition of *housing assistance program***

3 *omit everything before paragraph (a), substitute*

4 *housing assistance program* means a program (other than a
5 program under part 4A (Affordable and community housing) for
6 providing housing assistance that includes the following:

7 **7** **Sections 26 and 27**

8 *omit*

9 **8** **New part 4A**

10 **Part 4A** **Affordable and community**
11 **housing**

12 **Division 4A.1** **Affordable and community housing**
13 **providers**

14 **25A** **Affordable and community housing providers—**
15 **registration**

- 16 (1) The housing commissioner may register an eligible entity as—
17 (a) an affordable housing provider; or
18 (b) a community housing provider.
19 (2) The housing commissioner may determine a process for the
20 registration of housing providers.

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

1 (3) A determination is a disallowable instrument.

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

4 (4) The housing commissioner must not delegate the commissioner's
5 function under subsection (2).

6 (5) The housing commissioner must prepare a written notice of a
7 decision to register an entity as an affordable housing provider or a
8 community housing provider.

9 (6) A notice is a notifiable instrument.

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

11 **25B Affordable and community housing providers—refusal to**
12 **register**

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

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

17 **25C Affordable and community housing providers—register**

18 (1) The housing commissioner must keep a register of—

19 (a) registered affordable housing providers; and

20 (b) registered community housing providers.

21 (2) The register must include the following information:

22 (a) the name and address of each housing provider;

23 (b) the name of a contact person for the housing provider;

24 (c) the telephone and fax numbers of the contact person;

25 (d) the date the housing provider is registered;

1 (e) whether the housing provider is registered as an affordable
2 housing provider or community housing provider;

3 (f) the conditions (if any) of the registration.

4 **25D Public access—register**

5 (1) The housing commissioner must make the register available for
6 inspection during ordinary office hours at the office of the housing
7 commissioner.

8 (2) A person may, without charge, inspect the register during ordinary
9 office hours.

10 (3) On request, the housing commissioner must give a person a copy of
11 all, or any part, of the register.

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

13 **25E Notice about changes of particulars in register**

14 (1) This section applies if the information about a registered housing
15 provider recorded in the register changes.

16 (2) The registered housing provider must tell the housing commissioner,
17 in writing, about the change within 14 days after the day the change
18 happens.

19 **25F Affordable housing provider—eligibility criteria**

20 (1) An entity is eligible to be registered as an affordable housing
21 provider if the entity—

22 (a) is either—

23 (i) an incorporated body under the Corporations Act that
24 is—

25 (A) a company limited by guarantee; or

26 (B) a company limited by shares; or

- 1 (ii) incorporated under the *Cooperatives Act 2002*; and
- 2 (b) operates on a not-for-profit basis; and
- 3 (c) is registered as an exempt charity or public benevolent
- 4 institution under the *Income Tax Assessment Act 1997* (Cwlth);
- 5 and
- 6 (d) has a constitution—
- 7 (i) an objective of which is the provision of community or
- 8 affordable housing; and
- 9 (ii) that allows the board to approve financing of housing
- 10 projects; and
- 11 (e) is operating within an acceptable level of risk; and
- 12 (f) unless specifically excluded by the housing commissioner—
- 13 receives a benefit from the Territory as an affordable housing
- 14 provider.
- 15 (2) For subsection (1) (e), an entity is operating within an acceptable
- 16 level of risk if the housing commissioner is satisfied that the entity's
- 17 operations are sound taking into consideration the level of risk to
- 18 which the operations are exposed in relation to the following:
- 19 (a) business planning;
- 20 (b) financial and risk management;
- 21 (c) service quality;
- 22 (d) portfolio planning;
- 23 (e) procurement of properties;
- 24 (f) land, housing development and property management.

-
- 1 **25G Community housing provider—eligibility criteria**
- 2 An entity is eligible to be registered as a community housing
3 provider if the entity—
- 4 (a) is an incorporated body; and
- 5 (b) operates on a not-for-profit basis; and
- 6 (c) has a constitution an objective of which is to provide tenancy
7 or asset management services for—
- 8 (i) affordable housing; or
- 9 (ii) community housing; and
- 10 (d) manages not less than 10 properties; and
- 11 (e) satisfies the standards under section 25I.
- 12 **25H Affordable and community housing providers—trustees**
13 **and subsidiaries**
- 14 (1) The housing commissioner may register an eligible entity that acts
15 as trustee as an affordable housing provider, or community housing
16 provider, if satisfied that the role of trustee does not adversely affect
17 the entity’s ability to comply with the eligibility criteria.
- 18 (2) The housing commissioner may register an eligible entity that is a
19 subsidiary of a body other than an eligible entity as an affordable
20 housing provider, or community housing provider, if satisfied that
21 the entity’s status as a subsidiary does not adversely affect its ability
22 to comply with the eligibility criteria.
- 23 **25I Community housing providers—standards**
- 24 (1) The housing commissioner may determine standards (the *standards*)
25 for a community housing provider.
- 26 *Note* Power to make a statutory instrument (including a regulation) includes
27 power to make different provision for different categories (see
28 Legislation Act, s 48).

- 1 (2) The standards may include, but are not limited to, provisions in
2 relation to the following:
- 3 (a) tenancy management;
- 4 (b) tenant rights and participation in the general management of
5 community housing provision;
- 6 (c) governance and organisational management;
- 7 (d) management systems, including human resource management.
- 8 (3) A standard is a notifiable instrument.

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

10 **25J Community housing providers—compliance with**
11 **standards**

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

14 **25K Affordable and community housing providers—**
15 **monitoring guidelines**

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

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

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

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

- 1 (3) Without limiting subsection (1), the monitoring guidelines may
2 make provision in relation to the following:
- 3 (a) compliance by a provider with the objects of the provider's
4 constitution or rules;
- 5 (b) business planning;
- 6 (c) financial and risk management;
- 7 (d) service quality;
- 8 (e) portfolio planning;
- 9 (f) procurement of properties;
- 10 (g) land, housing development and property management.

- 11 (4) A guideline is a disallowable instrument.

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

14 *Note 2* The housing commissioner's power under this section cannot be
15 delegated (see s17).

16 **25L Affordable and community housing providers—**
17 **compliance with monitoring guidelines**

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

20 **25M Affordable and community housing providers—**
21 **monitoring standards, guidelines etc**

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

- 24 (a) for an affordable housing provider—the monitoring guidelines
25 for the provider; and
- 26 (b) for a community housing provider—
- 27 (i) the monitoring guidelines for the provider; and

- 1 (ii) the standards for the provider; and
2 (iii) any other standards prescribed by regulation.

3 **25N Affordable and community housing providers—report to**
4 **housing commissioner**

- 5 (1) A registered housing provider must report to the housing
6 commissioner—
7 (a) annually, not later than 28 days after the housing provider’s
8 annual general meeting; and
9 (b) at any other reasonable time if asked by the housing
10 commissioner.
11 (2) The report must include—
12 (a) the housing provider’s compliance with its objectives; and
13 (b) information that supports the housing provider’s continued
14 compliance with the eligibility criteria for the provider’s
15 registration; and
16 (c) the housing provider’s financial statements and accounts; and
17 (d) any other matter required under a contract to which the
18 provider is a party.

19 **25O Affordable and community housing providers—changes**
20 **to constitution or rules**

- 21 (1) This section applies if a registered housing provider proposes to
22 change its constitution or rules.
23 (2) The provider must, at least 28 days before the change to its
24 constitution or rules, apply to the housing commissioner for
25 approval for the change.

1 (3) The housing commissioner must refuse to approve a change to the
2 constitution or rules if satisfied that the change would make the
3 provider ineligible for registration.

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

6 **25P Exemption from requirement or approval—changes to**
7 **constitution or rules**

8 (1) A registered housing provider need not apply to the housing
9 commissioner for approval for a minor change to its constitution or
10 rules.

11 (2) The housing commissioner may determine what is a minor change
12 to the constitution or rules of a registered housing provider.

13 (3) A determination is a notifiable instrument.

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

15 **Division 4A.2 Affordable and community housing**
16 **programs**

17 **25Q Affordable and community housing programs—housing**
18 **commissioner may give assistance**

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

21 **Examples—assistance by housing commissioner**

22 1 a grant of money

23 2 a transfer of land

24 3 a lease of land or property for use as long-term affordable rental housing

25 4 a commercial partnership or joint venture between the housing commissioner
26 and registered housing provider

1 **Examples—assistance by Territory entity**

2 1 a secured loan

3 2 a tax concession

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

7 (2) Assistance may be given subject to conditions.

8 (3) Nothing in this section requires the housing commissioner or the
9 Territory to give assistance to a registered housing provider.

10 **25R Affordable and community housing programs—**
11 **requirement for information etc**

12 (1) The housing commissioner may, by written notice given to a
13 registered housing provider, require the housing provider to give the
14 commissioner relevant information or documents that the
15 commissioner reasonably requires for this part.

16 (2) The notice must state—

17 (a) the information or document required by the commissioner;
18 and

19 (b) where or how the information or document is to be given to the
20 commissioner; and

21 (c) the reasonable time within which the information or document
22 must be given to the commissioner.

23 **Division 4A.3 Housing commissioner’s functions**

24 **25S Housing commissioner’s functions—housing**
25 **commissioner may intervene**

26 (1) The housing commissioner may intervene in the business of a
27 registered housing provider if the housing provider—

28 (a) fails to adequately manage risk; or

-
- 1 (b) fails to comply with another condition of registration; or
2 (c) fails to comply with an instruction issued by the housing
3 commissioner under this Act; or
4 (d) makes changes to its rules so that the housing provider—
5 (i) no longer complies with the registration requirements; or
6 (ii) cannot provide affordable housing.
- 7 (2) The housing commissioner may intervene in the business of the
8 registered housing provider by taking 1 or more of the following
9 actions:
10 (a) appointing people to the board of the housing provider;
11 (b) appointing an administrator to control and direct the operation
12 of the housing provider;
13 (c) appointing an administrator to wind up the housing provider
14 and distribute its assets.
- 15 (3) The housing commissioner may determine guidelines (the
16 *intervention guidelines*) for intervening in the business of a
17 registered housing provider.
- 18 (4) The intervention guidelines are a notifiable instrument.
19 *Note* A notifiable instrument must be notified under the Legislation Act.
- 20 (5) This section is declared to be a corporations legislation displacement
21 provision for the Corporations Act, section 5G (Avoiding direct
22 inconsistency arising between the Corporations legislation and State
23 and Territory laws).
24 *Note* Subsection (5) ensures that any provision of the Corporations Act or the
25 *Australian Securities and Investment Commission Act 2001* (Cwlth)
26 with which this section would otherwise be inconsistent does not apply
27 to the extent necessary to avoid the inconsistency.

- 1 **25T Affordable and community housing providers—removal**
2 **from register**
- 3 (1) The housing commissioner may remove a registered housing
4 provider from the register if the provider breaches a condition of
5 registration.
- 6 (2) The housing commissioner must remove a registered housing
7 provider from the register if the provider breaches this part.
- 8 (3) The housing commissioner must prepare a written notice of a
9 decision to remove a housing provider from the register.
- 10 (4) A notice is a notifiable instrument.

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

12 **25U Affordable and community housing programs—housing**
13 **commissioner to report to Minister**

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

21 **9 New part 6A**

22 *insert*

23 **Part 6A Review**

24 **31A AAT review**

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

column 1 item	column 2 decision	column 3 affected entity
1	s 24—refusing application for housing assistance	the applicant
2	s 25—suspending or cancelling all or part of housing assistance being provided to entity	the entity
3	s 25B—refusing to register entity as housing provider	the entity
4	s 25O (2) or (3)—refusing to approve change to constitution or rules of housing provider	the applicant
5	s 25S—deciding to intervene in business of housing provider	the entity

31B Notice of reviewable decisions

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

10 Dictionary, new definitions

insert

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

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

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

- 1 ***housing provider*** means—
- 2 (a) an affordable housing provider; or
- 3 (b) a community housing provider.
- 4 ***incorporated association*** means an association incorporated under
- 5 the *Associations Incorporation Act 1991* or the *Cooperatives*
- 6 *Act 2002*.
- 7 ***monitoring guidelines***, for a housing provider—see section 25K.
- 8 ***standards***, for a community housing provider—see section 25I

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2008.
- 2 **Notification**
Notified under the Legislation Act on 2008.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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