

2008

**LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**HOUSING ASSISTANCE (AMENDMENT) BILL 2008 (REGULATORY
FRAMEWORK FOR NOT FOR PROFIT HOUSING PROVIDERS)**

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Housing**

EXPLANATORY STATEMENT

This explanatory statement relates to the Housing Assistance (Amendment) Bill 2008 (Regulatory Framework for Not for Profit Housing Providers) (the Bill) as introduced into the ACT Legislative Assembly.

Overview

An ACT regulatory framework for not for profit housing providers is to be introduced through amendment to the *Housing Assistance Act 2007* (the Act). The regulatory powers will be vested in the Commissioner for Social Housing (the Housing Commissioner) as established in the Act. The *Housing Assistance Act 2007* commenced on 10 November 2007.

Appropriate regulation of the community and affordable housing sector is necessary to ensure that public funds provided for affordable housing activities are appropriately managed and utilised.

The framework empowers the Housing Commissioner to register, monitor the activities of, and de-register housing providers. The consequence of de-registration would be the loss of any tied government assistance and publicly funded assets.

The Framework provides for proportionate regulation based on risk with a focus on service quality, governance and protection of vulnerable clients. Higher risk activities will be subject to greater oversight (eg. property development as opposed to tenancy management). The risk assessment will consider the type, scale and experience with activities to be undertaken and the history of the organisation, including recent growth.

The framework will manage risk associated with funded assets in the sector including transferred stock and new stock developed through subsidies and concessions provided by the ACT Government.

Regulatory processes will monitor the activities of housing providers on a whole of organisation basis and will be complementary with other regulatory and reporting requirements (for example the *Corporations Act 2001*).

Registration will be governed by a set of appropriate registration and monitoring processes. This will include the registration of existing providers as well as allowing entry by new providers, including organisations from other jurisdictions.

The Regulatory Framework will facilitate the ACT's consistency with the National Regulatory Framework, including participation in mutual recognition activities.

Revenue/Cost Implications

The legislation will be implemented within existing financial resources.

Notes on Clauses

PART 1 PRELIMINARY

This part includes the introductory information relating to the Act.

Clause 1 Name of Act

This clause provides that the name of this Act is the *Housing Assistance Amendment Act 2008*.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause names the *Housing Assistance Act 2007* as the legislation to be amended by this Act.

Clause 4 Housing Commissioner – functions New section 11 (1) (a) (v)

This clause adds sub-paragraph (v) affordable housing to the functions of the Commissioner.

Clause 5 Housing Commissioner - delegation Section 17

This clause amends Section 17, which empowers the Commissioner to delegate powers under the *Housing Assistance Act 2007*, to exclude delegation of powers conferred under 25A (2).

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

This clause amends section 18 to clarify that part 4A programs are not "housing assistance" for the purposes of part 4, so that, for example, the determinations and operational guidelines under part 4 won't apply to any program under part 4A.

Clause 7 Sections 26 and 27

This clause omits the existing sections 26 and 27, dealing with review by the AAT, because the matters dealt with are now covered in a new Part 6A.

Clause 8 New Part 4A

This clause establishes Part 4A – affordable and community housing

Part 4A Affordable and community housing

This Part establishes the regulatory framework for not for profit affordable and community housing providers. It describes the Commissioner's role in respect of registration of housing providers, what criteria housing providers need to meet to be eligible for and to maintain registration. It allows for the provision of assistance to be linked to registration, provides for step-in powers for the Commissioner, provides for the Commissioner to remove providers from the register and empowers the Commissioner to make determinations.

Clause 25A Affordable and Community Housing Providers - registration

This clause describes the two tiers of the registration system and gives the Commissioner the power to register housing providers and to determine a process for the registration of housing providers. The determination is a Disallowable Instrument. This clause also obliges the Commissioner to prepare written notice of a decision to register an organisation. Any such decision is a Notifiable Instrument. It notes that the Commissioner can make different provision for different categories, enabling different registration criteria and monitoring.

Clause 25B Affordable and Community Housing Providers – refusal to register

This clause obliges the Commissioner to refuse registration to an organisation that does not satisfy the eligibility criteria.

Clause 25C Affordable and community housing providers – register

This clause obliges the Commissioner to keep a register of registered affordable and community housing providers and describes the information that must be included on the register.

Clause 25D Public access - register

This clause obliges the Commissioner to make the register available for inspection during business hours and to provide a copy of all or part of the register to a person who requests it.

Clause 25E Notice about changes of particulars in register

If information about a registered housing provider recorded in the register changes, this clause obliges a registered housing provider to advise the Commissioner about that change within 14 days.

Clause 25F Affordable housing provider – eligibility criteria

This clause specifies the eligibility criteria to be met by an affordable housing provider to qualify for registration.

Clause 25G Community housing provider – eligibility criteria

This clause specifies the eligibility criteria to be met by a community housing provider to qualify for registration, which is different from that of an affordable housing provider.

Clause 25H Affordable and community housing providers – trustees and subsidiaries

This clause specifies the circumstances in which trustees and subsidiaries that would otherwise be excluded from registration might be registered.

Clause 25I Community housing providers – standards

This clause gives the Commissioner the power to determine standards for the community housing providers and gives some examples of areas the standards might cover. Any such determination is a Notifiable Instrument.

Clause 25J Community housing providers – compliance with standards

This clause obliges registered community housing providers to comply with the standards that apply to that provider.

Clause 25K Affordable and community housing providers – monitoring guidelines

This clause gives the Commissioner power to establish a mechanism through which a provider's continued compliance with the eligibility criteria may be monitored. It describes some of the areas of operation that might be monitored. Any such guideline is a Disallowable Instrument.

Clause 25L Affordable and community housing providers – compliance with monitoring guidelines

This clause obliges providers to comply with the monitoring guidelines that apply to that provider.

Clause 25M Affordable and community housing providers – monitoring standards, guidelines etc

This clause allows the Commissioner to monitor the compliance of registered housing providers with monitoring guidelines and, in the case of community housing providers, standards determined under section 25I and any other standards prescribed by regulation.

Clause 25N Affordable and community housing providers – report to housing commissioner

This clause deals with the reporting that providers must provide to the Commissioner, the timeframe in which that reporting is to be provided, and the content of the reports.

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

This clause obliges a registered provider to seek the approval of the Commissioner for any changes to its constitution or rules at least 28 days before any such change. It also

states the grounds on which the Commissioner must refuse to approve a change, while also obliging the Commissioner not to unreasonably refuse to give approval.

Clause 25P Exemption from requirement or approval – changes to constitution or rules

This clause allows the provider to make a minor change to its constitution without the approval of the Commissioner, and allows the Commissioner to determine what is a minor change. Any such determination is a Notifiable Instrument.

Clause 25Q Affordable and community housing programs – housing commissioner may give assistance

This clause empowers the Commissioner and any other Territory entity to give assistance to a registered provider and gives examples of the types of assistance. The clause also makes it clear that there is no obligation for the Commissioner or another Territory entity to give assistance.

Clause 25R Affordable and community housing programs – requirement for information

This clause allows the Commissioner to require a registered provider to give the Commissioner relevant information or documents by giving written notice to the provider describing the information to be provided, how it is to be provided and specifying a reasonable timeframe within which the information is to be provided. This clause will allow the Commissioner to seek information in addition to that provided annually where circumstances dictate that the Commissioner needs more recent or more detailed information in order to assess risk to the provider's operations.

Clause 25S Housing commissioner's functions – housing commissioner may intervene

This clause sets out the Commissioner's powers in relation to registered providers. It provides the step-in powers that may be required where there is a high risk to the activities of a provider, with the circumstances in which those powers can be exercised. The powers allow the Commissioner to work with the provider to attempt to address issues, before taking more extreme measures such as winding up a provider or removing a provider from the register.

The clause allows the Commissioner to determine guidelines for intervention in the business of a provider. Any intervention guidelines determined by the Commissioner are a Notifiable Instrument.

The clause also declares the winding up provisions of this section to be a corporations' legislation displacement provision for the *Corporations Act 2001*. This provision allows the Commissioner to wind up a provider and distribute the assets instead of relying on ASIC to exercise the winding up provisions of the *Corporations Act 2001*.

Clause 25T Affordable and community housing providers – removal from the register

This clause allows the Commissioner the discretion to remove a provider from the register if the provider breaches a condition of registration, becoming ineligible under

the registration criteria. It obliges the Commissioner to remove a provider from the register if the provider breaches any other requirement under the framework. This could include failing to comply with directions from the Commissioner. Any such decision is a Notifiable Instrument.

Clause 25U Affordable and community housing programs – housing commissioner to report to the Minister

This clause requires the Commissioner to provide a written report about affordable and community housing to the Minister if asked. It also obliges the Minister to present the report to the Legislative Assembly within 6 sitting days of the Minister receiving the report.

PART 6A Review

This part outlines the manner in which providers may apply to the administrative appeals tribunal for review of a decision by the Commissioner.

31A AAT Review

This clause lists the reviewable decisions and who may appeal them to the AAT.

31B Notice of reviewable decisions

This part obliges the Commissioner to give written notice of a decision, in a way consistent with the *Administrative Appeals Tribunal Act 1989*.

Dictionary

This section includes definitions of the following key terms used in the Act but not elsewhere defined in the Act:

Affordable Housing; company limited by guarantee; company limited by shares; housing provider; incorporated association; and monitoring guidelines; and standards.