



Queensland

Housing Legislation Amendment Act 2023

Act No. 5 of 2023

An Act to amend the Housing Act 2003, the Housing Regulation 2015 and the Retirement Villages Act 1999 for particular purposes

[Assented to 5 April 2023]



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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Housing Legislation Amendment Act 2023*.

2 Commencement

Parts 2 and 3 commence 3 months after the date of assent.

Part 2 Amendment of Housing Act 2003

3 Act amended

This part amends the *Housing Act 2003*.

4 Insertion of new pt 8, div 2C

Part 8—

insert—

Division 2C Charitable donation deeds

94I Definitions for division

In this division—

appropriate form, for an instrument, see the *Land Title Act 1994*, schedule 2.

charitable donation deed, for a lot, means a

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deed—

- (a) that is entered into by a non-profit organisation and the registered owner of the lot; and
- (b) under which—
 - (i) the registered owner of the lot agrees to donate all or part of the proceeds of the sale of the lot to the non-profit organisation; and
 - (ii) the non-profit organisation agrees to use the donated proceeds only to—
 - (A) provide, or assist an entity to provide, a social housing service in the State; or
 - (B) otherwise increase, or assist an entity to increase, the supply of safe, secure, appropriate and affordable housing in the State.

lot see the *Land Title Act 1994*, schedule 2.

non-profit organisation means an incorporated organisation that is—

- (a) registered, or is taken to be registered, as a charity under the *Collections Act 1966*; and
- (b) prescribed by regulation for this definition.

party, to a charitable donation deed, includes the successors and assigns of a party to the deed who are bound by the deed.

registered owner, of a lot, see the *Land Title Act 1994*, schedule 2.

94J When existence of charitable donation deeds must be recorded on titles

- (1) A non-profit organisation, that is a party to a

charitable donation deed for a lot, may give the registrar of titles notice of the existence of the deed in the appropriate form.

- (2) If given a notice under subsection (1), the registrar of titles must record the existence of the deed in the freehold land register as an administrative advice on the indefeasible title of the lot.
- (3) An administrative advice recorded under this section—
 - (a) remains recorded on the indefeasible title of the lot, despite any change in the ownership of the lot, until it is removed from the freehold land register under—
 - (i) section 94K; or
 - (ii) the *Land Title Act 1994*, section 29A; but
 - (b) does not prevent a person from doing any of the following under the *Land Title Act 1994*—
 - (i) registering an interest in a lot;
 - (ii) exercising the person's rights under a registered interest;
 - (iii) releasing or surrendering a registered interest.
- (4) The non-profit organisation is liable for the fee payable under the *Queensland Future Fund (Titles Registry) Act 2021* for depositing the administrative advice.
- (5) In this section—

administrative advice means an advice that is an administrative advice under the manual of land title practice kept under the *Land Title Act 1994*, section 9A.

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94K When records of existence of charitable donation deeds must be removed from titles

- (1) This section applies if—
 - (a) the registrar of titles has recorded the existence of a charitable donation deed for a lot in the freehold land register; and
 - (b) a party to the deed, or the registered owner of the lot, makes a request, in the appropriate form, that the registrar of titles remove the record of the existence of the deed from the freehold land register.
- (2) The registrar of titles must comply with the request.

Note—

See also the *Land Title Act 1994*, section 29A.

5 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

appropriate form, for an instrument, for part 8, division 2C, see section 94I.

charitable donation deed, for a lot, for part 8, division 2C, see section 94I.

lot, for part 8, division 2C, see section 94I.

non-profit organisation, for part 8, division 2C, see section 94I.

party, to a charitable donation deed, for part 8, division 2C, see section 94I.

registered owner, of a lot, for part 8, division 2C, see section 94I.

registrar of titles means the registrar of titles under the *Land Title Act 1994*.

Part 3 Amendment of Housing Regulation 2015

6 Regulation amended

This part amends the *Housing Regulation 2015*.

7 Insertion of new s 35A

After section 35—

insert—

35A Prescribed non-profit organisations—Act, s 94I

Homes For Homes Limited ACN 143 151 544 is prescribed for section 94I of the Act, definition *non-profit organisation*, paragraph (b).

Part 4 Amendment of Retirement Villages Act 1999

8 Act amended

This part amends the *Retirement Villages Act 1999*.

9 Amendment of s 3 (Objects)

(1) Section 3(2), before paragraph (a)—

insert—

- (aa) to maintain public confidence in the retirement village industry by enhancing—
 - (i) the financial transparency of the operations of retirement villages; and
 - (ii) the accountability of scheme operators;

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- (2) Section 3(2)(aa) to (d)—
renumber as section 3(2)(a) to (e).

10 Omission of s 18 (What is a *capital replacement fund contribution*)

Section 18—
omit.

11 Amendment of s 35 (Retirement village scheme register)

- (1) Section 35(2)—
insert—
(ba) a copy of each independent quantity surveyor’s written report given to the chief executive under section 92(6) or 98(8);
- (2) Section 35(2)(c), after ‘statements’—
insert—
and audit reports
- (3) Section 35(2)(ba) and (c)—
renumber as section 35(2)(c) and (d).

12 Amendment of s 63 (When former resident’s exit entitlement payable)

Section 63(5)(b), after ‘charges’—
insert—
and maintenance reserve fund contributions

13 Amendment of s 74 (Village comparison documents)

Section 74(5), from ‘chief executive’ to ‘amendment.’—
omit, insert—

chief executive—

- (a) written notice of the amendment; and
- (b) a copy of the amended village comparison document.

14 **Amendment of s 92 (Amount of capital replacement fund)**

- (1) Section 92(1), ‘report’—

omit, insert—

report, that complies with section 113AA,

- (2) Section 92(5) and (7)—

omit.

- (3) Section 92(6)—

renumber as section 92(5).

- (4) Section 92—

insert—

- (6) Within 5 months after the end of each financial year, the scheme operator must give to the chief executive a copy of the full or updated report obtained, under subsections (1) and (2), during the financial year.

Maximum penalty for subsection (6)—200 penalty units.

15 **Amendment of s 93 (Capital replacement fund budget)**

- (1) Section 93(1) and (1A)—

omit, insert—

- (1) The scheme operator must, having regard to the quantity surveyor’s report obtained or updated under section 92(1), adopt a budget (a **capital replacement fund budget**) for each financial year for the capital replacement fund that complies

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with subsection (2) and section 113AA.

Maximum penalty—200 penalty units.

- (2) Section 93(2)(b), ‘amount to be raised by way of capital replacement fund contribution’—

omit, insert—

amount (the *capital replacement fund contribution*) to be paid by the scheme operator, from money of the scheme operator,

- (3) Section 93(3) to (5)—

omit, insert—

- (3) The scheme operator—

- (a) may use all or part of an ingoing contribution to pay the capital replacement fund contribution; but
- (b) must not otherwise raise, or attempt to raise, all or part of the capital replacement fund contribution from residents.

16 Amendment of s 94 (Payments into capital replacement fund)

Section 94(1)(c), after ‘contribution’—

insert—

for each financial year

17 Amendment of s 98 (Amount of maintenance reserve fund)

- (1) Section 98(1), ‘report’—

omit, insert—

report, that complies with section 113AA,

- (2) Section 98—

insert—

- (8) Within 5 months after the end of each financial year, the scheme operator must give to the chief executive a copy of the full or updated report obtained, under subsections (1) and (2), during the financial year.

Maximum penalty for subsection (8)—200 penalty units.

18 Amendment of s 99 (Maintenance reserve fund budget)

- (1) Section 99(1)(a)—

omit, insert—

- (a) complies with subsection (3) and section 113AA; and

- (2) Section 99(1)(b), after ‘obtained’—

insert—

or updated

- (3) Section 99(3), ‘The’—

omit, insert—

For subsection (1), the

- (4) Section 99(4) to (6)—

omit.

- (5) Section 99(7)—

renumber as section 99(4).

- (6) Section 99(8)—

omit.

19 Amendment of s 102A (General services charge budget)

- (1) Section 102A(1) and (2)—

omit, insert—

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- (1) The scheme operator must, for each financial year, adopt a budget (the ***general services charge budget***), that complies with subsection (2) and section 113AA, for the general services charges fund.

Maximum penalty—200 penalty units.

- (2) Section 102A(3)—
renumber as section 102A(2).
- (3) Section 102A(4) to (6)—
omit.
- (4) Section 102A(7)—
renumber as section 102A(3).
- (5) Section 102A(8)—
omit, insert—
 - (4) The scheme operator must fix the total general services charge mentioned in section 106(1) after the scheme operator complies with subsection (3).

20 Amendment of s 107 (Allowable increase in total general services charge)

Section 107(d), ‘section 38A(2)(a)’—

omit, insert—

section 38A(1)(a)

21 Amendment of s 112 (Quarterly financial statements)

Section 112(2)—

omit, insert—

- (2) Within 28 days after receiving the request, the scheme operator must give the resident a quarterly financial statement for each quarter that—

-
- (a) complies with section 113AA; and
 - (b) without limiting paragraph (a), shows the income for the quarter of, and expenditure for the quarter from—
 - (i) the capital replacement fund; and
 - (ii) the maintenance reserve fund; and
 - (iii) the general services charges fund; and
 - (c) either—
 - (i) has been audited; or
 - (ii) is in a form that is capable of being audited.

Maximum penalty—100 penalty units.

22 Amendment of s 113 (Annual financial statements)

- (1) Section 113(1), ‘operation is given’—

omit, insert—

operation, and that complies with section 113AA, is given

- (2) Section 113(2)—

omit.

- (3) Section 113(3), ‘audit report issued under Australian Auditing Standards’—

omit, insert—

audit report, that complies with section 113AA and subsection (3), is issued

- (4) Section 113—

insert—

- (3A) If, at any time during a financial year, no standards or principles for the preparation of audit reports are prescribed under section 113AA(1)(c),

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an audit report for an annual financial statement for the financial year must be prepared in accordance with the Australian Auditing Standards.

- (5) Section 113(3) and (3A)—
renumber as section 113(2) and (3).
- (6) Section 113(4), after ‘statement’—
insert—
and the audit report

23 Insertion of new pt 5, div 9A

Part 5—
insert—

Division 9A Requirements for financial documents

113AA Form and content of financial documents

- (1) A financial document must—
- (a) be in the approved form; and
- Note*—
See section 227AA(2).
- (b) be in the form, and include the information, prescribed for the document by regulation; and
- (c) be prepared in accordance with standards or principles prescribed for the document by regulation.

Examples of standards or principles that may be prescribed under this paragraph—

- accounting standards or principles
- the Australian Auditing Standards

(2) Without limiting subsection (1)(b), a regulation mentioned in that provision may prescribe the following for a financial document—

(a) particular information that must be included in the document;

Examples—

- information relating to particular items or classes of income or expenditure, whether the items or classes are shared with other entities and how the items or classes compare to corresponding items or classes in earlier financial documents
- information about, or stated in, an audit report issued for the financial document under section 113(2)

(b) the way in which information must be presented in the document;

Example—

The information may be required to be presented in a way that assists residents, prospective residents or the chief executive to use or understand the information or document.

(c) the statements or declarations, of any person, that must be included in the document;

(d) the disclosure notes, about any matter, that must be included in the document;

Examples—

- disclosure notes about how the capital replacement fund contribution, maintenance reserve fund contribution and total general services charge are fixed
- disclosure notes about related party transactions
- disclosure notes about liabilities owed to former residents

(e) the explanations, of any matter, that must be included in the document.

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Example—

an explanation of a surplus or deficit stated in a financial document

(3) In this section—

financial document means each of the following documents—

- (a) a capital replacement fund budget;
- (b) a maintenance reserve fund budget;
- (c) a general services charge budget;
- (d) a quarterly financial statement mentioned in section 112(1);
- (e) an annual financial statement mentioned in section 113(1);
- (f) an audit report mentioned in section 113(2);
- (g) an independent quantity surveyor's written report mentioned in section 92(1) or 98(1).

113AB Requirement to provide draft budgets and independent quantity surveyor's written report

- (1) A resident or the residents committee may, by written notice given to the scheme operator at least 28 days before the beginning of a financial year, ask the scheme operator to give the resident or residents committee a copy of a draft budget for the financial year.
- (2) If the scheme operator is given a notice under subsection (1), the scheme operator must—
 - (a) if the scheme operator has not already done so, prepare the draft budget; and
 - (b) at least 14 days before the beginning of the financial year, give the resident or residents committee—
 - (i) a copy of the draft budget; and

- (ii) a copy of any independent quantity surveyor's written report the scheme operator had regard to for the preparation of the draft budget.

Maximum penalty—200 penalty units.

24 Amendment of s 129B (Residents committee may require scheme operator to attend meeting about budgets)

Section 129B(1), from 'the following'—

omit, insert—

a draft budget for the financial year.

25 Amendment of s 131 (Annual meeting)

- (1) Section 131(1), 'statements'—

omit, insert—

statement and audit report

- (2) Section 131(4), 'statements'—

omit, insert—

statement and report

26 Insertion of new s 226

After section 225—

insert—

226 Chief executive may make guidelines

- (1) The chief executive may make guidelines, not inconsistent with this Act, to inform persons about—
 - (a) the attitude the chief executive is likely to adopt on a particular matter; or

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- (b) how the chief executive administers this Act; or
 - (c) matters that may help persons comply with their obligations or responsibilities, or lawfully and appropriately exercise powers, under this Act.
- (2) The chief executive must publish the guidelines on the department's website.

27 Insertion of new pt 15, div 6

Part 15—

insert—

Division 6 Transitional provisions for Housing Legislation Amendment Act 2023

237S Definitions for division

In this division—

amending Act means the *Housing Legislation Amendment Act 2023*.

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

237T Application of new ss 35(2)(c), 92(6) and 98(8)

- (1) This section applies in relation to an independent quantity surveyor's written report obtained or updated before 1 July 2023.
- (2) New sections 35(2)(c), 92(6) and 98(8) do not apply in relation to the report.

237U Continued application of former s 74(5)

Despite the amendment of section 74 by the amending Act, former section 74(5) continues to apply in relation to an amendment of a village comparison document made before the commencement.

237V Continued application of former s 99(1)

Despite the amendment of section 99 by the amending Act, former section 99(1) continues to apply in relation to the adoption of a maintenance reserve fund budget for the financial year ending 30 June 2023.

237W Continued application of former s 112(2)

Despite the amendment of section 112 by the amending Act, former section 112(2) continues to apply in relation to a request for a quarterly financial statement received by the scheme operator before the commencement.

237X Continued application of former s 113

Despite the amendment of section 113 by the amending Act, former section 113 continues to apply in relation to—

- (a) an annual financial statement for the financial year ending 30 June 2023; and
- (b) an audit report for an annual financial statement mentioned in paragraph (a).

237Y Continued application of former s 131(1) and (4)

Despite the amendment of section 131 by the amending Act, former section 131(1) and (4)

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continues to apply in relation to an annual meeting at which an annual financial statement, for a financial year ending before 1 July 2023, is presented.

28 Amendment of schedule (Dictionary)

(1) Schedule, definition *capital replacement fund contribution*—
omit.

(2) Schedule—
insert—

capital replacement fund budget see section 93(1).

capital replacement fund contribution see section 93(2)(b).

draft budget means each of the following—

- (a) a draft of a capital replacement fund budget that complies, as far as practicable, with the requirements applying, under part 5, division 4, to capital replacement fund budgets;
- (b) a draft of a maintenance reserve fund budget that complies, as far as practicable, with the requirements applying, under part 5, division 5, to maintenance reserve fund budgets;
- (c) a draft of a general services charge budget that complies, as far as practicable, with the requirements applying, under part 5, division 7 to general services charge budgets.

general services charge budget see section 102A(1).

maintenance reserve fund budget see section

99(1).

quantity surveyor means a person who holds—

- (a) a member grade, or a fellow grade, membership with the Australian Institute of Quantity Surveyors; or
- (b) an equivalent grade of membership with a successor of the Australian Institute of Quantity Surveyors, by whatever name called.

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