

HOUSING AND OTHER ACTS AMENDMENT BILL 2005

EXPLANATORY NOTES

SHORT TITLE

Housing and Other Acts Amendment Act 2005

GENERAL OUTLINE

Objectives of the Bill

The objective of the Bill is to amend the *Housing Act 2003* concerning: the transition from the *State Housing Act 1945* and regulation of organisations funded by the Department of Housing to provide housing services; to repeal the *Commonwealth State Housing Agreement (Service Personnel) Act 1991*; and to amend the *Building and Construction Industry Payments Act 2004* to correct an error in Schedule 1.

Reasons for the objectives and how they will be achieved

The *Housing Act 2003* (the Housing Act) commenced on 1 January 2004, repealing the *State Housing Act 1945* (the 1945 Act) and dissolving the Queensland Housing Commission. The Housing Act continues to recognise the State Government's role in traditional forms of housing assistance and enables the Department of Housing to undertake new activities to achieve affordable housing objectives and regulate organisations funded to provide housing services.

Several issues have emerged since the development of the Housing Act. The proposed amendments to the Housing Act which are required to address these issues seek to improve the:

- regulation of organisations funded by the Department of Housing to provide housing services; and
- transition from the 1945 Act to the Housing Act.

Consequently, the amendments to the Housing Act will improve the Department of Housing's capacity to:

- improve housing outcomes for its clients and those of funded service providers, by empowering the chief executive to appoint an interim manager to funded housing services operated by local governments and Indigenous community councils in certain limited circumstances; and
- streamline administrative arrangements, by:
 - empowering the chief executive to:
 - set multiple fixed and variable interest rates for owner-occupier home loans established under the Housing Act; and
 - approve the sale of a house or land, subject to agreements under section 113, for a price less than the total capital cost;
 - removing the obsolete reference to section 29Q of the 1945 Act in section 141 of the Housing Act, which concerns the cost of terminating housing trusts;
 - amending section 113 of the Housing Act to replace the Governor in Council with the chief executive as the decision-maker in respect of interest rates for shared equity and contracts of sale products;
 - deleting sections 113(4) and 113(4A) of the Housing Act, which provide for the cost of alterations, improvements or enlargements made by the Department of Housing to a property that is the subject of a shared equity contract or contract of sale, to be added to the unpaid purchase money without the agreement of the purchaser. This provision is inconsistent with the Consumer Credit Code;
 - amending section 95 of the Housing Act to ensure that purchasers under shared equity contracts and contracts of sale are not exempt from paying local government rates and providing for the validation of rates levied for land of which the owner was for the whole or the part of the period from 1 January 2004 a purchaser of land under the Housing Act;
 - validating concessions provided for conversions of perpetual leases to freehold made from 1 January 2004, when the Housing Act commenced, and restoring the power to provide such concessions; and

- applying the penalty provision in section 81(5) to an existing requirement under section 81(3) which states that a person must certify a document under their possession or control as a true copy, unless they have a reasonable excuse.

The Bill repeals the *Commonwealth State Housing Agreement (Service Personnel) Act 1991* which governed the handover arrangements of defence housing from the State to the Commonwealth Defence Housing Authority. These arrangements were finalised in 1993-94, consequently the Act is no longer required.

The *Building and Construction Industry Payments Act 2004* was assented to on 20 May 2004. The Act made amendments to the *Queensland Building Services Authority Act 1991*, including the insertion of a new provision, section 67 AAA.

The Bill makes amendments to the drafting of section 67AAA to ensure the provision achieves its intended objective of clarifying what constitutes a building contract for the purposes of Part 4A of the *Queensland Building Services Authority Act 1991*.

Administrative cost to Government of implementation

It is anticipated that the Bill will not impose an administrative cost to Government. Implementation of the new Bill will be supported by the resources of the Department of Housing and by the Queensland Building Services Authority with respect to the amendment to the *Building and Construction Industry Payments Act 2004* (the BCIP Act).

Consistency with Fundamental Legislative Principles

While the provisions of the Bill are generally consistent with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions.

Section 95 exemption from rating

Under the Housing Act, land held or administered for the purposes of the Housing Act is not rateable land for the *Local Government Act 1993*. The only exception to this provision is land which is the subject of or purchased under a “section 24 contract”, namely land which is the subject of shared equity or instalment contract arrangement established under the repealed 1945 Act. Under these contracts, the land remains in the name of the State during the period of the contract.

There is no provision that deems land the subject of new or re-negotiated shared equity or instalment contracts entered into since 1 January 2004 to be rateable under the *Local Government Act 1993*. Therefore, local governments can not recover rates directly from these home buyers or exercise the power of sale in the event of default.

The Bill:

- ensures that all properties the subject of shared equity or instalment contracts entered into under the Housing Act since 1 January 2004, are rateable land under the *Local Government Act 1993*;
- re-establishes the legislative basis for local governments to recover rates and/or exercise the power of sale, in the event of default by those who have entered shared equity or instalment contracts under the Housing Act; and
- also amends the *Local Government Act 1993* to ensure that the:
 - priority of the State is preserved with respect to the proceeds of sale where a local government exercises the power of sale in the event of default; and
 - meaning of “owner” of land applies to all purchasers who have entered into shared equity or instalment contracts either before or after the commencement of the Housing Act, on 1 January 2004.

As a result, it could be argued that the Bill does not have sufficient regard to the rights and liberties of individuals as it imposes obligations retrospectively including the validation of rates levied for land the subject of shared equity or instalment contracts, of which the owner was for the whole or the part of the period from 1 January 2004 a purchaser of land under the Housing Act.

This provision can be justified as it will restore the requirement; which has been absent for share equity or instalment contracts entered into since 1 January 2004; that all land subject to these contracts will be rateable land under the *Local Government Act 1993*, irrespective of when the contracts were entered into. Consequently, all purchasers under these contracts will be treated in a consistent manner and no one will be disadvantaged.

The Fundamental Legislative Principles are not infringed as a result of the retrospective nature of the *Local Government Act 1993* amendment which preserves the priority of the State with respect to the proceeds of sale, as it

applies only to the Department of Housing and has no impact on individuals.

Concessions to the conversion of perpetual leases to freehold

Holders of perpetual leases can apply to convert their leasehold interest to freehold, upon payment of the freehold value of the land. Under the *State Housing (Freeholding of Land) Act 1957*, lessees were entitled to receive a concession on the freehold price based on rental payments by the lessee. In the consequential amendments made by the Housing Act to the *State Housing (Freeholding of Land) Act 1957*, the chief executive power to provide these concessions was inadvertently removed.

The Bill will empower the chief executive to offer concessions to reduce the cost of freeholding to holders of residential perpetual leases, on conversion of their interest to freehold and provide the legislative basis for any concessions provided for conversions to freehold undertaken from 1 January 2004, when the Housing Act commenced.

The retrospective nature of the amendment can be justified as it clearly provides benefits to clients and will not impact negatively on the rights and liberties of individuals.

CONSULTATION

Community

In May 2003, the Department of Housing circulated, to all local governments and Indigenous community councils in Queensland, a consultation paper on the proposed expansion of the interim manager provision to include local governments and Indigenous community councils. The paper described the proposed amendment of the Housing Act in relation to the interim manager and the context in which this power is likely to be used. The paper provided a rationale for extending the power to cover local governments and Indigenous community councils. The Department of Housing also consulted with the Local Government Association of Queensland.

The draft Bill and explanatory notes were forwarded to funded service providers, local governments, Indigenous community councils and peak housing organisations in January 2005.

Industry

The Queensland Building Services Board has been consulted about the proposed amendment to the BCIP Act. The Board comprises representatives from licensed builders, licensed trade contractors (Specialist Trades Alliance), building and construction unions (the Construction Forestry, Mining and Energy Union), the accounting profession and a non-voting Government member (Department of Public Works).

Government

The draft Bill and explanatory notes were forwarded to the Department of the Premier and Cabinet, Queensland Treasury, the Department of Local Government, Planning, Sport and Recreation, the Department of Communities, the Department of Employment and Training, the Department of State Development and Innovation, the Department of Justice and Attorney-General, Queensland Health, the Department of Public Works, the Department of Aboriginal and Torres Strait Islander Policy, Department of Tourism, Fair Trading and Wine Industry Development and Disability Services Queensland in January 2005.

The Commonwealth Department of Family and Community Services has been consulted on the repeal of the *Commonwealth State Housing Agreement (Service Personnel) Act 1991*.

NOTES ON PROVISIONS**PART 1 - PRELIMINARY****Short title**

Clause 1 sets out the short title as the Housing and Other Acts Amendment Act 2005.

Commencement

Clause 2 provides that:

- (1) sections 7 and 11 are taken to have commenced on 31 December 2003; and
- (2) Section 8(4) and part 4, other than section 18, are taken to have commenced on 1 January 2004.

PART 2 – AMENDMENT OF HOUSING ACT 2003

Act amended in pt 2

Clause 3 provides for an amendment to the *Housing Act 2003*.

Omission of s38 (Application of pt 5)

Clause 4 omits section 38. Section 38 of the *Housing Act 2003* presently excludes the appointment of an interim manager over the funded service of a local government, Aboriginal Council, Island Council or the Island Coordinating Council. Consequently, Part 5 will apply to all registered providers, including a local government, Aboriginal Council, Island Council and the Island Coordinating Council and as a result will enable the Department of Housing to intervene by appointing an interim manager where significant risks to tenants and/or assets have been identified.

Amendment of s81 (Power to require information or documents)

Both section 81(1) and (3) enable the chief executive or authorised officer to make a requirement of a person to provide either orally or in writing, information or copies of documentation that the chief executive or authorised officer may require. However, section 81(5) only makes it an offence to fail to comply with the requirements in section 81(1).

Clause 5 of the Bill will extend the penalty provisions in section 81(5) to section 81(3). Therefore, a maximum penalty of 20 units (currently \$1500) may apply where a person who has possession or control of the document fails to certify the copy as a true copy of the document or entry.

Amendment of s92 (Standard interest rates)

Clause 6 omits section 92(2) and replaces it with a provision which empowers the chief executive to offer one or more standard fixed or variable interest rates for all owner-occupied home loans, including shared equity contracts and contracts of sale entered under the *Housing Act 2003*.

Amendment of s95 (Exemption from rating)

Clause 7 subclause (1) provides that the exemption from rating of portfolio land does not apply to any shared equity or instalment contracts entered into on or after 1 January 2004 under the *Housing Act 2003*. Consequently, all land subject to these contracts will be rateable land under the *Local Government Act 1993*, irrespective of when the contracts were entered into.

Clause 7 subclause (2) defines a “section 113 contract” as a contract of sale, entered into under section 113, of the *Housing Act 2003* where the purchasing price, other than any deposit, is payable in two or more instalments, or the sale is of a share in a house and land.

Amendment of s113 (Chief executive’s power to sell houses to eligible persons)

Clause 8 subclause (1) updates the references in section 113(3A) to “subsection (3B) and (3D)”, consequent to the removal of section 113(3C).

Clause 8 subclause (2) deletes section 113(3C) and thereby empowers the chief executive to approve the sale of properties the subject of agreements under section 113, at a capital loss. This is consistent with the general powers provided to the chief executive under the *Housing Act 2003*.

Clause 8 subclause (2) also deletes section 113(4) and (4A), removing the power of the chief executive to:

- (i) add to the unpaid purchase price the capital cost of an alteration, improvement or enlargement made by the State acting through the Department of Housing to a property the subject of a shared equity contract or a contract of sale agreement; and
- (ii) endorse the amendments to the contract accordingly.

As a result, the Department of Housing can not unilaterally increase the unpaid purchase price of a home which is the subject of a contract of sale for which alterations, improvements or enlargements to the dwelling have been made without the agreement of the purchaser.

Clause 8 subclause (3) updates the references in section 113(3D) to “subsection (3A) and (3B)”, consequent to the removal of section 113(3C).

Clause 8 subclause (4) replaces the reference to the Governor-in-Council in section 113(E) with the chief executive. This provides for consistency in giving the power to the chief executive to set interest rates for home ownership products under section 113 of the *Housing Act 2003*

Clause 8 subclause (5) omits the heading “Improvements etc. after contract of sale entered into” as section 113(4) and (4A), to which it refers, has been deleted.

Amendment of s141 (Continuing application of the repealed Act, pt 6C)

Clause 9 removes the reference to section 29Q of the *State Housing Act 1945* in section 141 of the *Housing Act 2003*. Section 29Q requires the Public Trustee to pay the expenses relating to the termination of a housing trust. Under this section, the chief executive of the Department of Housing would be liable for any expenses not met by the Public Trustee. However, as there were no housing trusts in operation at the commencement of the *Housing Act 2003* and all assets and liabilities had previously been transferred from the Public Trust to the chief executive, the continuing application of section 29Q is no longer required.

Insertion of new pt 10, div 5

Clause 10 inserts after section 151 a new division 5 “Provision for Housing and Other Acts Amendment Act 2005” which declares that the provisions under the *Housing Act 2003* as amended under the *Housing and Other Acts Amendments Act 2005*, sections 7 and 11, are taken to have commenced on 1 January 2004 under the commencing proclamation.

The commencing proclamation referred to in this section is Subordinate Legislation 2003 No. 332 made under the *Housing Act 2003*.

Amendment of sch 2 (Amendments of Act)

Clause 11 provides for the removal of schedule 2, provisions for the *State Housing (Freeholding of Land) Act 1957*, sections 5 – 31. These are replaced with provisions which:

- give the chief executive power to offer concessions to reduce the cost of freeholding, to holders of residential perpetual leases, on conversion of their interest to freehold; and

- provide the legislative basis for any concessions provided for conversions to freehold undertaken from 1 January 2004, when the Housing Act commenced.

PART 3 – AMENDMENT OF *BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004*

Act amended in pt 3

Clause 12 provides for an amendment to the *Building and Construction Industry Payments Act 2004*.

Amendment of sch 1 (Amendment of Acts)

The *Building and Construction Industry Payments Act 2004* made amendments to the *Queensland Building Services Authority Act 1991* (QBSA Act 1991) including the insertion of a new provision, section 67AAA.

Clause 13 omits the words “that includes” in section 67AAA(1)(b) and replaces them with “exclusively for”. The purpose of the amendment is to make it clear that:

- if a party enters into a mixed contract to undertake “building work” and “construction work that is not building work”, they have entered into a “building contract” and the protection mechanisms of Part 4 of the QBSA Act 1991 apply; and
- if a party enters into a contract solely for “construction work” that is not “building work” (eg a contract solely for electrical work), it is not a “building contract” and therefore outside of Part 4A of the QBSA Act 1991.

PART 4 – AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 4

Clause 14 provides for amendments to the *Local Government Act 1993*.

Amendment of s4 (Meaning of owner of land)

Clause 15 omits the words “s24” in sections 4(1)(ba) and (bb). The purpose of this amendment is to ensure that all land subject to shared equity or instalment contracts under the *Housing Act 2003* is rateable land under the *Local Government Act 1993*, irrespective of when the contracts were entered into.

Amendment of s1047 (Application of proceeds of sale)

Clause 16 omits the words “section 1057” in section 1047 (4) and replaces it with “section 1057 and 1057A”.

Replacement of s1057A (Priority of Queensland Housing Commission preserved)

Clause 17 omits section 1057A and inserts a revised section 1057A, which

- removes the reference to “s 24”; and
- replaces reference to the “commission” with “chief executive (housing)”, meaning the chief executive of the department in which the *Housing Act 2003* is administered.

This ensures that the priority of the State is preserved with respect to the proceeds of sale where a local government exercises the power of sale in the event of default. This applies to all properties the subject of shared equity or instalment contracts irrespective of when they were entered into.

Insertion of new ch 19, pt 11

Clause 18 provides for the insertion of a new Part 11 “Transitional provision for Housing and Other Acts Amendment Act 2005” and section 1273 “Validation of levying of rates for certain lands”, after section 1272 of the *Local Government Act 1993*.

This new section applies to a rate levied:

- for the whole or a part of the period from 1 January 2004 to the commencement of this section (the validation period); and
- for land of which the owner was, for the whole or part of the validation period, a purchaser of land under a *Housing Act 2003* section 113 contract.

The rate is taken to have been, at all times, validly levied.

Amendment of schedule (Dictionary)

Clause 19 inserts within the schedule a definition of “housing Act contract”, which means, a housing Act section 24 contract or a *Housing Act 2003* section 113 contract.

The term “*Housing Act 2003* section 113 contract” means a contract of sale entered into under the *Housing Act 2003*, section 113, under which:

- the purchasing price, other than any deposit, is payable in two or more instalments; or
- the sale is of a share in a house and land.

PART 5 – Repeal

Repeal

Clause 20 provides for the repeal of the *Commonwealth and State Housing Agreement (Service Personnel) Act 1991* No. 54. This Act governed the handover arrangements of defence housing from the State to the Commonwealth Defence Housing Authority. These arrangements were finalised in 1993-94, consequently the Act is no longer required.