

Housing Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No. 179

made under the

Housing Act 2003

General Outline

Short title

Housing Amendment Regulation 2023

Authorising law

Section 33 of the *Housing Act 2003*.

Policy objectives and the reasons for them

The objective the Amendment Regulation is to amend the *Housing Regulation 2015* (Housing Regulation) to enable the delivery of the Housing Investment Fund program and Build to Rent pilot project by allowing non-registered providers to participate in government funded social and affordable housing programs.

Queensland's housing system is experiencing significant pressures as a result of sustained net increased interstate migration, materials and skills shortages in the construction industry, changes in the property market arising from pandemic-era economic policies, demographic trends, and the impact of weather events. Housing supply has not kept up with increased demand and the number of properties available in the private rental market has reduced, impacting availability and affordability.

The Queensland Government has endorsed significant investment to support housing outcomes to ensure there is sufficient social and affordable housing to meet current and future needs, including the Housing Investment Fund program and the Build to Rent pilot project.

The Housing Investment Fund provides subsidies, one-off capital grants and other support to encourage developers, builders, registered community housing providers, tenancy managers, institutional investors and superannuation funds to partner to develop, finance and operate additional social and affordable housing supply in Queensland. The Government has committed to commencing 5,600 new social and affordable homes by 30 June 2027 through the Housing Investment Fund and this is a key enabler of the *Housing and Homelessness Action Plan 2021–25*.

The Queensland Government is partnering with the development sector to deliver affordable rental housing through new Build to Rent developments. These are usually large-scale residential properties specifically designed, built and managed for long-term rental. Under the Build to Rent pilot projects, a targeted Government rental subsidy will be provided to deliver affordable rental housing within the three approved Brisbane-based sites. These will offer approximately 1,200 rental apartments, including up to 490 dwellings to be provided at a discounted rent for low to moderate income earners.

Section 22 of the *Housing Act 2003* provides that the chief executive may only give funding to deliver a 'social housing service' (which can include affordable housing) to a 'registered provider' or an 'exempt provider'.

The Housing Investment Fund and Build to Rent pilot project involve entry by the State into funding arrangements with private sector proponents for delivery and operation of social and affordable housing projects. Some of these proponents are neither 'registered providers' nor 'exempt providers'.

The registration requirements in the *Housing Act 2003* implement the National Regulatory System for Community Housing, which was introduced in accordance with the Inter-Government Agreement for a National Regulatory System for Community Housing Providers (Intergovernmental Agreement). The Intergovernmental Agreement does not stipulate that only registered providers may be funded. This intent is reflected in section 22 of the *Housing Act 2003*, which allows funding to be given to both registered providers and exempt providers.

A person or entity may be prescribed as exempt provider in accordance with the definition of 'exempt provider' in schedule 4 of the *Housing Act 2003*. The definition of 'exempt provider' refers to the provider being prescribed as eligible to receive funding to provide either a 'particular social housing service' or 'any social housing service' in Queensland. The housing provided under the Housing Investment Fund and Build to Rent pilot project would still constitute a social housing service as defined in the *Housing Act 2003* and these providers would constitute 'a funded provider that provides a social housing service'.

To respond to the housing crisis and increase housing supply, it is necessary to subsidise or fund not only registered community housing providers but also other types of entities, including developers, builders, tenancy managers, institutional investors and superannuation funds. The requirements for registration applicable to community housing providers are not appropriate for these types of entities.

To ensure delivery certainty under these programs, amendments to the Housing Regulation are required to allow non-registered providers to participate in government funded social and affordable housing programs.

The Amendment Regulation will make such providers 'exempt providers' for the Housing Investment Fund program and Build to Rent pilot project, and will specify which prescribed requirements do not apply to these providers and the requirements applying specifically to Housing Investment Fund and Build to Rent pilot project providers.

Achievement of policy objectives

To achieve its policy objectives, the Amendment Regulation will exempt Housing Investment Fund and Build to Rent pilot project providers from certain requirements in the *Housing Act 2003* and will specify the requirements applying specifically to those providers.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Housing Act 2003*.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objective to enable the delivery of the Housing Investment Fund program and Build to Rent pilot project by allowing non-registered providers to participate in government funded social and affordable housing programs.

Benefits and costs of implementation

The Amendment Regulation will benefit private sector proponents by enabling them to participate in government funding arrangements to deliver social and affordable housing developments under the Housing Investment Fund program and the Build to Rent pilot project. As regulatory impediments are being removed for these providers, no adverse impacts or costs are anticipated for them.

The community will benefit through an increase in the supply of social and affordable housing in Queensland.

It is anticipated that the government will not incur any additional costs in relation to implementing this regulation.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted considering the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is consistent with these principles. Sufficient regard has been given to the rights and liberties of individuals and the institution of Parliament.

The amendments to the Amendment Regulation are consistent with fundamental legislative principles.

Consultation

Consultation was not required in relation to these amendments as they remove a regulatory barrier to enable the State to respond to the housing crisis and increase housing supply by subsidising or funding entities other than registered community housing providers. The requirements for registration applicable to community housing providers are not appropriate for these other types of entities.

These entities have sought to participate in the Build to Rent pilot project and Housing Investment Fund program to deliver government funded social and affordable housing programs and, as a result, are expected to strongly support these amendments without the need for further consultation. The provisions in the Amendment Regulation were harmonised as far as possible with the funding agreements to minimise the implementation impacts on these providers.

Notes on provisions

Section 1 provides the short title of the regulation.

Section 2 provides that this regulation amends the *Housing Regulation 2015*.

Section 3 amends the heading in Part 2 of the Housing Regulation.

Section 4 amends section 5 to exempt a Build to Rent (BTR) pilot project provider or a Housing Investment Fund (HIF) provider from requirements relating to the provision of housing services.

Section 5 amends section 11(3) relating to financial statements for ancillary housing services to require that if the funded provider is established under an Act, the annual financial statements must be in the form, and contain the information, required under that Act.

Section 6 amends the definition of 'client' in section 19(4)(a)(ii) to improve consistency in terminology.

Section 7 inserts a new Part 2A to specify the requirements for housing services for BTR providers and HIF providers.

New section 19A inserts new definitions for Part 2A, including BTR provider, Build to Rent pilot project, HIF provider, and Housing Investment Fund program.

New section 19B defines the Build to Rent pilot project as the pilot project administered by the State that seeks to deliver affordable housing to low to moderate income earners by providing rent subsidies to developers to encourage developers to develop affordable housing in Queensland.

New section 19C defines the Housing Investment Fund program as the program administered by the State that seeks to deliver community housing and affordable housing to low to moderate income earners, and provides subsidies, one-off capital grants and other support to encourage developers, builders, tenancy managers, institutional investors and superannuation funds to develop, finance and operate community housing and affordable housing in Queensland. This is intended to expeditiously support the HIF providers to deliver additional affordable housing, and community housing in limited circumstances, while housing supply is under pressure.

It also defines community housing in relation to this section to mean a community housing service provided by a registered provider. HIF providers will be supported to build or develop community housing, with the intention that it will be operated by registered community housing providers once it becomes operational. This seeks to ensure that community housing tenants, who generally have higher support needs than tenants in affordable housing, continue to be offered the same protections and receive the specialised support offered by registered community housing providers.

New section 19D amends the Housing Regulation for this part to prescribe the requirements relating to the provision of housing services for which a funded provider who is a HIF provider or BTR provider receives funding. A BTR provider or a HIF provider is an exempt provider under the *Housing Act 2003*, schedule 4.

New section 19E prescribes that if a provision of this part is inconsistent with a term of a funding agreement, the provision prevails and the term is void to the extent of the inconsistency. This does not limit another provision of this regulation.

New Division 2 inserts new financial management and accountability requirements for HIF providers and BTR providers.

New section 19F prescribes that the BTR provider or HIF provider must use the funding or receipts that the provider receives for a housing service in a way that complies with the funding agreement for that service.

New section 19G prescribes the requirements for financial statements for an ancillary housing service delivered by a HIF provider that received funding for that ancillary housing service. This includes that the HIF provider must prepare annual financial statements for each financial year in which the provider receives funding. If the HIF provider is established under an Act, the annual financial statements must be in the form and contain the information required under the Act. If the chief executive requests a copy of the annual financial statements, the HIF provider must comply with the request.

New section 19H applies to a HIF provider. The HIF provider must not use funded property as security for a loan unless the chief executive gives the HIF provider written approval to use the funded property as security for the loan.

New section 19I applies to a HIF provider. The HIF provider must keep and implement an asset management plan for each of the HIF provider's funded properties. This section explains the purpose of an asset management plan and information to be included in the asset management plan. If the chief executive requests a copy of an asset management plan, the HIF provider must comply with the request.

New Division 3 inserts governance and service delivery requirements for BTR providers and HIF providers.

New section 19J requires a BTR provider or HIF provider to comply with the *Information Privacy Act 2009*, chapter 2, parts 1 and 3 as if the provider were the department. These parts relate to compliance with Information Privacy Principles by agencies and transfer of personal information outside of Australia.

New section 19K requires that a BTR provider or HIF provider that receives funding to provide a social housing service must have an eligibility policy for the social housing service and implement the eligibility policy consistently and fairly. An eligibility policy for a social housing service means a policy that states the criteria and procedures for deciding whether a person is eligible to receive the service, and complies with the funding agreement for the service.

New section 19L requires that a BTR provider or HIF provider that receives funding to provide a social housing service must have an allocations policy for the social housing service and implement the allocations policy consistently and fairly. An allocations policy for a social housing service means a policy that states the criteria and procedures for deciding whether a service is to be allocated to a person eligible to receive the service and complies with the funding agreement for the service.

New section 19M requires that a HIF provider that receives funding to provide an ancillary housing service must have an eligibility policy for the ancillary housing service and must implement the eligibility policy for the ancillary housing service consistently and fairly. An eligibility policy for an ancillary housing service means a policy that states the criteria and procedures for deciding whether a person is eligible to receive the service and complies with the funding agreement for the service.

New section 19N requires a BTR provider or HIF provider that receives funding to provide a housing service for residential use to keep a rent policy for the service and implement the rent policy for the service consistently and fairly. Compliance with this obligation is required even if rent is not paid for the service. If a tenant pays rent for the service, the BTR provider or HIF provider must keep a record of rent calculations for the tenant for the period required under the funding agreement. This section includes definitions of rent policy and tenant.

New section 19O requires a HIF provider that receives funding to provide a social housing service to give the chief executive information about each funded property

for the service if the chief executive gives the provider a notice requesting the information. The HIF provider must comply with the request within the period stated in the notice. If the information given to the chief executive changes, the HIF provider must give details of the change to the chief executive as soon as practicable.

New section 19P applies to a HIF provider that receives funding to provide a housing service. The chief executive may, by notice, require the HIF provider to provide certain types of information to the chief executive, including information about the housing service, information about the use of a funded property for the service, non-identifying information about a client of the funded provider, and any other information about the funding the HIF provider receives that the chief executive considers appropriate. The HIF provider must comply with the request within the period stated in the notice. A client is defined as a person who is receiving a housing service from the funded provider or has applied to the funded provider for a housing service, and includes a tenant.

Section 8 inserts a new section 38A to include additional exempt providers under the Housing Regulation. This new section prescribes that a BTR provider and a HIF provider are each eligible to receive funding to provide a social housing service in Queensland.

Section 9 amends Schedule 2 Dictionary to insert definitions of BTR provider, Build to Rent pilot project, HIF provider and Housing Investment Fund program.