



# Housing Act 2003

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Queensland

# Housing Act 2003

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# Housing Act 2003

**An Act about the provision of housing and related matters**

## **Part 1                      Preliminary**

### **Division 1                      Introduction**

#### **1                      Short title**

This Act may be cited as the *Housing Act 2003*.

#### **2                      Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2                      Application, objects and guiding principles**

#### **3                      Act binds all persons**

- (1) This Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

#### **4                      Main objects**

The main objects of this Act are—

- (a) to improve the access of Queenslanders to safe, secure, appropriate and affordable housing; and
- (b) to help build sustainable communities.

## **5 How the objects are to be primarily achieved**

The objects are to be achieved primarily by making provision about the following matters—

- (a) housing-related activities carried on by the State, including—
  - (i) providing public housing and other housing services; and
  - (ii) developing, undertaking or supporting other housing programs and initiatives;
- (b) a system, for supporting and regulating certain types of entities providing housing services, that includes—
  - (i) registering the entities; and
  - (ii) giving them financial assistance, making land available to them or giving them other types of assistance; and
  - (iii) regulating how they provide housing services using the assistance.

## **6 Guiding principles**

This Act is to be administered in a way that has sufficient regard to the following principles—

- (a) the availability of safe, secure, appropriate and affordable housing in a community—
  - (i) enhances the quality of life of people living in the community; and
  - (ii) contributes to the wellbeing of the community by enabling people to participate in its social and economic life;

- (b) the need for safe, secure, appropriate and affordable housing can be met by entities from government, industry and the community, acting separately and in partnership;
- (c) a community is sustainable if—
  - (i) it is socially and economically diverse, cohesive, resilient and adaptable; and
  - (ii) it has access to appropriate services and amenities;
- (d) housing services should be provided in a way that responds to the diverse and changing needs of individuals, families and other households;
- (e) the State’s provision of housing services should—
  - (i) provide leadership and promote best practice in housing provision and residential development; and
  - (ii) be integrated, as far as is reasonably practicable, with the provision of other government social services;
- (f) individuals being provided with housing under this Act should have access, as far as is reasonably practicable, to an appropriate choice of housing types and tenures;
- (g) housing services should be provided in a way that has appropriate regard to—
  - (i) local and regional differences; and
  - (ii) cultural diversity; and
  - (iii) Aboriginal tradition and Island custom;

*Note—*

***Aboriginal tradition*** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships—see the *Acts Interpretation Act 1954*, section 36.

*Island custom*, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships—see the *Acts Interpretation Act 1954*, section 36.

- (h) the needs, views and interests of consumers of housing services, indigenous community members and representatives, non-government entities, industry bodies and local governments should be taken into account in developing government housing policy.

## Division 3 Interpretation

### 7 Definitions

The dictionary in schedule 4 defines particular words used in this Act.

### 8 Key concepts

- (1) A *housing service* is a social housing service or an ancillary housing service.
- (2) A *social housing service* is the provision of housing to an individual for residential use, other than crisis accommodation.
- (3) A *community housing service* is a social housing service that is not public housing.
- (4) *Public housing* is a social housing service provided directly by the State.
- (5) An *ancillary housing service* is any of the following—
  - (a) giving financial or other assistance to enable an individual to—



- 
- (i) buy or lease a residence or obtain housing in another way; or
  - (ii) modify or maintain a residence;
  - (b) any of the following kinds of services—
    - (i) tenant advisory services;
    - (ii) tenant advocacy services;
    - (iii) home maintenance services;
    - (iv) home modification services;
    - (v) housing-related referral and information services;
    - (vi) provision of crisis accommodation;
    - (vii) a prescribed service.

## **Division 4                      Queensland Housing Fund**

### **10                      Queensland Housing Fund**

- (1) The Queensland Housing Commission Fund under the repealed Act is continued in existence as the Queensland Housing Fund.
- (2) The *Financial Accountability Act 2009* applies to the fund.
- (3) Accounts for the fund must be kept as part of the departmental accounts.
- (4) Amounts received for the fund must be deposited in a departmental financial-institution account of the department, but may be deposited in an account used for depositing other amounts of the department.
- (5) Amounts received for the fund include—
  - (a) amounts paid to the department as part of its vote under the *Financial Accountability Act 2009* and made available by the department for use under this Act; and
  - (b) amounts received from the Commonwealth for providing housing services; and

- (c) repayments for loans made under this Act; and
  - (d) rent payments for public housing provided under this Act; and
  - (e) the proceeds of the sale of portfolio property; and
  - (f) other amounts received by the department under this Act.
- (6) An amount is payable from the fund for the purposes of this Act.

*Examples of amounts payable from the fund—*

- grants to registered providers
  - loans to individuals to obtain housing
  - purchases of land for the property portfolio
  - costs of administering this Act
- (7) Other amounts may be paid into, or out of, the fund for non-housing purposes but an amount may not be paid out of the fund for a non-housing purpose that is more than the amount paid into the fund for that non-housing purpose.
- (8) An amount may be paid into the fund under this section only if the amount is not required, under the *Financial Accountability Act 2009* or another Act, to be paid into another fund or an account other than a departmental account.
- (9) In this section—

***departmental accounts*** means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

***non-housing purpose*** means a purpose other than a purpose of this Act.

***other amounts of the department*** means amounts received by the department other than amounts received for the fund.

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## Part 2                      Chief executive's functions and powers

### Division 1                Functions

#### 11            Functions

- (1) The chief executive is responsible for using the Queensland Housing Fund and portfolio property in ways that best achieve the objects of this Act.
- (2) The ways that the chief executive may use the fund or property include—
  - (a) providing public housing; and
  - (b) providing grants, loans, land or other assistance to—
    - (i) individuals in need of housing services; and
    - (ii) entities providing housing services; and
    - (iii) entities providing housing for their employees or contractors; and
  - (c) conducting housing-related research; and
  - (d) developing, undertaking or supporting other housing programs and initiatives to—
    - (i) promote the development and sustainability of the housing sector; and
    - (ii) improve the responsiveness of the housing sector to housing need, housing design issues and planning issues; and
    - (iii) otherwise help the housing sector to meet the demand for safe, secure, appropriate and affordable housing; and

*Examples for paragraph (d)—*

- leasing commercial premises in conjunction with the provision of public housing

- providing funding for activities carried on by peak housing and industry organisations
  - (e) providing housing-related infrastructure.
- (3) Subsections (1) and (2) do not limit the chief executive's other functions under this or another Act or law.

## **Division 2                    Powers**

### **12            General powers**

- (1) The chief executive has, under the Minister and as agent of the State, all the powers of the State that are necessary or desirable for performing the chief executive's functions under this Act.
- (2) Without limiting subsection (1), the chief executive may, for example, in performing the chief executive's functions—
- (a) enter into contracts; and
  - (b) acquire, hold, lease, sell and otherwise deal with land and other property; and
  - (c) carry out building and related works and make other improvements to land; and
  - (d) appoint agents and attorneys; and
  - (e) charge for goods and services supplied.
- (3) The chief executive may, on the terms and conditions and subject to the restrictions, exceptions and reservations the chief executive thinks fit, dispose of portfolio property that is surplus to the requirements of the department.

### **13            Power to make loans and investments**

- (1) The chief executive may make loans and investments, and pay amounts out of a departmental financial-institution account of the department to make a loan or investment, to achieve the objects of this Act.

- 
- (2) Subsection (1) applies despite the *Financial Accountability Act 2009*, section 87.
  - (3) Subject to other laws, the chief executive may set interest rates for the loans in the way the chief executive considers appropriate.

## 14 Waiver of amounts owed

- (1) This section applies if a person owes an amount to the chief executive arising out of, or relating to, the chief executive's provision of a housing service.

*Examples of amounts that may be owed to the chief executive—*

- a rental payment
  - an instalment due under a loan agreement
  - an amount of compensation for damage caused to a rental property
- (2) The chief executive may waive, entirely or partly, payment of the amount if the chief executive is satisfied the waiver is appropriate in all the circumstances.
  - (3) The chief executive may waive payment unconditionally or on the conditions the chief executive considers appropriate.

*Example—*

The chief executive may waive payment of part of an amount owed by a person on the condition that the person enters into a written agreement about repayment of the rest of the amount.

- (4) In making a decision under this section about waiving payment of an amount owed by a person, the chief executive must have regard to all the relevant circumstances of which the chief executive is aware, including, for example—
  - (a) the size of the amount owed; and
  - (b) why the person owes the amount; and
  - (c) whether payment of the amount would cause the person financial hardship; and
  - (d) the person's likely ability to repay the amount in the future; and

- (e) any special circumstances relevant to whether it would be fair to enforce payment of the amount.

## 15 Powers not limited

This Act does not limit the chief executive's powers under another Act or law.

*Example of a power under another Act—*

a power of the State delegated to the chief executive under the *Constitution of Queensland 2001*, section 55

# Part 3 Obligations relating to social housing services

## Division 1 Giving information to the chief executive or funded provider

### 16 Housing service information

- (1) This division applies to information (*housing service information*) that a person gives to the chief executive for the purpose of a decision by the chief executive about—
  - (a) whether to provide a housing service to the person; or
  - (b) the type of housing service to provide to the person; or
  - (c) the terms on which to provide a housing service to the person.
- (2) Housing service information may include, for example, information given by a person—
  - (a) in an application for a housing service; or
  - (b) in compliance with a lease agreement, loan agreement or other agreement with the chief executive about providing a housing service to the person; or

- 
- (c) while a housing service is being provided to the person, in response to a query from the chief executive.

## 17 False or misleading information

- (1) A person must not give the chief executive or a funded provider housing service information that the person knows is false or misleading in a material particular.

*Examples—*

- 1 A person applies to the chief executive for a loan to buy a house. The application includes false information about the person's financial circumstances.
- 2 A person applies to the chief executive to be provided with rental accommodation. The application is accompanied by a declaration about the person's income, made by the person's employer, that the person knows to be false.
- 3 A person is renting a house from a funded provider. In response to a query from the funded provider, the person gives false information about the income of persons living in the house.

Maximum penalty—10 penalty units.

- (2) Subsection (1) does not apply to a person who gives the chief executive or a funded provider a document containing housing service information if the person, when giving the document—
- (a) tells the chief executive or the funded provider, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## 18 Notice of changes in information

- (1) This section applies only to housing service information prescribed under a regulation.
- (2) Within 28 days after there is a change in housing service information that a person has given to the chief executive or a funded provider, the person must give the chief executive or

funded provider notice of the change, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 2                    Other matters**

### **19            Unauthorised use or subletting of rental accommodation**

(1) This section applies to a provision of a residential tenancy agreement between the chief executive and a person that—

- (a) the person must use the premises as the person's place of residence; or
- (b) the person must not sublease the premises; or
- (c) the person must not use the premises, or allow the premises to be used, for a purpose other than a place of residence; or
- (d) the person must not allow the premises to be used as the place of residence of—
  - (i) anyone other than the person, the person's family or other stated persons; or
  - (ii) more than a stated number of persons.

(2) The person must not contravene the provision.

Maximum penalty—10 penalty units.

(3) The person does not contravene the provision only by a non-use, sublease or use of the premises under written authority from the chief executive.

(4) Subsection (2) does not limit another consequence of a contravention of the provision.

*Example for subsection (4)—*

A person's contravention of a residential tenancy agreement with the chief executive may be an offence against subsection (2) and may also allow the chief executive to take action, as lessor, under the *Residential Tenancies and Rooming Accommodation Act 2008*.



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## Part 4 Funding

### Division 1 Preliminary

#### 21 Meaning of *funding* and *funded provider*

- (1) *Funding* is assistance provided by the chief executive—
  - (a) in the form of money or other assistance to a funded provider to assist the provider in providing housing services; and
  - (b) on condition the funded provider is accountable to the chief executive for providing the housing services and the use of the money or other assistance.
- (2) A *funded provider* is an entity providing, or required to provide, housing services using funding.
- (3) For subsection (2), it does not matter—
  - (a) if other resources are also used to provide the services; or
  - (b) that an agreement under which the funding was provided has ended.

#### 22 Only particular providers eligible to receive funding to deliver social housing services

The chief executive may give funding to deliver a social housing service only to—

- (a) a registered provider; or
- (b) an exempt provider.

## **Division 2                      Providing funding**

### **23            Types of funding that may be provided**

The chief executive may give an entity that provides, or intends to provide, a housing service funding the chief executive considers appropriate to assist the entity to provide the service, including, for example—

- (a) making, on appropriate conditions, a monetary grant or a series of monetary grants to the entity; or
- (b) making a secured loan to the entity; or
- (c) transferring to the entity land subject to an appropriate security or covenant relating to the use of the land; or
- (d) leasing land to the entity.

### **24            Purpose of funding**

The purpose of funding an entity is to enable it to provide housing services in ways that best achieve the objects of this Act.

### **25            Funding agreement**

- (1) The chief executive may enter into an agreement (a ***funding agreement***) with an entity for giving funding to the entity.
- (2) A funding agreement may include the terms the chief executive considers appropriate.

*Example for subsection (2)—*

A term of a funding agreement may provide that, if the funded provider deals with a stated amount in a way that contravenes a stated prescribed requirement, the amount is repayable to the chief executive.

### **26            Demand for repayment of unexpended amounts**

- (1) This section applies if—
  - (a) a funding agreement with a funded provider ends; and

- (b) an amount that the chief executive paid to the provider under the agreement has not been expended.
- (2) The chief executive may give the provider a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to demand repayment of the unexpended amount; and
  - (b) that the provider may, within a stated time of at least 7 days, give the chief executive a written response about the proposed demand.
- (3) After considering any written response received from the provider within the stated time, the chief executive may demand repayment of all or some of the amount stated in the show cause notice.
- (4) If the chief executive decides not to demand repayment of any of the amount, the chief executive must give the provider notice of the decision.
- (5) The chief executive may recover the demanded amount as a debt owed to the State.
- (6) This section does not limit the ways the chief executive may demand payment of, or recover, an amount owed to the chief executive.

## **27 No entitlement to funding**

The chief executive is not required to give funding to an entity, or to enter into a funding agreement with an entity, merely because the entity is a registered provider.

## **Division 3                      Compliance with prescribed requirements**

### **33            Prescribed requirements**

- (1) A regulation may prescribe requirements relating to the provision of housing services for which a funded provider receives funding.
- (2) Without limiting subsection (1), a regulation may prescribe a requirement about—
  - (a) how a funded provider conducts its operations while providing a housing service for which the provider receives funding, including—
    - (i) financial management and accountability; and
    - (ii) corporate governance; and
  - (b) how a funded provider delivers services to clients, including—
    - (i) deciding eligibility and priority for services; and
    - (ii) giving information; and
    - (iii) resolving disputes; and
  - (c) other matters about providing a housing service for which the provider receives funding, including—
    - (i) tenancy management; and
    - (ii) rent assessment and collection; and
    - (iii) property management.
- (3) A requirement may include provision about—
  - (a) preparing, maintaining, publishing or implementing a policy; or
  - (b) reporting to the chief executive.

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### 34 Funded provider must comply with prescribed requirements

A funded provider must not contravene a prescribed requirement relating to the provision by the provider of a housing service for which the provider receives funding.

*Notes—*

- 1 Under section 35, a funded provider may be given a compliance notice requiring the provider to remedy a contravention of a prescribed requirement.
- 2 The extent of a funded provider's compliance with, or contravention of, a prescribed requirement is likely to be a relevant matter for the chief executive to consider when deciding the further funding, if any, to give to the provider under this part.
- 3 A funding agreement may include a provision about the consequences of a contravention of a prescribed requirement.
- 4 Noncompliance by a funded ancillary provider with certain types of prescribed requirements may lead to the appointment of an interim manager to the business of that provider—see sections 40 and 41.

### 35 Compliance notice

- (1) This section applies if the chief executive reasonably believes a funded provider—
  - (a) is contravening a prescribed requirement; or
  - (b) has contravened a prescribed requirement in circumstances that make it likely the contravention will continue or be repeated.
- (2) The chief executive may give the provider a notice (a **compliance notice**) requiring the provider to remedy the contravention.
- (3) The compliance notice must state the following—
  - (a) that the chief executive reasonably believes the provider—
    - (i) is contravening a prescribed requirement; or

- (ii) has contravened a prescribed requirement in circumstances that make it likely the contravention will continue or be repeated;
  - (b) the prescribed requirement the chief executive believes is being, or has been, contravened;
  - (c) briefly, how it is believed the prescribed requirement is being, or has been, contravened;
  - (d) that the provider must remedy the contravention within a stated reasonable time;
  - (e) that it is an offence to fail to comply with the compliance notice unless the provider has a reasonable excuse.
- (4) The compliance notice may also state the steps that the chief executive reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the prescribed requirement.
- (5) The provider must comply with the compliance notice unless the provider has a reasonable excuse.
- Maximum penalty—20 penalty units.
- (6) If the provider contravenes subsection (5)—
- (a) the chief executive is not required to give any funding or further funding, to the provider under a funding agreement in force when the relevant compliance notice was given, despite any provision of the agreement; and
  - (b) the chief executive may include in the register a note about the contravention that the chief executive considers appropriate.
- (7) This section does not limit—
- (a) a remedy available to the chief executive under a funding agreement; or
  - (b) the chief executive's powers apart from this section.

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## Part 4A Community housing providers

### Division 1 Preliminary

#### 36 Objects of this part

This part establishes a system for the registration, monitoring and regulation of entities providing community housing services—

- (a) to encourage the development, viability and quality of community housing services; and
- (b) to promote confidence in the good governance of registered providers of community housing services, in order to facilitate greater investment in the community housing sector; and
- (c) to make it easier for providers of community housing services to operate in more than 1 participating jurisdiction.

*Note—*

Part 4A implements the State's obligations under the Inter-Governmental Agreement for a National Regulatory System for Community Housing Providers.

#### 36A Meaning of *primary jurisdiction*

- (1) The *primary jurisdiction* of a national provider, or a national entity (a *potential provider*) intending to provide a community housing service, is—
  - (a) the participating jurisdiction in which the national provider provides, or the potential provider intends to provide, most of its community housing services; or
  - (b) if the registrars of each participating jurisdiction agree to a different primary jurisdiction—that jurisdiction.
- (2) The registrars of each participating jurisdiction may agree to a different primary jurisdiction for a national provider or

[s 36B]

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potential provider at any time whether or not on the application of the national provider or potential provider.

- (3) As soon as practicable after agreeing on a different primary jurisdiction for a national provider or potential provider, the registrar of the provider's new primary jurisdiction must—
  - (a) give the national provider or potential provider notice of its new primary jurisdiction; and
  - (b) record the new primary jurisdiction on the national register.
- (4) For subsection (1)(a), a community housing service provided by a national provider, or intended to be provided by a potential provider, in a jurisdiction other than a participating jurisdiction is not to be taken into account in deciding where most of the national provider's or potential provider's community housing services are, or will be, provided.

### **36B Extraterritorial operation of pt 4A**

It is the intention of the Parliament that, as far as the legislative power of the Parliament permits, the operation of this part includes operation in relation to the following—

- (a) things situated in or outside the territorial limits of the State;
- (b) acts, transactions, and matters done, entered into or occurring in or outside the territorial limits of the State;
- (c) things, acts, transactions and matters, wherever situated, done, entered into or occurring, that would, apart from this part, be governed or otherwise affected by the law of another jurisdiction.

### **36C Chief executive declared to be housing agency**

For the purpose of the corresponding laws of the other participating jurisdictions, the chief executive as agent for the State is declared to be the housing agency for this jurisdiction.



*Note—*

See definition, *housing agency* in schedule 4 (Dictionary).

## **Division 2                    Registrar**

### **36D    Appointment**

- (1) The chief executive may appoint an appropriately qualified person as the registrar of—
  - (a) the national register for this jurisdiction; and
  - (b) the state register.
- (2) The registrar is to be appointed and employed under the *Public Service Act 2008*.

### **36E    Independence of registrar**

- (1) Subject to the Minister and the chief executive, the registrar is to control—
  - (a) the national register for this jurisdiction; and
  - (b) the state register.
- (2) However, the registrar is not subject to the control of the Minister or the chief executive in making decisions about any of the following matters—
  - (a) the approval or refusal of an application for registration on the national register for this jurisdiction or the state register;
  - (b) the imposition of conditions on the registration of a registered provider, including the imposition of an additional standard condition on the registration of a national provider;
  - (c) the variation of a national provider's category of registration;
  - (d) the exercise of an enforcement or intervention function or power under division 4;

- (e) the cancellation of a registered provider's registration on the national register or the state register.

### **36F Functions of registrar**

- (1) The registrar has the following functions—
  - (a) maintaining—
    - (i) the national register, jointly with the registrars for the other participating jurisdictions; and
    - (ii) the state register;
  - (b) assessing the suitability of applicants for registration;
  - (c) registering—
    - (i) national entities, for which this jurisdiction is or will be the primary jurisdiction, as national providers; and
    - (ii) local governments and other entities as state providers;
  - (d) cancelling the registration of registered providers;
  - (e) monitoring and enforcing compliance by registered providers with this Act and exercising enforcement and intervention functions under division 4;
  - (f) investigating complaints about the compliance by registered providers with this Act;
  - (g) any other functions conferred or imposed on the registrar under this Act or another Act.
- (2) The registrar has the following additional functions in relation to the national register—
  - (a) providing information about the registration of national entities and the compliance by national providers with this Act;
  - (b) sharing information and cooperating with the registrars of the other participating jurisdictions for the purposes of this Act and corresponding laws;

- (c) providing information and advice to the Minister and chief executive about registration of national entities, the regulation of national providers and any other matters under this Act or a corresponding law.

### **36G Powers of registrar**

The registrar has the power necessary or convenient to carry out the registrar's functions.

### **36H Registrar must comply with guidelines**

In performing a function in relation to the national register, the registrar must comply with any guidelines made jointly by the Minister and each Minister responsible for the administration of a corresponding law for a participating jurisdiction, and published—

- (a) in the New South Wales Government Gazette; or
- (b) on the New South Wales legislation website.

### **36I Registrar not personally liable**

The registrar is not personally liable for any matter or thing done or omitted to be done in good faith in the performance of a function, or the exercise of a power, of the registrar under this Act.

### **36J Delegation of registrar's functions or powers**

- (1) The registrar may delegate the registrar's functions and powers under this Act to—
  - (a) if the function or power relates to the state register—an appropriately qualified officer of the department; or
  - (b) if the function or power relates to the national register—
    - (i) the registrar of another participating jurisdiction; or

- (ii) an appropriately qualified officer of the department; or
  - (iii) a prescribed person or a member of a prescribed class of persons.
- (2) Without limiting subsection (1), the functions and powers relating to the national register that may be delegated by the registrar include—
  - (a) functions and powers of the registrar as the primary registrar for a national provider, or a national entity intending to provide a community housing service; and
  - (b) functions and powers delegated to the registrar by the registrar of another participating jurisdiction.
- (3) However, the registrar may delegate the following functions or powers only to an authorised officer—
  - (a) the power to request the provision of information relating to a registered provider’s affairs, including a specified document or record, as mentioned in schedule 2, section 4;
  - (b) the power to request a registered provider attend a meeting to answer questions about the provider’s affairs, as mentioned in schedule 2, section 5;
  - (c) the power to enter a registered provider’s premises to inspect the premises or the provider’s records, as mentioned in schedule 2, section 6;
  - (d) a power or function conferred on the registrar by the corresponding law of a participating jurisdiction that corresponds to the conditions of registration mentioned in schedule 3, part 1, sections 3 to 5.

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## Division 3                      Registration

### 37        Registers established

- (1) The national register of national entities providing community housing services is established.
- (2) It is the intention of the Parliament that this part, together with the corresponding laws of the other participating jurisdictions, has the effect that the national register is a single national register.
- (3) The state register of local governments and prescribed state providers providing community housing services is established.

*Note—*

A state provider may provide a community housing service only within this jurisdiction—see schedule 3, part 2, section 7.

### 37A      Information on register

- (1) This section applies if the registrar approves an application by—
  - (a) a national entity for which this jurisdiction is, or will be, the primary jurisdiction for registration on the national register; or
  - (b) a local government or a prescribed state provider for registration on the state register.
- (2) The registrar must include the following information on the national register or the state register, for the entity, local government or prescribed state provider (the *provider*)—
  - (a) name and identifying details;
  - (b) the conditions applying to the registration;
  - (c) a copy of any notice of intent to cancel registration issued to the provider;

- (d) whether the registration has been cancelled at any time and details of the cancellation, including a copy of the notice of cancellation;
  - (e) a copy of any binding instructions issued to the provider;
  - (f) details of the appointment of a statutory manager for the provider, including a copy of the relevant instrument of appointment;
  - (g) any other information the registrar considers relevant.
- (3) If the provider is a national entity the registrar must also include the following information for the provider on the national register—
- (a) the category of registration of the provider;
  - (b) the primary jurisdiction;
  - (c) each other participating jurisdiction in which the provider has a national community housing asset.
- (4) The registrars of each participating jurisdiction may agree to divide the national register into different parts to assist in the administration of the national register.
- (5) The registrar may, at any time, by notice to a national provider for which the registrar is the primary registrar—
- (a) vary the category of registration of the provider; and
  - (b) move the registration of the provider to another part of the national register.

*Note—*

A decision by the registrar to vary the category of a national provider's registration is reviewable—see section 63(2)(a).

- (6) Information on the national register and the state register must be publicly available.
- (7) The registrar may, on payment of the prescribed fee, give a person a copy of information kept on the relevant register.

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### **37B Application for registration or variation of registration**

- (1) An entity (the *applicant*) providing or intending to provide a community housing service may apply to the registrar—
  - (a) if the applicant is a national entity for which the registrar is or will be the primary registrar—for registration on the national register; or
  - (b) if the applicant is a national provider for which the registrar is the primary registrar—for variation of the provider's existing registration on the national register; or
  - (c) if the applicant is a local government or a prescribed state provider—for registration on the state register.
- (2) An application under subsection (1) must be—
  - (a) in the approved form; and
  - (b) accompanied by the prescribed fee.
- (3) If the registrar receives an application from a national entity or national provider for which the registrar is not, or will not be, the primary registrar, the registrar must refer the application to the primary registrar for the applicant.
- (4) The registrar may require the applicant to give the registrar further information or documents the registrar reasonably requires to decide the application, including information or documents relating to—
  - (a) the performance of the applicant's functions and any arrangement the applicant has entered into with another entity in relation to the performance of the applicant's functions; or

*Example—*

A national entity that is a consolidated entity within the meaning of the *Corporations Act 2001* (Cwlth), section 9, may be required to give the registrar information about changes to the consolidated entity's group structure.

  - (b) the applicant's affairs.

- (5) However, subsection (4) does not authorise the registrar to require information or a document that identifies an individual who is an occupier of residential premises.

### **37C Deciding application**

- (1) The registrar must approve an application made under section 37B(1)(a) or (b) by a national entity or a national provider if the registrar is satisfied that—
- (a) the entity or provider is providing, or intends to provide, community housing services, most of which are or will be provided in this jurisdiction; and
  - (b) the entity or provider will comply with this Act and the corresponding law of each participating jurisdiction in which the entity or provider provides, or will provide, a community housing service; and
  - (c) the entity or provider will comply with any condition applying to the entity or provider's registration, or the provider's registration as varied; and
  - (d) approval of the application is appropriate in the circumstances having regard to—
    - (i) the main objects of this Act and how the objects are to be primarily achieved; and
    - (ii) the objects of this part.
- (2) The registrar must approve an application made under section 37B(1)(c) by a local government or a prescribed state provider if the registrar is satisfied that—
- (a) the local government or prescribed state provider is providing, or intends to provide, a community housing service in this jurisdiction only; and
  - (b) the local government or prescribed state provider will comply with this Act and the conditions applying to the local government's or the provider's registration; and
  - (c) approval of the application is appropriate in the circumstances having regard to—



- (i) the main objects of this Act and how the objects are to be primarily achieved; and
- (ii) the objects of this part.

*Note—*

A decision by the registrar to refuse an application for registration, or an application by a national provider for variation of its registration, is reviewable—see section 63(2)(b).

### **37D Conditions of registration**

- (1) A registered provider must comply with—
  - (a) each condition applying to the provider's registration; and
  - (b) each provision (an *applicable code provision*) of the national regulatory code in schedule 1 that is identified on the relevant register as applying to the provider's registration.

*Note—*

A failure to comply with subsection (1) is not an offence but is a ground for the registrar to give a registered provider a notice of noncompliance.

- (2) Schedule 2 sets out the conditions that apply to the registration of each registered provider.
- (3) Schedule 3, part 1 sets out the conditions that apply to the registration of a national provider for which this jurisdiction is the primary jurisdiction.
- (4) Schedule 3, part 2, sets out the conditions that apply to the registration of a state provider.

### **37E Additional standard conditions for national providers**

- (1) The registrars of each participating jurisdiction may agree to conditions of registration (each an *additional standard condition*) for national providers.
- (2) The registrar may impose 1 or more additional standard conditions on the registration of a national provider for which this jurisdiction is the primary jurisdiction—

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- (a) at the time the registrar decides the provider's application for registration; or
- (b) at any other time by notice given to the provider.

*Note—*

A decision by the registrar to impose an additional standard condition is reviewable —see section 63(2)(c).

- (3) The registrar must—
  - (a) give the national provider an opportunity to make a submission on a proposed notice under subsection (2)(b); and
  - (b) take any submission made by the provider into account before giving the notice to the provider.
- (4) An additional standard condition imposed on the registration of a national provider for which this jurisdiction is the primary jurisdiction applies in addition to—
  - (a) the conditions set out in schedule 2; and
  - (b) the conditions set out in schedule 3, part 1; and
  - (c) any applicable code provision.

### **37F Individual occupier of residential premises**

Nothing in section 37D or 37E authorises—

- (a) a registered provider to give information that identifies an individual who is an occupier of residential premises, without the individual's consent, to—
  - (i) the registrar; or
  - (ii) if the provider is a national provider—the registrar of another participating jurisdiction; or
- (b) the registrar, or the registrar of another participating jurisdiction, to enter residential premises occupied by an individual, without the individual's consent.

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### **37G Cancellation of registration**

- (1) The registrar may cancel the registration of a national provider for which the registrar is the primary registrar, or a state provider, if the provider—
  - (a) has applied to the registrar for the cancellation of the provider's registration; or
  - (b) has been wound up or has otherwise ceased to exist.
- (2) An application under subsection (1)(a) must be made in the approved form.
- (3) The registrar may refuse the application only if—
  - (a) for a national provider—the registrar is not satisfied each national community housing asset of the provider has been transferred under section 37H(2) or the corresponding law of another participating jurisdiction that applies to the provider or the asset; or
  - (b) for a state provider—the registrar is not satisfied each state community housing asset of the provider has been transferred under section 37H(3).
- (4) The registrar may also cancel the registration of a national provider for which the registrar is the primary registrar, or a state provider, if—
  - (a) the registrar has given the provider a notice of intent to cancel registration under section 38C; and
  - (b) the provider has not, within the time stated in the notice, satisfied the registrar that the provider's registration should not be cancelled; and
  - (c) the registrar has given the provider notice under section 64 of the registrar's decision to cancel the provider's registration.

*Note—*

A decision by the registrar to cancel a registered provider's registration or to refuse an application by a registered provider for cancellation of the provider's registration is reviewable—see section 63(2)(d).

### **37H Community housing assets to be transferred if registration cancelled**

- (1) This section applies if—
  - (a) a registered provider intends to apply for cancellation of the provider's registration; or
  - (b) the registrar cancels the registration of a registered provider under section 37G(4).
- (2) If the registered provider is a national provider, the provider must take all reasonable steps to ensure that on or before the relevant day for the provider, the provider transfers each of its national community housing assets to—
  - (a) if the asset is located in this jurisdiction—
    - (i) the chief executive; or
    - (ii) if another entity is prescribed—the prescribed entity; or
    - (iii) if the chief executive consents in writing—another national provider or state provider; or
  - (b) if the asset is located in another participating jurisdiction—
    - (i) the housing agency of that jurisdiction; or
    - (ii) if the corresponding law of that jurisdiction prescribes another entity—the prescribed entity.
- (3) If the registered provider is a state provider, the provider must take all reasonable steps to ensure that on or before the relevant day for the provider, the provider transfers each of its state community housing assets to—
  - (a) the chief executive; or
  - (b) if another entity is prescribed—the prescribed entity; or
  - (c) if the chief executive consents in writing—another national provider or state provider.
- (4) If the chief executive consents under subsection (2)(a)(iii) or (3)(c) to the transfer of a community housing asset to another national provider or state provider—

- (a) the chief executive may impose conditions on the consent that the chief executive considers appropriate; and
  - (b) if the chief executive imposes conditions—the national provider or the state provider transferring the community housing asset must comply with the conditions when the provider is transferring the asset.
- (5) If a registered provider fails to comply with subsection (2), (3) or (4), the provider is taken to have contravened each funding agreement to which the provider is a party.
- (6) In this section—

*relevant day*, for a registered provider, means—

- (a) for a registered provider intending to apply for cancellation of the provider's registration—
  - (i) the day before the provider applies for cancellation; or
  - (ii) if, before the provider applies for the cancellation, the registrar and the provider agree in writing that a stated day will be the relevant day for the provider—the stated day; or
- (b) for a registered provider whose registration is cancelled under section 37G(4)—
  - (i) the day that is 6 months after the day on which the provider receives the notice under section 64 of the cancellation; or
  - (ii) if, before the day mentioned in subparagraph (i), the registrar and the provider agree in writing that a stated day will be the relevant day for the provider—the stated day.

## Division 4                      Enforcement powers of registrar

### 38            Registrar may take action

- (1) The registrar may take action under this division in relation to the following—
  - (a) a national provider for which the registrar is the primary registrar;
  - (b) a state provider.
- (2) The registrar may take action under this division against a registered provider mentioned in subsection (1) if the registrar reasonably believes the provider is not complying with—
  - (a) this Act; or
  - (b) if the provider is a national provider—a corresponding law that applies to the provider.

### 38A          Notice of noncompliance

- (1) If the registrar decides to take action under this division in relation to a registered provider, the registrar may give the provider a notice (*a notice of noncompliance*) stating—
  - (a) that the registrar reasonably believes the provider is not complying with—
    - (i) this Act; or
    - (ii) if the provider is a national provider—a corresponding law that applies to the provider; and
  - (b) the provision of this Act or of the corresponding law the registrar believes is not being, or has not been, complied with; and
  - (c) briefly, how the registrar believes the provision is not being, or has not been, complied with; and
  - (d) the reasonable steps the provider must take to rectify the noncompliance; and

- (e) the time within which the provider must take steps to rectify the noncompliance; and
  - (f) that the consequences of the provider failing to rectify the noncompliance within the stated time may include cancellation of the provider's registration.
- (2) If the provider is a national provider, the registrar must give a copy of the notice of noncompliance to the registrar of each other participating jurisdiction.

### **38B Binding instructions to rectify noncompliance**

- (1) The registrar may give a registered provider written instructions (the *binding instructions*) about the way in which the provider is to address a matter that is the subject of a notice of noncompliance the registrar has given the provider.

*Note—*

A decision by the registrar to issue binding instructions to a registered provider is reviewable—see section 63(2)(e).

- (2) The registrar may give more than 1 set of binding instructions for a notice of noncompliance.
- (3) The registered provider and each relevant person for the provider must comply with the binding instructions within the period, if any, stated in the instructions.

*Note—*

A failure to comply with subsection (3) is not an offence but is a ground for the registrar to give a registered provider a notice of intention to cancel the provider's registration.

- (4) In deciding whether to give binding instructions to the registered provider the registrar must—
- (a) consider the interests of any tenants of the provider; and
  - (b) if the provider is a national provider—take all steps reasonably practicable to obtain the views of a regulatory body the registrar considers has a relevant interest in the matter.

*Example for paragraph (b)—*

in considering whether to give binding instructions under this section to a national provider that is a company limited by shares under the *Corporations Act 2001* (Cwlth), the registrar takes steps to obtain the views of the Australian Securities and Investments Commission

(5) In this section—

***relevant person***, for a registered provider, means—

- (a) a member of the provider's governing body; or
- (b) an officer or employee of the provider.

### **38C Notice of intent to cancel registration**

(1) This section applies if the registrar reasonably believes a registered provider—

- (a) has not addressed the matters stated in a notice of noncompliance given to the provider within the period stated in the notice; or
- (b) has not complied with binding instructions given to the provider within the period, if any, stated in the instructions; or
- (c) has failed to comply with a provision of this Act or, if the provider is a national provider, a corresponding law of another participating jurisdiction, and urgent steps are required because the failure has potentially serious consequences.

*Example for paragraph (c)—*

a failure by a registered provider to comply with this Act that creates a risk to the health and safety of the provider's tenants

(2) The registrar may give the registered provider a notice (a ***notice of intent to cancel registration***) that the registrar intends to cancel the provider's registration.

(3) The notice of intent to cancel registration must state—

- (a) the reasons the registrar considers registration should be cancelled; and



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- (b) that the provider's registration will be cancelled unless, within the period stated in the notice, the provider satisfies the registrar that the provider's registration should not be cancelled.
  - (4) The stated period in a notice of intent to cancel registration—
    - (a) must be not less than 14 days after the day the notice is given to the registered provider; and
    - (b) may be extended in writing by the registrar at the provider's request, if the registrar is satisfied that there are good reasons for extending the period.
  - (5) If the provider is a national provider, the registrar must also give a copy of the notice of intent to cancel registration to the registrar of, and the housing agency for, each other participating jurisdiction.

### 38D Statutory managers

- (1) The registrar may, by instrument, appoint a person (a *statutory manager*) to conduct the affairs and activities of a registered provider, to the extent the affairs and activities relate to the provider's community housing assets.

*Note—*

A decision by the registrar to appoint a statutory manager is reviewable—see section 63(2)(f).

- (2) The registrar may appoint a statutory manager only if—
  - (a) the registrar has given the provider a notice of intent to cancel registration; or
  - (b) the registrar is satisfied the provider has failed to comply with any of the following and urgent steps are required because the failure to comply has potentially serious consequences—
    - (i) this Act;
    - (ii) if the provider is a national provider—a corresponding law of another participating jurisdiction applying to the provider;

(iii) binding instructions given to the provider.

*Example of potentially serious consequences—*

a failure by a registered provider to comply with this Act that creates a risk to the health and safety of the provider's tenants

- (3) The statutory manager's instrument of appointment must state the following—
- (a) the statutory manager's name;
  - (b) details of the registered provider;
  - (c) details of the statutory manager's functions and powers;
  - (d) the day the appointment takes effect;
  - (e) either—
    - (i) the day the appointment ends; or
    - (ii) that the appointment continues until the registrar gives notice that the appointment has ended;
  - (f) any conditions of the appointment;
  - (g) any other matter the registrar considers appropriate.
- (4) A copy of the instrument of appointment must be given to the registered provider.
- (5) The statutory manager—
- (a) has the functions and powers stated in the manager's instrument of appointment; and
  - (b) holds office on the conditions stated in the manager's instrument of appointment.
- (6) If a person appointed as statutory manager is not a public service employee, the person is entitled to be paid the remuneration decided by the chief executive.
- (7) A registered provider must not, while a statutory manager is appointed for the provider, perform a function or exercise a power the statutory manager has been appointed to perform or exercise unless the statutory manager agrees to the provider performing the function or exercising the power.

*Note—*

A failure to comply with subsection (7) is not an offence but may be a ground for the cancellation of the registered provider's registration.

- (8) The registrar must revoke the statutory manager's appointment if the registrar is satisfied—
- (a) the registered provider is complying, or will comply—
    - (i) with this Act and any binding instructions given to the provider; and
    - (ii) if the provider is a national provider—with each corresponding law that applies to the provider; or
  - (b) the provider no longer provides a community housing service—
    - (i) in this jurisdiction; and
    - (ii) if the provider is a national provider—in any other participating jurisdiction; or
  - (c) the registered provider has been wound up or has otherwise ceased to exist.

**38E Other matters relating to performance of a function or exercise of a power by statutory manager**

- (1) The expenses of and incidental to the conduct of the affairs and activities of a registered provider by a statutory manager are payable by the provider.
- (2) The expenses include—
  - (a) the remuneration of the statutory manager if the statutory manager is not a public service employee; or
  - (b) the reimbursement of the State of an amount certified by the chief executive as being the remuneration of the employee for the period of the employee's appointment as statutory manager.
- (3) The amount mentioned in subsection (2)(b) may be recovered in a court of competent jurisdiction as a debt due to the State.

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- (4) A statutory manager is not liable for any loss incurred by the registered provider during the period of the statutory manager's appointment unless the loss was attributable to the statutory manager's—
  - (a) wilful misconduct; or
  - (b) gross negligence; or
  - (c) wilful failure to comply with this Act or a corresponding law or any other law regulating the conduct of members of the governing body of the provider.
- (5) Neither the State nor the registrar is liable for any loss incurred by a registered provider during the period of a statutory manager's appointment for the registered provider, whether or not the statutory manager is liable to the provider.

### **38F Displacement provisions**

- (1) Sections 38B and 38D are declared to be Corporations legislation displacement provisions for the *Corporations Act 2001* (Cwlth), section 5G.
- (2) Sections 38B and 38D prevail to the extent the sections are inconsistent with a provision of the following legislation—
  - (a) the *Associations Incorporation Act 1981*;
  - (b) the *Cooperatives Act 1997*.

### **38G No compensation payable by State**

- (1) No compensation is payable by or on behalf of the State or the registrar in connection with the operation of this division.
- (2) Without limiting subsection (1), compensation is not payable by or on behalf of the State or the registrar arising directly or indirectly from any of the following—
  - (a) the cancellation of the registration of a registered provider;
  - (b) the imposition of conditions on the registration of a registered provider;

- (c) the publication of a notice of intent to cancel registration;
  - (d) the giving of binding instructions;
  - (e) the appointment of a statutory manager;
  - (f) the performance by a person of a function or exercise of a power, or a failure by a person to perform a function or exercise a power, of a statutory manager.
- (3) In this section—
- compensation* includes damages or any other form of monetary compensation.

## Division 5                      Miscellaneous

### 38H      Disclosure of information

The registrar must not disclose information obtained in the performance of the registrar's functions, or exercise of the registrar's powers, under this Act unless the disclosure is made—

- (a) in connection with the administration of this Act, including disclosure of information to the Minister or the chief executive, or of another law; or
- (b) with the consent of—
  - (i) the person from whom the information was obtained; or
  - (ii) if the person from whom the information was obtained is not the person to whom the information relates—the person to whom the information relates; or
- (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or

- (d) under an authorisation provided by the guidelines mentioned in section 36H; or
- (e) as expressly permitted or required by another Act.

## **Part 5                      Appointment of interim manager for particular funded providers**

### **Division 1                Preliminary**

#### **39        Definitions for pt 5**

In this part—

*business*, of a funded ancillary provider, means the business of the provider to the extent that it involves any of the following activities—

- (a) the provision of an ancillary housing service using funding;
- (b) the management of funded property;
- (c) compliance with the terms of a relevant agreement.

*funded ancillary provider* means a funded provider that provides an ancillary housing service but does not provide a social housing service.

*funded property*, for a funded ancillary provider, means property—

- (a) transferred or leased by the chief executive to the funded ancillary provider for the purpose of providing an ancillary housing service; or
- (b) bought or leased by the funded ancillary provider using funds entirely or partly provided by a grant, loan or other financial assistance from the chief executive for the purpose of providing an ancillary housing service.

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**relevant agreement**, for a funded ancillary provider, means a residential tenancy agreement for which—

- (a) the lessor is the funded ancillary provider; and
- (b) the residential premises the subject of the agreement are funded property.

## Division 2                      Appointment

### 40              Appointment

The chief executive may appoint a person as interim manager for the business of a funded ancillary provider.

*Note—*

For the appointment of a statutory manager to a registered provider— see section 38D.

### 41              Basis for appointment

- (1) The chief executive may appoint an interim manager for the business of a funded ancillary provider only if the chief executive is satisfied the appointment is reasonably necessary to ensure—
  - (a) in relation to the funded ancillary provider—
    - (i) compliance with a prescribed requirement about—
      - (A) deciding eligibility or priority for ancillary housing services; or
      - (B) rent assessment or collection; and
    - (ii) the proper and efficient use of funded property under the funding agreement; or
  - (b) in relation to a relevant agreement—compliance with an obligation under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 185(2)(b) to (d) or (3)(a) to (c).

- (2) In deciding whether the appointment is reasonably necessary, the chief executive must have regard to all of the following matters—
- (a) the amount and type of property the funded ancillary provider is managing in the course of providing the ancillary housing service;
  - (b) the amount and type of funding provided by the chief executive to the funded ancillary provider for the ancillary housing service;
  - (c) the number of relevant agreements in force for the funded ancillary provider;
  - (d) whether the funded ancillary provider is or appears to be unwilling or unable to provide, or provide properly, the ancillary housing service for which the provider is receiving the funding;
  - (e) the likely consequences for the tenants under relevant agreements if the provider does not provide, or provide properly, the ancillary housing service for which the provider is receiving the funding;
  - (f) the likely consequences of the appointment, of which the chief executive is aware, for the funded ancillary provider and anyone else likely to be affected;
  - (g) any other relevant matter of which the chief executive is aware.
- (3) Before making the appointment, the chief executive must consider whether it would be more appropriate to take steps other than the appointment, or not to take any steps.

## **42 Suitability of proposed appointee**

- (1) The chief executive may make the appointment only if the chief executive is satisfied the proposed appointee is suitable for the appointment under this section.



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- (2) In deciding whether a person is suitable for the appointment, the chief executive must have regard to the following matters—
- (a) the nature of the ancillary housing service provided by the funded ancillary provider;
  - (b) the reason for the appointment;
  - (c) the person's expertise or experience relevant to the appointment;
  - (d) any conflict of interest that may arise in the course of the person acting as interim manager;
  - (e) any other relevant matter of which the chief executive is aware.
- (3) A person who has agreed to a proposed appointment must advise the chief executive, before the appointment is made, whether the person is aware of a conflict of interest that may arise in the course of the person acting as interim manager.
- Maximum penalty—20 penalty units.
- (4) Only an adult may be appointed as interim manager.

### **43 Terms of appointment**

An instrument of appointment of a person as interim manager for the business of a funded ancillary provider must state the following matters—

- (a) the person's name;
- (b) details of the ancillary housing service provided by the funded ancillary provider;
- (c) details of the person's function as interim manager;
- (d) any limitations on the person's powers as interim manager;
- (e) the period of the appointment;
- (f) any conditions of the appointment;
- (g) anything else the chief executive considers appropriate.

#### **44 Notice about appointment**

- (1) Immediately after appointing a person as interim manager for the business of the funded ancillary provider, the chief executive must give a copy of the appointment to the funded ancillary provider.
- (2) Also, the chief executive must ensure the tenant under a relevant agreement is notified of the appointment of an interim manager at or before the time the manager exercises a power under this part in relation to the agreement.

#### **45 Initial period of appointment**

An interim manager may be appointed for a period of not more than 3 months.

#### **46 Variation of appointment**

- (1) After an interim manager starts to carry out the manager's function, the chief executive may, by notice—
  - (a) extend the period of the appointment; or
  - (b) vary the appointment in another way.
- (2) The chief executive may extend the period of the appointment if the chief executive is satisfied the extension is reasonably necessary in all the circumstances.
- (3) The period of the appointment may be extended more than once.
- (4) However—
  - (a) the period of an extension must not be more than 3 months; and
  - (b) the total period of the initial appointment and any extension or extensions must not be more than 6 months.
- (5) The chief executive may vary the appointment in a way other than by extending the period of the appointment if the chief

executive is satisfied the variation is appropriate, having regard to—

- (a) the matters stated in section 41; and
  - (b) the operation of the business of the funded ancillary provider since the appointment started.
- (6) If the appointment is varied under this section, the chief executive must ensure notice of the variation is given—
- (a) to the funded ancillary provider; and
  - (b) if the manager exercises a power under this part in relation to a relevant agreement during the period of an extension or after the appointment is otherwise varied—to the tenant.
- (7) The notice under subsection (6)(b) must be given to the tenant at or before the time the manager exercises the power.

## **47 Ending of appointment**

- (1) The chief executive may, by notice, end an interim manager's appointment at any time before the end of the period of appointment if the chief executive is satisfied the appointment is no longer appropriate, having regard to the matters stated in section 41.
- (2) Immediately after ending an appointment under subsection (1), the chief executive must give notice about the ending of the appointment to the funded ancillary provider and to each tenant who had been notified of the appointment.

## **Division 3 Function and powers**

### **48 Application of div 3**

This division applies to a person appointed as interim manager for the business of a funded ancillary provider.

## **49 Function**

The interim manager's function is, to the extent stated in the instrument of appointment, to ensure the matters stated in section 41(1)(a) and (b).

## **50 Power to act on funded ancillary provider's behalf in relation to a relevant agreement**

- (1) To carry out the interim manager's function, the interim manager—
- (a) may enter into a residential tenancy agreement under the *Residential Tenancies and Rooming Accommodation Act 2008*, on behalf of the funded ancillary provider, for residential premises that are funded property; and
  - (b) may do anything in relation to a relevant agreement, on behalf of the provider, that the provider is permitted or required to do.

*Examples for paragraph (b)—*

- 1 The interim manager may exercise a right of entry under the *Residential Tenancies and Rooming Accommodation Act 2008*, chapter 3, part 3.
  - 2 The interim manager may give a notice to the tenant under the *Residential Tenancies and Rooming Accommodation Act 2008*, chapter 5, part 1, division 2.
- (2) For the application of the *Residential Tenancies and Rooming Accommodation Act 2008*, the interim manager is not liable, as an agent of the funded ancillary provider, for an act or omission relating to a relevant agreement other than a thing done by the interim manager under subsection (1).

*Note—*

See the *Residential Tenancies and Rooming Accommodation Act 2008*, section 24, for provision about things required to be done by lessors or their agents.

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## 51 Power to demand rental payments

- (1) The interim manager may give a notice, in the approved form, to the tenant under a relevant agreement, requiring the tenant to pay to the manager a rental payment due to the funded ancillary provider under the agreement.
- (2) On the making of a requirement under subsection (1), a requirement under the relevant agreement to make the rental payment to the funded ancillary provider is taken to be a requirement to make the payment to the manager.
- (3) The manager may require the payment of amounts under subsection (1) only to the extent the manager reasonably requires to carry out the manager's function.
- (4) The manager may apply an amount received under this section only in carrying out the manager's function.
- (5) If the manager stops being satisfied an amount received under this section is needed to carry out the manager's function, the manager must immediately pay the amount to the funded ancillary provider.
- (6) At the end of the manager's appointment, the manager must give to the funded ancillary provider any remaining amount received under this section.
- (7) Subsections (5) and (6) apply subject to section 59.

## 52 Other powers

The interim manager has the other powers of the funded ancillary provider that are necessary or convenient to carry out the manager's function.

*Example—*

It may be necessary for the interim manager to carry out repairs to funded property.

### **53 Limitation on powers under instrument of appointment**

A power conferred on the interim manager under this division applies subject to any limitation stated in the instrument of appointment.

### **54 Production of instrument of appointment for inspection**

- (1) This section applies if—
  - (a) the interim manager is exercising, or proposes to exercise, a power given under this part in relation to a person; and
  - (b) the person asks the manager to produce the manager's instrument of appointment for the person's inspection.
- (2) The manager must comply with the request.

### **55 Obstruction**

- (1) A person must not obstruct an interim manager in the exercise of a power, unless the person has a reasonable excuse.  
Maximum penalty—20 penalty units.
- (2) If a person has obstructed an interim manager and the manager decides to proceed with the exercise of the power, the manager must warn the person that—
  - (a) it is an offence to obstruct the manager, unless the person has a reasonable excuse; and
  - (b) the manager considers the person's conduct an obstruction.

## **Division 4 Other matters**

### **56 Access to information or documents**

- (1) The interim manager may ask an executive officer of the funded ancillary provider for information or documents that

the manager reasonably needs to carry out the manager's function.

- (2) The chief executive may disclose information to an interim manager, or give an interim manager access to documents, to the extent the chief executive considers appropriate for the purpose of the manager's appointment.

*Example for subsection (2)—*

The chief executive may give information about the business of the funded ancillary provider, or access to the provider's records, that the chief executive has obtained under section 81.

## **57 Confidentiality**

- (1) This section applies to a person—
- (a) who is, or has been, appointed as interim manager for the business of a funded ancillary provider; and
  - (b) who, in the course of the appointment or because of opportunity provided by the appointment, has gained or has access to confidential information about the funded ancillary provider or someone else.
- (2) The person must not make a record of the information, disclose the information to anyone else or give access to the information to anyone else, other than—
- (a) for a purpose of this part; or
  - (b) with the consent of the funded ancillary provider or other person to whom the information relates; or
  - (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
  - (d) as expressly permitted or required by another Act.

Maximum penalty—20 penalty units.

## **58 Remuneration**

An interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

## **59 Funded ancillary provider liable for remuneration and other costs**

- (1) If an interim manager is appointed for the business of a funded ancillary provider, the chief executive may give the provider a written demand for the amount of an administration cost.
- (2) The chief executive may recover the amount as a debt owed to the State.
- (3) At any time during or after the appointment, the chief executive may recover an administration cost from an amount held by the manager under section 51.
- (4) In this section—  
*administration cost* means the remuneration paid to the interim manager and any other reasonable cost incurred in carrying out the manager's function.

## **60 Accounts and reports**

- (1) An interim manager appointed for the business of a funded ancillary provider must give to the chief executive—
  - (a) records of all amounts received or paid in the course of the appointment; and
  - (b) the other reports about the administration that the chief executive requires.
- (2) The records and other reports must be given as soon as possible after the end of the appointment or, if required by the chief executive at a time during the appointment, at that time.
- (3) The chief executive must give a copy of each record or report to the funded ancillary provider.



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## **62 Compensation**

- (1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.
- (2) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

## **Part 6 Review of decisions**

### **63 Reviewable decisions**

- (1) The following decisions made by the chief executive are reviewable decisions—
  - (a) a decision about a person's eligibility for a social housing service;
  - (b) a decision about the type of social housing service to be provided to a person;
  - (c) a decision about the place where a social housing service is to be provided to a person;
  - (d) a decision to appoint an interim manager for the business of a funded ancillary provider.
- (2) The following decisions by the registrar are reviewable decisions—
  - (a) a decision to vary the category of registration of a national provider;
  - (b) a decision to refuse—
    - (i) an application for registration; or
    - (ii) an application by a national provider to vary the provider's registration;

- (c) a decision to impose an additional standard condition;
- (d) a decision to—
  - (i) cancel the registration of a registered provider; or
  - (ii) refuse an application by a registered provider for cancellation of the provider's registration;
- (e) a decision to issue binding instructions to a registered provider;
- (f) a decision to appoint a statutory manager for a registered provider.

#### **64 Notice of reviewable decision**

As soon as practicable after making a reviewable decision, the chief executive or the registrar must give the entity in relation to which the decision was made a notice stating—

- (a) the reasons for the decision; and
- (b) that the entity may apply to the chief executive for a review of the decision—
  - (i) for a reviewable decision made by the chief executive—within 28 days after receiving the notice; or
  - (ii) for a reviewable decision made by the registrar—within 14 days after receiving the notice; and
- (c) how the entity may apply for the review; and
- (d) if the notice relates to a decision by the registrar to cancel a provider's registration—the day the cancellation takes effect.

#### **65 Application for review**

- (1) An entity entitled to be given a notice under section 64 about a reviewable decision may apply to the chief executive for a review of the decision.
- (2) The application must be made—

- (a) for a reviewable decision made by the chief executive—
  - (i) if the chief executive gives the entity a notice under section 64—within 28 days after the notice is given; or
  - (ii) otherwise—within 28 days after the entity becomes aware of the decision; or
- (b) for a reviewable decision made by the registrar—
  - (i) if the registrar gives the entity a notice under section 64—within 14 days after the notice is given; or
  - (ii) otherwise—within 14 days after the entity becomes aware of the decision.
- (3) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.
- (4) The chief executive may extend the time for making the application.

## **66 Stay of operation of reviewable decision**

- (1) An application under section 65 for review of a reviewable decision does not stay the decision.
- (2) However, the operation of the decision may be stayed by—
  - (a) for a reviewable decision made by the chief executive—the chief executive giving the entity a notice staying the operation for a stated period; or
  - (b) for a reviewable decision made by the registrar—the chief executive or registrar giving the entity a notice staying the operation of the decision for a stated period.
- (3) The chief executive or the registrar may grant the stay on conditions the chief executive or the registrar considers appropriate.

- (4) If the chief executive or the registrar grants a stay, the chief executive or registrar must give the entity in relation to which the reviewable decision was made a notice stating—
  - (a) that the operation of the reviewable decision has been stayed; and
  - (b) the day on which the stay ends; and
  - (c) any conditions imposed under subsection (3).

## **67 Review decision**

- (1) This section applies to an application under section 65 for a review of a decision.
- (2) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (3) Within 28 days after receiving the application, the chief executive must review the original decision and make a decision (the *review decision*)—
  - (a) confirming the original decision; or
  - (b) amending the original decision; or
  - (c) substituting another decision for the original decision.
- (4) The chief executive must make the review decision on the material that led to the original decision and any other material the chief executive considers relevant.
- (5) Immediately after making the review decision, the chief executive must give the person notice of the review decision and the reasons for it.

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## **Part 7**                      **Information gathering and enforcement**

### **Division 1**                **Matters for which powers may be exercised**

#### **68**        **Exercise of powers only for certain matters**

A power conferred under this part may be exercised only for monitoring or enforcing—

- (a) compliance with parts 3 and 4; or
- (b) compliance by a registered provider with part 4A; or
- (c) compliance by a funded ancillary provider with—
  - (i) section 55(1); or
  - (ii) in relation to a relevant agreement within the meaning given by section 39—the *Residential Tenancies and Rooming Accommodation Act 2008*, section 185(2)(b) to (d) or (3)(a) to (c); or

*Note for subparagraph (ii)—*

This relates to a ground for appointing an interim manager for the business of a funded ancillary provider. See section 41(1)(b).

- (d) compliance with section 88 or 89.

### **Division 2**                **Authorised officers**

#### **69**        **Appointment and qualifications**

- (1) The following persons are authorised officers—
  - (a) the registrar;
  - (b) an officer of the department appointed by the chief executive by instrument in writing.

- (2) However, the chief executive may appoint an officer of the department as an authorised officer only if the chief executive is satisfied that the officer has the necessary expertise or experience.

## **70 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
- (a) if the officer was appointed under section 69(1)(b), the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the officer or a regulation may limit the officer's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

## **71 When authorised officer stops holding office**

- (1) An authorised officer stops holding office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the officer stops holding office;
  - (c) the officer's resignation under section 72 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may stop holding office.
- (3) In this section—  
*condition of office* means a condition on which the officer holds office.

## **72 Resignation**

- (1) An authorised officer may resign by signed notice given to the chief executive.
- (2) However, the registrar may not resign as an authorised officer without resigning as registrar.

## **73 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photo of the officer; and
  - (b) contain a copy of the officer's signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

## **74 Return of identity card**

A person who stops being an authorised officer must return the person's identity card to the chief executive as soon as practicable, but not later than 7 days, after the person stops being an authorised officer unless the person has a reasonable excuse.

Maximum penalty—5 penalty units.

## **75 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or

- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 77(1)(b) or (2).

## **Division 3                      Powers of authorised officers**

### **76            Non-application to certain residences**

- (1) This division does not apply to a place that a person is occupying as the person's residence—
  - (a) under a residential tenancy agreement, contract of sale or other agreement with the chief executive; or
  - (b) with financial assistance given directly to the person by the chief executive to enable the person to occupy the place as the person's residence.
- (2) For a person who is an authorised officer, subsection (1) does not prevent the person entering a place mentioned in subsection (1) other than in the person's capacity as an authorised officer.

### **77            Power to enter a place**

- (1) An authorised officer may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) it is not a residence and the entry is made when the place is open for the conduct of business.



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- (1A) Without limiting subsection (1)(c), the registrar may enter the premises of a registered provider, other than a residence, to inspect the premises or the provider's records as mentioned in a condition of the provider's registration.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent—
- (a) enter land around a building at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

## **78 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 77(1)(a).
- (2) Before asking for the consent, the officer must tell the occupier—
- (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent; and
  - (c) briefly, the powers the officer may exercise under this part.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
- (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
    - (iii) briefly, the powers the officer may exercise under this part; and
  - (b) the purpose of the entry; and

- (c) the occupier gives the officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the officer must immediately give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **79 General powers after entering a place**

- (1) This section applies to an authorised officer who enters a place under this division.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) The authorised officer may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, photograph or film any part of the place or anything at the place;
  - (c) copy a document at the place;
  - (d) take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power under this part;
  - (e) require the occupier of the place, or a person at the place, to give the officer—
    - (i) reasonable help to exercise the officer's powers under paragraphs (a) to (d); or

- (ii) information to help the officer find out whether a provision mentioned in section 68 or a prescribed requirement is being complied with.

## **80 Failure to help authorised officer**

A person required to give reasonable help, or information, under section 79(3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## **Division 4 Other powers**

### **81 Power to require information or documents**

- (1) The chief executive or an authorised officer may, by notice given to a person, require the person to—
  - (a) give to the chief executive or an authorised officer, either orally or in writing, information in the person's knowledge about a stated matter within a stated reasonable time and in a stated reasonable way; or
  - (b) give to the chief executive or an authorised officer, within a stated reasonable time and in a stated reasonable way, a document about a stated matter in the person's possession or control.
- (2) The chief executive or authorised officer may keep a document mentioned in subsection (1)(b) to copy it.
- (3) If the chief executive or authorised officer copies the document, or an entry in the document, the chief executive or officer may require the person who has possession or control of the document to certify the copy as a true copy of the document or entry.
- (4) The chief executive or authorised officer must return the document to the person as soon as practicable after copying it.

[s 81A]

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- (5) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (6) If a court convicts a person of an offence against subsection (5), the court may also order the person to give to the chief executive or a stated authorised officer, within a stated time and in a stated way, information or a document to which the requirement related.

### **81A Registrar may require attendance**

- (1) The registrar may, by notice given to a registered provider, require the provider to ensure that a suitably qualified officer of the provider attends a meeting with the registrar to provide oral information about the provider's affairs, on the day and in the place stated in the notice.
- (2) A person required by a notice mentioned in subsection (1) to attend a meeting must not, without reasonable excuse—
- (a) fail to attend as required by the notice; or
  - (b) fail to continue to attend the meeting as required by the registrar until excused from further attendance by the registrar.

*Note—*

A failure to comply with this section is not an offence but may be a ground for the registrar to give a registered provider a notice of noncompliance.

## **Division 5 Miscellaneous**

### **82 Self-incrimination**

- (1) This section applies if—
- (a) the chief executive or an authorised officer makes a requirement of an individual; and

- (b) under a provision of this part, it is an offence for the individual to fail to comply with the requirement unless the individual has a reasonable excuse.
- (2) It is a reasonable excuse for the individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

### **83 Compensation**

- (1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.
- (2) Without limiting subsection (1), compensation may be claimed for loss or damage incurred in complying with a requirement made of the person under this part.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

### **84 Obstructing an authorised officer**

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.  
Maximum penalty—20 penalty units.
- (2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
- (b) the officer considers the person's conduct an obstruction.

## **85 Impersonation of an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—20 penalty units.

## **86 Duty of confidentiality**

- (1) This section applies to a person—
  - (a) who is, or has been, appointed as an authorised officer; and
  - (b) who, in the course of the appointment or because of opportunity provided by the appointment, has gained or has access to confidential information about someone else.
- (2) The person must not make a record of the information, disclose the information to anyone else or give access to the information to anyone else, other than—
  - (a) for a purpose of this Act; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
  - (d) as expressly permitted or required under an Act.

Maximum penalty—20 penalty units.
- (3) In this section—  
*authorised officer* does not include the registrar.

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## Part 8                      Miscellaneous

### Division 1                  Offences

#### 87            **Meaning of *official***

In this division—

*official* means the chief executive or an authorised officer, including the registrar.

#### 88            **False or misleading statements**

A person must not state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—10 penalty units.

#### 89            **False or misleading documents**

- (1) A person must not give an official a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—10 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the official, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

#### 90            **Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.

- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.
- state of mind*, of a person, includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

## **Division 2                      Interest rates for owner-occupied home loans**

### **92                      Standard interest rates**

- (1) The chief executive may, by publishing a notice in a newspaper circulating throughout the State, declare 1 or more standard interest rates for owner-occupied home loans made by the chief executive under this Act.



- (2) The declared rates may include—
  - (a) 1 or more standard fixed interest rates; and
  - (b) 1 or more standard variable interest rates.
- (3) A declared interest rate must be consistent with the interest rate policy prescribed under a regulation.
- (4) A declared interest rate applies to a loan if the rate is stated to apply under this Act or under an agreement between the parties to the loan.

### **93 Lower interest rate in special circumstances**

- (1) This section applies if the chief executive has made, or is proposing to make, an owner-occupied home loan to a person.
- (2) The chief executive may lower the interest rate applying, or that would otherwise apply, to the loan if the chief executive is satisfied it would be appropriate to do so because of special circumstances.
- (3) The chief executive may agree with the person on other conditions for the loan including, for example, a condition about the time for which the lower interest rate applies.

### **94 Other ways of setting rates not limited**

This division does not limit the interest rates the chief executive may agree to, or the ways the chief executive may set interest rates, for loans made by the chief executive on behalf of the State.

*Note—*

See section 13 for the chief executive's power to make loans and set interest rates for the loans.

## **Division 2A                      Confidentiality**

### **94A      Definitions for div 2A**

In this division—

*approved provider* means—

- (a) a funded provider that—
  - (i) provides housing services, other than a funded provider that only provides home maintenance services or home modification services; and
  - (ii) is, under the provider's funding agreement, described as an approved provider in relation to the disclosure of confidential information; or
- (b) an exempt provider or registered provider if—
  - (i) the exempt provider or registered provider is engaged under a contract or agreement by an approved provider mentioned in paragraph (a) to provide services to the approved provider; and
  - (ii) under the approved provider's funding agreement, the approved provider is authorised to disclose confidential information to the exempt provider or registered provider.

*disclose* includes record, reveal or use.

### **94B      Immunity for disclosure of particular confidential information**

- (1) This section applies to the disclosure of confidential information by—
  - (a) the chief executive or an employee of the department to an approved provider; or
  - (b) an approved provider or an employee of the approved provider to the chief executive or another approved provider.

- (2) The chief executive, employee of the department, approved provider or employee of the approved provider is not criminally liable for the disclosure under any law, including, for example, a confidentiality provision, if the disclosure is made for the purpose of providing a housing service.
- (3) The chief executive or employee of the department is not civilly liable if the disclosure is made for the purpose of providing a housing service.
- (4) The approved provider or employee of the approved provider is not civilly liable if—
  - (a) the disclosure is made for the purpose of providing a housing service; and
  - (b) the disclosure does not contravene—
    - (i) for a funded provider—a term of the provider’s funding agreement; or
    - (ii) for another approved provider—a term of the provider’s contract or agreement with a funded provider.
- (5) In this section—

***confidentiality provision*** means any of the following—

  - (a) the *Ambulance Service Act 1991*, section 49A;
  - (b) the *Child Protection Act 1999*, sections 186 and 188;
  - (c) the *Corrective Services Act 2006*, section 341;
  - (d) the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6;
  - (e) the *Criminal Law (Sexual Offences) Act 1978*, section 10;
  - (f) the *Witness Protection Act 2000*, section 36;
  - (g) section 94C, 94D or 94E.

**94C Prohibition on disclosure of confidential information the subject of the *Ambulance Service Act 1991*, s 49A**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been confidential information—
  - (a) that must not be disclosed under the *Ambulance Service Act 1991*, section 49A; and
  - (b) that identifies a person as a person who is receiving, or has received, an ambulance service.
- (2) The approved provider or employee must not disclose the information to anyone else.  
Maximum penalty—50 penalty units.
- (3) However, the approved provider or employee may disclose the information to someone else if the disclosure is—
  - (a) to the person to whom the confidential information relates; or
  - (b) required or permitted by law.

**94D Prohibition on disclosure of confidential information the subject of the *Child Protection Act 1999*, s 188**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been information or a document—
  - (a) that must not be disclosed, or to which access must not be given, under the *Child Protection Act 1999*, section 188(2); and
  - (b) that is about a person's affairs.
- (2) The approved provider or employee must not disclose the information, or give access to the document, to anyone else.  
Maximum penalty—100 penalty units or 2 years imprisonment.
- (3) However, the approved provider or employee may disclose the information or give access to the document to someone else—

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- (a) if the disclosure or giving of access is authorised by the chief executive under the *Child Protection Act 1999*, section 189B; or
  - (b) if the disclosure or giving of access is for purposes directly related to a child's protection or wellbeing; or
  - (c) if the disclosure or giving of access is for purposes directly related to obtaining information requested by the chief executive under the *Child Protection Act 1999*, section 246C; or
  - (d) if the disclosure or giving of access is required or permitted by law.
- (4) In this section—

*chief executive* means the chief executive of the department in which the *Child Protection Act 1999* is administered.

**94E Prohibition on disclosure of confidential information the subject of the *Corrective Services Act 2006*, s 341**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been confidential information that must not be disclosed under the *Corrective Services Act 2006*, section 341(2).
- (2) The approved provider or employee must not disclose the information to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (3) However, the approved provider or employee may disclose the information to someone else—
  - (a) if the disclosure is to the person to whom the confidential information relates; or
  - (b) if authorised by the chief executive of the department that administers the *Corrective Services Act 2006* because—

- (i) a person's life or physical safety could otherwise reasonably be expected to be endangered; or
- (ii) it is otherwise in the public interest; or
- (c) if the information merely informs someone—
  - (i) of the corrective services facility in which a prisoner is being held in custody under the *Corrective Services Act 2006*; or
  - (ii) for an offender who is subject to a parole order or a community based order under the *Corrective Services Act 2006*—that the offender is subject to the order; or
- (d) if the disclosure is required or permitted by law.

## **Division 2B                      Development of public housing premises**

### **94F      Definitions for div 2B**

In this division—

***applicable laws***, for development of public housing premises, means any Act, including any of the following Acts, as in force at the time the development was carried out, to the extent it applied to the development—

- (a) the *Building Act 1975*;
- (aa) the *Economic Development Act 2012*;
- (b) the *Integrated Planning Act 1997*;
- (c) the *Local Government (Planning and Environment) Act 1990*;
- (d) the *Plumbing and Drainage Act 2002*;
- (e) the *Planning Act*;
- (f) the repealed *Sustainable Planning Act 2009*.

***development*** means—

- (a) in relation to anything done before the commencement of this definition—development as defined in the repealed *Sustainable Planning Act 2009* immediately before the commencement; or
- (b) in relation to anything done on or after the commencement of this definition—development as defined in the *Planning Act* from time to time.

***Planning Act*** means the *Planning Act 2016*.

***premises*** means—

- (a) a building or other structure; or
- (b) land (whether or not a building or other structure is situated on the land).

***public housing premises*** means premises that are owned, or were owned, by the State or a statutory body representing the State and to which any of the following applies—

- (a) the premises are used, or have been used, to provide relevant public housing;
- (b) the premises are approved by the chief executive to be used to provide a housing service;
- (c) the premises, are being used or have been used, under this Act or the repealed Act, for the provision of housing to an individual for residential use.

***relevant public housing***—

- (a) means housing—
  - (i) provided by or for the State or a statutory body representing the State; and
  - (ii) for short or long term residential use; and
  - (iii) that is totally or partly subsidised by the State or a statutory body representing the State; and
- (b) includes services provided for residents of the housing, if the services are totally or partly subsidised by the State or a statutory body representing the State.

### **94G Development of public housing premises**

- (1) This section applies to development of public housing premises carried out by the State or a statutory body representing the State before or after the commencement.
- (2) The development is taken to have been carried out in accordance with all applicable laws.

### **94H Transfer of public housing premises**

- (1) For the Planning Act and the *Economic Development Act 2012*, the transfer of public housing premises does not result in a material change of use of the premises if the transferor is an entity that uses the premises to provide relevant public housing or a housing service.
- (2) Without limiting subsection (1), the transfer may include—
  - (a) a transfer, from the provider of relevant public housing, to—
    - (i) an individual; or
    - (ii) an entity that provides a housing service that is not the provision of relevant public housing; or
  - (b) a transfer, from an entity that provides a housing service that is not the provision of relevant public housing, to an individual.
- (3) Without limiting subsection (1), an entity is taken to use premises to provide relevant public housing or a housing service if the premises are held by the entity for the purpose of providing relevant public housing or a housing service.
- (4) Subsection (3) applies even if the premises—
  - (a) immediately before the transfer, are not occupied by an individual as a residence; or
  - (b) have never been occupied by an individual as a residence.



- (5) Subsection (1) does not affect the transferee's obligation to comply with all applicable laws for any development of the premises started on or after the transfer of the premises.

## Division 3                      Other matters

### 95                      Exemption from rating

- (1) Land that is portfolio property is not rateable land for the *Local Government Act 2009*.
- (2) Subsection (1) does not apply to—
- (a) land that is the subject of a section 24 contract or a section 113 contract; or
  - (b) land in which a person has a share that the person bought under a section 24 contract or a section 113 contract.
- (3) In this section—

***section 24 contract*** means a contract of sale, entered into under the repealed Act, section 24, under which—

- (a) the purchasing price, other than any deposit, is payable in 2 or more instalments; or
- (b) the sale is of a share in a house and land.

***section 113 contract*** means a contract of sale, entered into under section 113, under which—

- (a) the purchasing price, other than any deposit, is payable in 2 or more instalments; or
- (b) the sale is of a share in a house and land.

### 96                      Loans to enable conduct of residential services

To remove any doubt, it is declared that a reference to a loan in section 13 includes a loan to help meet the costs of building and related work carried out for the purpose of conducting a

residential service under the *Residential Services (Accreditation) Act 2002*.

**97 Application of Criminal Code, s 89**

A public service employee does not commit an offence against the Criminal Code, section 89, only because the employee enters into an agreement with the chief executive for the provision of a housing service to the employee.

**98 Acquisition of land**

The purposes of this Act are purposes for which land may be taken under the *Acquisition of Land Act 1967*.

**99 Advisory committees**

The Minister may establish advisory committees in order to obtain the views of government entities, individuals, community entities and other non-government entities about housing matters.

**99A Delegation by Minister or chief executive**

- (1) The Minister may delegate the Minister's functions or powers under this Act to an appropriately qualified public service employee.
- (2) The chief executive may delegate the chief executive's functions or powers under this Act to an appropriately qualified person.
- (3) A delegation of a function or power by the Minister may permit the subdelegation of the function or power to an appropriately qualified public service employee.
- (4) A delegation of a function or power by the chief executive may permit the subdelegation, and further subdelegation, of the function or power to an appropriately qualified person.

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**99B Acts applying to delegates and sub-delegates**

- (1) This section applies to an entity, other than an individual, to whom a function or power is delegated under section 99A(2) in relation to the performance of a function or exercise of a power by the entity under this Act.
- (2) The *Crime and Corruption Act 2001* applies to the entity as if—
  - (a) the entity were a unit of public administration; and
  - (b) the holder of a specified office, prescribed by regulation, of the entity were the chief executive officer of the entity; and
  - (c) a person employed by the entity were a person holding an appointment in a unit of public administration.
- (3) The *Judicial Review Act 1991* applies to the entity as if—
  - (a) the entity were a State authority; and
  - (b) a decision of an administrative character made, proposed to be made, or required to be made, by the entity or a person employed by the entity, whether or not in the exercise of a discretion, were a decision to which that Act applies.
- (4) The *Ombudsman Act 2001* applies to the entity as if—
  - (a) the entity were an agency; and
  - (b) the holder of a specified office, prescribed by regulation, of the entity were the chief executive officer of the entity; and
  - (c) a person employed by the entity were an officer of an agency; and
  - (d) the Minister were the responsible Minister.
- (5) The *Public Interest Disclosure Act 2010* applies to the entity as if—
  - (a) the entity were a public sector entity; and

- (b) a person employed by the entity were a public officer;  
and
- (c) the holder of a specified office, prescribed by regulation,  
of the entity were the chief executive officer of the  
entity.

## **100 Approved forms**

The chief executive may approve forms for use under this Act.

## **101 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
  - (a) housing service decisions made by the chief executive or a registered provider;
  - (b) fees;
  - (c) interest rates;
  - (d) prescribing an entity that is not a local government or a national entity to be a prescribed state provider;
  - (e) prescribing a person, or a class of persons, to whom a function or power of the registrar that relates to the national registrar may be delegated;
  - (f) prescribing, for section 37H, a person to whom, or entity to which, a registered provider may transfer a community housing asset;
  - (g) prescribing an asset, or a class of assets, as a national community housing asset or a state community housing asset.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

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## **Part 9                      Legal proceedings**

### **Division 1                Evidence**

#### **102    Application of div 1**

This division applies to a proceeding under this Act.

#### **103    Appointments and authority**

It is not necessary to prove the appointment of the chief executive or an authorised officer, or the authority of the chief executive or an authorised officer to do anything under this Act, unless a party, by reasonable notice, requires proof of the appointment or authority.

#### **104    Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

#### **105    Other evidentiary aids**

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given, issued or kept under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice, direction or requirement;
    - (iii) the register or an extract from the register;
  - (b) a stated document is a copy of a document mentioned in paragraph (a);

- (c) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in force for a stated person;
  - (d) on a stated day, a stated person was given a stated notice or direction under this Act;
  - (e) on a stated day, a stated requirement was made of a stated person.
- (2) A certificate purporting to be signed by an approved provider stating any of the following matters is evidence of the matter—
- (a) a stated document is one of the following things made, given or issued under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice, direction or requirement;
  - (b) a stated document is a copy of a document mentioned in paragraph (a);
  - (c) on a stated day, a stated person was given a stated notice or direction under this Act;
  - (d) on a stated day, a stated requirement was made of a stated person.

## **Division 2                      Offence proceedings**

### **106      Summary proceedings for offences**

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start within the later of the following periods to end—
  - (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **107 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### **108 False or misleading information or statements**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

## **Part 10 Repeal, savings and transitional provisions**

### **Division 2 Repeal of State Housing Act 1945**

#### **110 Repeal**

The State Housing Act 1945 9 Geo 6 No. 24 is repealed.

### **Division 3 Saved provisions from repealed Act**

#### **111 Explanation**

This division contains certain provisions relocated from the repealed Act.

#### **112 Provision of land for industry, trade or business**

- (1) If the chief executive is satisfied it is desirable to make land vested in the chief executive under this Act available to a person or body corporate for any purpose of or connected with

the establishment or carrying on by him, her or it of an industry, trade, or business, including but without limit to the foregoing provisions of this subsection the provision of housing for his, her or its employees, the chief executive may set apart the land for the purposes of this section.

- (2) If land is set apart under subsection (1), then, subject to this subsection, the Governor in Council may, in the name of Her Majesty, demise by a lease in perpetuity or for a term of years that land to the person or body corporate to whom or which the chief executive is satisfied it is desirable to make that land available.
- (2A) The capital value of land demised under subsection (2) shall be such sum as the Governor in Council upon the recommendation of the chief executive shall fix.
- (2B) The *Land Act 1994* applies, with all necessary changes, to a lease under subsection (2), except that—
  - (a) any provision of that Act which is inconsistent with a provision of subsection (2) to the extent of such inconsistency shall not so apply; and
  - (b) all coal, petroleum, helium, and minerals are hereby expressly declared to remain the property of the Crown; and
  - (c) all rents payable in respect of lands so demised shall be paid to the chief executive; and
  - (d) the lease may be granted subject to such covenants binding upon the lessee (with liability to forfeiture of the lease for a breach thereof) as the Governor in Council deems necessary to secure the performance by the lessee of the purpose for which the land was made available to the lessee.
- (2C) For subsection (2B), the *Land Act 1994* applies to a lease under subsection (2) as if a reference in that Act to the Minister were a reference to the Minister administering this Act.
- (3) Subject to this section, each rental period of a lease demised pursuant to subsection (2) shall be 1 year.



- (3A) The first rental period of a lease demised after 31 December 1983 shall be from the date of the grant of the lease to 30 June next occurring after the expiration of 12 months from the date of grant.
- (4) For each rental period of 1 year (other than the first rental period of a lease) commencing after 31 December 1983, the annual rental shall be a sum equal to—
- (a) the prescribed percentage of the unimproved value of the land the subject of the lease at the date of commencement of the period in question; or
  - (b) \$30;
- whichever is the greater.
- (7) For a rental period mentioned in subsection (3A), the rental shall be an amount that bears to the amount that would have been the rental had the period been a rental period referred to in subsection (4) the same proportion that the actual rental period expressed in weeks (in which expression a part of a week shall be taken to be a whole week) bears to 52.
- (8) For the purposes of subsection (4) the unimproved value of land shall be—
- (a) in respect of the first rental period of a lease—the capital value of the land demised fixed pursuant to subsection (2A);
  - (b) in the case where a valuation of the unimproved value of the land made by the chief executive (valuations) under the *Valuation of Land Act 1944* is in force at the date of commencement of the rental period in question—the amount of that valuation or that amount as varied by the Land Court, on appeal by the lessee;
  - (c) in any other case—the amount that the Governor in Council determines in the particular case to be the unimproved value of the land.
- (10) In this section—

*chief executive (valuations)* means the chief executive of the department in which the *Valuation of Land Act 1944* is administered.

*prescribed percentage* means—

- (a) if a percentage is prescribed under a regulation for this definition and is effective at the date of commencement of the relevant rental period—that percentage; or
- (b) otherwise—10%.

### **113 Chief executive's power to sell houses to eligible persons**

- (1) The chief executive may sell to a person a house and land which has been or is being acquired by the chief executive or a house erected, or in the course of erection, or to be erected in pursuance of this Act.
- (1AA) Where the fee simple of the land whereon the house is erected, or in the course of erection, or to be erected is vested in the chief executive, the chief executive shall sell the land for that estate together with the dwelling house.
- (1A) Where—
  - (a) the chief executive acquires a house and land pursuant to this Act and is or becomes the registered proprietor of that land;
  - (b) the fee simple of the land whereon a house is erected or in the course of erection, or to be erected pursuant to this Act is vested in the chief executive;

the power conferred on the chief executive by subsections (1) and (1AA) includes the power to sell a share in the house and land and any reference to 'house', 'dwelling house' and 'land' in this section or other section applicable or which becomes applicable subsequent to the sale of a house, dwelling house, or land shall be read and construed to include a share of a house, dwelling house or land.

**(2) Sale of house only to person not already an owner**

A house shall not be sold under this section to any person unless the chief executive is satisfied that—

- (a) the house is intended to be used by the person as the person's home and for no other purpose; and
- (b) except in circumstances approved by the chief executive, neither the person, nor the spouse (if any) of that person, is the owner of any other house in Queensland or elsewhere.

**(3) Terms and conditions of sale**

A sale under this section must be on terms acceptable to the chief executive.

**(3A) Purchasing price**

Subject to subsections (3B) and (3D), the purchasing price shall be agreed upon between the chief executive and the purchaser.

- (3B) In determining the purchasing price to which it will agree, the chief executive shall have regard to the improved value of the land appurtenant to the house, namely, the capital sum the land might be expected to realise if offered for sale for an estate in fee simple on such reasonable terms and conditions as a bona fide seller would require having regard to the added value given to the land by the house and other improvements (if any) at the time as at which the contract of sale is entered into, irrespective of the cost of the house and other improvements (if any).

- (3D) In the case of a sale of a house in the course of erection, or a house to be erected, the chief executive may agree to sell at a price to be determined according to the provisions of subsections (3A) and (3B) upon the completion of erection, and may in such case further agree that the price to be so determined shall not exceed a specified sum.

(3E) **Instalments**

The purchaser must pay interest on the balance of the purchasing price at a rate determined by the chief executive.

(3EA) The purchaser must make monthly payments to the chief executive of—

- (a) the balance of the purchasing price payable; and
- (b) interest payable under subsection (3E).

(3EB) The amount of a monthly payment under subsection (3EA)(a) and (b) is the amount decided by the chief executive.

(3F) The provisions of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, section 10(a) shall not apply to any contract of sale entered into pursuant to this section application for which was received by the commission before the commencement of that Act nor to advances made by the commission pursuant to subsection (7) where the relevant contract was entered into before such commencement.

(5) The costs and expenses (if any) of any transfer, mortgage or release executed under this section shall be borne by the purchaser.

## **Division 4                    Other savings and transitional provisions**

### **114    Definitions for div 4**

In this division—

***commencement day***, in relation to a provision of this part, means the day the provision commences.

***commission*** means the Queensland Housing Commission under the repealed Act.

***loan*** includes advance.

**115 References to repealed Act**

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

**116 Dissolution of the commission**

The commission is dissolved.

**117 State is the legal successor**

- (1) The State is the commission's successor in law.
- (2) Subsection (1) is not limited by another section of this division.

**118 References to commission**

In an Act or document, a reference to the commission may, if the context permits, be taken as a reference to the State.

**119 Commission's assets and liabilities**

- (1) On the commencement day, the commission's assets and liabilities immediately before the commencement day become the State's assets and liabilities.
- (2) The registrar of titles or other person responsible for keeping a register for dealings in property must acknowledge the vesting under this section without a requirement to record the change in the owner, and any dealing in the assets and liabilities on or after the commencement day may be signed by the chief executive.
- (3) Subsection (2) applies even though a relevant document of title is not produced to the registrar of titles or other person.

## **120 Waiver of amounts owed**

A reference in section 14 to an amount owed to the chief executive arising out of, or relating to, the chief executive's provision of a housing service includes an amount that—

- (a) is owed to the State; and
- (b) immediately before the commencement day, was an amount owed to the commission arising out of, or relating to, the commission's provision of a housing service.

## **121 Lower interest rate**

A reference in section 93 to an owner-occupied home loan made by the chief executive includes an owner-occupied home loan owed to the State that was made by the commission before the commencement day.

## **122 Officers and employees of the commission**

- (1) This section applies to a person who, immediately before the commencement day, was a public service employee employed as an officer or employee of the commission.
- (2) On the commencement day, the person becomes a public service employee in the department.
- (3) Otherwise, the person's employment and all rights, entitlements and obligations related to the employment are unaffected by the enactment of this Act.

## **123 Agreement with the commission**

- (1) This section applies to an agreement, in force immediately before the commencement day, to which the commission was a party.
- (2) On the commencement day, the State becomes a party to the agreement in place of the commission.
- (3) In this section—

*agreement* includes a contract of sale, lease, tenancy agreement, loan agreement and mortgage agreement.

#### **124 Proceeding to which the commission was a party**

- (1) This section applies to a proceeding that, immediately before the commencement day, had not ended and to which the commission was a party.
- (2) On the commencement day, the State becomes a party to the proceeding in place of the commission.

#### **125 Proceeding not yet started by or against the commission**

- (1) This section applies if, immediately before the commencement day, a proceeding could have been started by or against the commission.
- (2) The proceeding may be started by or against the State.

#### **126 Application to the commission**

- (1) This section applies to an application made to the commission under the repealed Act that, immediately before the commencement day, had not been finally dealt with.
- (2) To the extent the application relates to a matter that the chief executive may deal with under this Act, the chief executive may deal with the application as if it had been made to the chief executive.

#### **127 Registration of entity that is a party to a continuing agreement**

- (1) This section applies to an entity mentioned in section 21 that, on the commencement day, is a party to a continuing agreement.
- (2) At any time while the continuing agreement is current, the chief executive may register the entity, even though the entity has not applied for registration under section 28.

*Note—*

The chief executive can no longer register an entity under this provision—see section 169.

- (3) In deciding whether to register the entity, the chief executive must have regard to—
  - (a) the time for which the continuing agreement will remain current; and
  - (b) the nature and extent of the assistance that has been, or is proposed to be, provided to the entity under the continuing agreement; and
  - (c) whether the entity has complied or is complying with the continuing agreement; and
  - (d) the matters stated in section 28(4).
- (4) Before registering the entity, the chief executive must give it a notice—
  - (a) stating that the chief executive proposes to register it; and
  - (b) inviting it to give a written response within a stated time of at least 14 days.
- (5) The chief executive must consider any written response received from the entity within the stated time before deciding whether to proceed with the registration.
- (6) Immediately after deciding whether or not to register the entity, the chief executive must give the entity notice of the decision.
- (7) On registration of the entity—
  - (a) each continuing agreement with the entity that is current at the time of registration is an assistance agreement for this Act; and
  - (b) a housing service provided by the entity using assistance from the chief executive under an assistance agreement is a funded service.
- (8) This section does not limit the application of part 4.



*Examples—*

- 1 If the chief executive decides not to register an entity under this section, the entity may apply for registration under section 28.
  - 2 Under section 29, the registration of an entity remains in force unless it is cancelled under part 4.
  - 3 If the chief executive registers an entity under this section, the entity may apply under section 30 for cancellation of the registration.
- (9) In this section—

*continuing agreement* means an agreement—

- (a) entered into, between the commission and an entity mentioned in section 21, on or after 1 January 1996; and
- (b) that was current immediately before the commencement day.

## **128 Land set apart under the repealed Act, s 18**

- (1) This section applies to a notification made under the repealed Act, section 18(3), on or before 23 December 1996, that was in force immediately before the commencement day.
- (2) The notification continues in force.
- (3) A reference in the notification to land being set apart to be used for the purposes of the repealed Act is taken to be a reference to the land being set apart to be used for the purposes of this Act.
- (4) Subsection (3) is not a further setting apart of the land.
- (5) The Governor in Council may, by gazette notice—
  - (a) repeal the notification to wholly revoke the setting apart of the land for use for the purposes of this Act; or
  - (b) amend the notification, including to partly revoke the setting apart of the land for use for the purposes of this Act.
- (6) The chief executive may, as agent of the State, apply under the *Land Act 1994* for land to which the notification applies to be—

- (a) granted in fee simple; or
  - (b) leased for a term of years or in perpetuity.
- (7) For dealing with an application mentioned in subsection (6) under the *Land Act 1994*—
- (a) section 16 of that Act does not apply; and
  - (b) a deed of grant or lease may be granted without competition.
- (8) The registration of a deed of grant under the *Land Title Act 1994*, or registration of a lease under the *Land Act 1994*, for land to which the notification applies revokes the notification to the extent it sets apart that land for use for the purposes of this Act.

### **129 Lease under the repealed Act, s 22B**

- (1) This section applies to a lease, granted under the repealed Act, section 22B, that was in force immediately before the commencement day.
- (2) That section (as amended, renumbered as section 112 and relocated under schedule 1) continues to apply to the lease while the lease is in force.

### **130 Loan to which the repealed Act, s 23A(8)(b) and (c) applied**

- (1) The repealed Act, section 23A(8)(b) and (c), as in force immediately before the commencement day, continue to apply to a loan to which the provisions applied immediately before the commencement day.
- (2) For subsection (1), the repealed Act, section 23A(8)(b) continues to apply as if a reference in the provision to conferring a power, function, right or remedy on the commission or an officer of the commission were a reference to conferring the power, function, right or remedy on the chief executive acting on behalf of the State or an officer in the department.

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**131 Reservation registered over a lot under the repealed Act, s 23B**

- (1) This section applies to a lot that, immediately before the commencement day, was the subject of a reservation registered under the repealed Act, section 23B.
- (2) The repeal of that section does not affect the reservation.
- (3) The repealed Act, section 23B(8) to (11), as in force immediately before the commencement day, continue to apply to the lot while the reservation is registered over the lot, as if—
  - (a) a reference in those provisions to the commission were a reference to the chief executive acting on behalf of the State; and
  - (b) a reference in those provisions to the Minister were a reference to the Minister administering this Act.
- (4) For the purpose of subsection (3), the other provisions of section 23B continue to apply to the extent necessary.

**132 Sale under the repealed Act, s 24**

- (1) This section applies to a contract of sale, entered into under the repealed Act, section 24, that was in force immediately before the commencement day.
- (2) That section (as amended, renumbered as section 113 and relocated under schedule 1) continues to apply to the contract while the contract is in force.

**133 Freeholding lease under the repealed Act, s 24**

- (1) This section applies to a freeholding lease under the repealed Act, section 24, that was in force immediately before the commencement day.
- (2) The terms and conditions of the lease continue to apply.
- (3) The final payment of the purchase price of the land in the lease and any home erected on the land must include the

appropriate fees prescribed under the *Land Act 1994* and the *Land Title Act 1994* for the issue of a deed of grant.

- (4) The *Land Act 1994* applies, with all necessary changes, to the lease except that—
  - (a) all lease payments must be paid to the chief executive; and
  - (b) a reference in that Act to the Minister is taken to be a reference to the Minister administering this Act; and
  - (c) to remove any doubt, chapter 8, part 2 of that Act does not apply.
- (5) The Governor in Council must issue a deed of grant for the land contained in the lease when—
  - (a) the terms and conditions of the lease and the contract of sale under the repealed Act, section 24 have been fulfilled; and
  - (b) the purchase price of the land in the lease and any home erected on the land, interest on the purchase price and all relevant fees have been paid.
- (6) The deed of grant is issued subject to all the encumbrances to which the lease was subject and in the same priorities.

### **134 Other lease under the repealed Act, s 24**

- (1) This section applies to a lease, other than a freeholding lease, granted under the repealed Act, section 24, that was in force immediately before the commencement day.
- (2) That section (as amended, renumbered as section 113 and relocated under schedule 1) continues to apply to the lease while the lease is in force.
- (3) The lease is taken to be a perpetual lease for residential purposes under the *Land Act 1994*.
- (4) However, the *Land Act 1994*, chapter 4, part 3, division 3, does not apply for converting the lease to freehold land.

- (5) The *Housing (Freeholding of Land) Act 1957*, part 2, applies for converting the lease to freehold land.
- (6) For subsection (3), a reference in the *Land Act 1994* to the Minister is taken to be a reference to the Minister administering this Act.

**135 Sale, lease or arrangements under the repealed Act, s 24A**

- (1) This section applies to an agreement, lease or arrangements, under the repealed Act, section 24A, that were in force immediately before the commencement day.
- (2) The repealed Act, section 24A(3C) to (7), (7B), (7C) and (7E) to (12), as in force immediately before the commencement day, continue to apply to the agreement, lease or arrangements while they are in force, as if—
  - (a) a reference in those provisions to the commission were a reference to the chief executive acting on behalf of the State; and
  - (b) a reference in those provisions to the Minister charged with the administration of the repealed Act were a reference to the Minister administering this Act; and
  - (c) a reference in those provisions to a perpetual town lease or perpetual suburban lease were a reference to a perpetual lease for residential purposes.
- (3) A lease that, immediately before the commencement day, was a perpetual town lease or perpetual suburban lease is taken to be a perpetual lease for residential purposes.
- (4) On 1 July 2006, this section stops applying to a lease.

*Editor's note—*

See section 154 (Lease under the repealed Act, s 24A).

**136 Lease to which the repealed Act, s 24C applied**

- (1) This section applies to a lease granted under the repealed Act, section 24 or 24A, that was in force, and to which the repealed

Act, section 24C applied, immediately before the commencement day.

- (2) The repealed Act, section 24C(1) to (7), as in force immediately before the commencement day, continue to apply to the lease while the lease is in force, as if a reference in those provisions to the prescribed percentage were a reference to the prescribed percentage in force immediately before the commencement day or, if another percentage is prescribed under a regulation for this section, the other percentage.

### **137 Application of the repealed Act, s 25 and schedule**

- (1) This section applies to a contract of sale, entered into under the repealed Act, that was in force immediately before the commencement day.
- (2) The repealed Act, section 25(3) to (5) and the schedule, as in force immediately before the commencement day, continue to apply to the contract while the contract is in force, as if—
  - (a) a reference in those provisions to the commission were a reference to the chief executive acting on behalf of the State; and
  - (b) a reference in those provisions to the commission, subject to the repealed Act, disposing of a property to any eligible person were a reference to the chief executive dealing with the property under this Act.

### **138 Continuing application of the repealed Act, s 26D**

- (1) This section applies to an agreement to sell a dwelling house, under the repealed Act, section 26D(1), entered into by the commission before the commencement day.
- (2) The repealed Act, section 26D, as in force immediately before the commencement day, continues to apply to the sale as if a reference in the section to the commission were a reference to the chief executive acting on behalf of the State.

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**139 Approved housing institutions advances account**

- (1) The approved housing institutions advances account established under the repealed Act, section 29B, is discontinued.
- (2) If, immediately before the commencement day, there is an amount in the account, the amount must be paid into the Queensland Housing Fund.

**140 Loan under the repealed Act, pt 6A**

- (1) This section applies to a loan under the repealed Act, part 6A, that, immediately before the commencement day, had not been fully repaid.
- (2) The repealed Act, part 6A, as in force immediately before the commencement day, continues to apply to the loan until it is fully repaid.
- (3) However, an amount received as a repayment of the loan must be paid into the Queensland Housing Fund.

**141 Continuing application of the repealed Act, pt 6C**

- (1) This section applies to a trust asset or trust liability under the repealed Act, part 6C, that was an asset or liability of the commission immediately before the commencement day.
- (2) A right, power, privilege or liability of the commission under that part immediately before the commencement day is a right, power, privilege or liability of the chief executive on behalf of the State.
- (3) The repealed Act, sections 29I, 29L, 29M, 29O and 29R, as in force immediately before the commencement day, continue to apply as if a reference in those sections, other than section 29M, to the commission were a reference to the chief executive acting on behalf of the State.

## **142 Application of Criminal Code, s 89**

- (1) This section applies to a person who, immediately before the commencement day, was a public service employee, and a party to a contract or agreement, mentioned in the repealed Act, section 30AA.
- (2) While the contract or agreement is in force, the person does not commit an offence against the Criminal Code, section 89 in relation to the contract or agreement only because the person is a public service employee and a party to the contract or agreement.

## **143 Standard fixed interest rate—the repealed Act, s 32AA**

- (1) This section applies if, immediately before the commencement day, an interest rate applying to a loan agreement, contract of sale or other agreement was—
  - (a) the standard fixed interest rate in force under the repealed Act, section 32AA (the *standard fixed rate*) at a particular time; or
  - (b) a rate calculated by reference to the standard fixed rate at a particular time.
- (2) So far as the agreement provides for the application, at a time on or after the commencement day, of the standard fixed rate in force at a time before the commencement day, that rate continues to apply under the agreement.

*Example—*

A loan agreement provides that interest is payable, for a stated period, at the standard fixed rate in force on the day the agreement is entered into. From the commencement day, that rate continues to apply for the remainder of the stated period, as agreed.

- (3) So far as the agreement provides for the application of the standard fixed rate in force at a time on or after the commencement day, the standard fixed rate is—
  - (a) for a time before a standard fixed interest rate is declared under section 92—the standard fixed rate in force immediately before the commencement day; or



- (b) for a time after a standard fixed interest rate is declared under section 92—the standard fixed interest rate in force under that section.
- (4) This section does not prevent the parties to the agreement agreeing to a different interest rate.
- (5) In this section, a reference to the application of the standard fixed rate includes the application of another rate calculated by reference to the standard fixed rate.

#### **144 Standard variable interest rate—the repealed Act, s 32AA**

- (1) This section applies if, immediately before the commencement day, an interest rate applying to a loan agreement, contract of sale or other agreement was—
  - (a) the standard variable interest rate declared under the repealed Act, section 32AA (the *standard variable rate*) at a particular time; or
  - (b) a rate calculated by reference to the standard variable rate at a particular time.
- (2) So far as the agreement provides for the application of the standard variable rate in force at a time on or after the commencement day, the standard variable rate is—
  - (a) for a time before a standard variable interest rate is declared under section 92—the standard variable rate in force immediately before the commencement day; or
  - (b) for a time after a standard variable interest rate is declared under section 92—the standard variable interest rate in force under that section.
- (3) This section does not prevent the parties to the agreement agreeing to a different interest rate.
- (4) In this section, a reference to the application of the standard variable rate includes the application of another rate calculated by reference to the standard variable rate.

**145 Variable interest rate applying under the repealed Act, s 32AC or 32A**

- (1) This section applies if, immediately before the commencement day, an interest rate applying to an agreement was, under a repealed section, the standard variable interest rate.
- (2) From the commencement day, section 144 applies to the agreement as if the agreement included a provision applying the standard variable interest rate as in force from time to time.
- (3) In this section—

*repealed section* means the repealed Act, section 32AC or 32A.

*standard variable interest rate* means the standard variable interest rate declared under the repealed Act, section 32AA.

**146 Continuing application of the repealed Act, s 33**

- (1) The repealed Act, section 33, as in force immediately before the commencement day, continues to apply to a loan agreement, contract of sale or other agreement to which that section applied immediately before the commencement day as if a reference in the section to the Governor in Council or the Minister were a reference to the chief executive.
- (2) For subsection (1), an interest rate applying to an agreement under the section that was decided or fixed by the Governor in Council or the Minister before the commencement day is taken to have been decided or fixed by the chief executive.

**147 Continuing application of the repealed Act, s 33A**

The repealed Act, section 33A, as in force immediately before the commencement day, continues to apply to a mortgage, held by the chief executive on behalf of the State, to which that section applied immediately before the commencement day.

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**148 Continuing application of the repealed Act, s 36**

The repealed Act, section 36, as in force immediately before the commencement day, continues to apply to a security for a loan to which that section applied immediately before the commencement day.

**149 Freeholding of leases over which mortgages held by the chief executive**

- (1) This section applies to a freeholding lease that is—
  - (a) in force under this Act, the *Housing (Freeholding of Land) Act 1957* or the *Land Act 1994*; and
  - (b) subject to a mortgage in favour of the chief executive on behalf of the State (the *chief executive's mortgage*).
- (2) The chief executive may, at any time, pay the purchasing price and any other fees or expenses required for the issuing of a deed of grant in respect of the freeholding lease.
- (3) If a payment under subsection (2) is made—
  - (a) the lessee is taken to have fulfilled all the conditions of the freeholding lease and any related contract of sale; and
  - (b) the amount of the payment is added to the amount owing under the chief executive's mortgage.
- (4) Subsections (2) and (3) apply despite any other Act.
- (5) For subsection (1)(a), a lease issued under the repealed Act that is in force is taken to be in force under this Act.

**150 Deed of grant to be issued under Land Act 1994**

A deed of grant required under this Act to be issued must be issued under the *Land Act 1994*.

## **151 Continuing application of schedule of repealed Act**

- (1) The schedule of the repealed Act, as in force immediately before the commencement day, continues to apply in the way, and to the extent, stated in this section, as if a reference in the schedule to the commission were a reference to the chief executive acting on behalf of the State.
- (2) Sections 12, 13, 15, 16 and 17 of the schedule continue to apply to a loan made by the commission under the repealed Act that has not been repaid, to the same extent the provisions applied to the loan immediately before the commencement day.
- (3) Section 18 of the schedule continues to apply to a loan made by the commission under the repealed Act that has not been repaid, or a contract or lease under the repealed Act that is still in force, to the same extent the section applied to the loan, contract or lease immediately before the commencement day.
- (4) Sections 20 to 24 of the schedule continue to apply to a mortgage or other security held by the chief executive on behalf of the State that was held by the commission immediately before the commencement day, to the same extent the sections applied to the mortgage or other security immediately before the commencement day.
- (5) Section 25 of the schedule continues to apply to a lease or agreement to let a house, entered into under the repealed Act, section 26, that is still in force.

## **Division 5 Provision for Housing and Other Acts Amendment Act 2005**

### **152 Commencement of certain provisions**

- (1) It is declared that the provisions of the *Housing Act 2003* as amended under the *Housing and Other Acts Amendment Act 2005*, sections 7 and 11, are taken to have commenced on 1 January 2004 under the commencing proclamation.
- (2) In this section—

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*commencing proclamation* means Subordinate Legislation 2003 No. 332 made under this Act, by which 1 January 2004 was fixed for the commencement of provisions of this Act that were not in force.

## **Division 6                      Transitional provisions for Housing Legislation Amendment Act 2005**

### **153      Lease under s 113**

- (1) This section applies to a lease granted under section 113 that was in force immediately before 1 July 2006.
- (2) Section 113 continues to apply to the lease while the lease is in force.
- (3) The lease is taken to be a perpetual lease for residential purposes under the *Land Act 1994*.
- (4) However, the *Land Act 1994*, chapter 4, part 3, division 3, does not apply for converting the lease to freehold land.
- (5) The *Housing (Freeholding of Land) Act 1957*, part 2, applies for converting the lease to freehold land.
- (6) For subsection (3), a reference in the *Land Act 1994* to the Minister is taken to be a reference to the Minister administering this Act.

### **154      Lease under the repealed Act, s 24A**

- (1) This section applies to a lease granted under the repealed Act, section 24A, that was in force immediately before 1 July 2006.
- (2) The lease is taken to be a perpetual lease for residential purposes under the *Land Act 1994*.
- (3) However, the *Land Act 1994*, chapter 4, part 3, division 3 does not apply for converting the lease to freehold land.

- (4) The *Housing (Freeholding of Land) Act 1957*, part 2, applies for converting the lease to freehold land.
- (5) For subsection (2), a reference in the *Land Act 1994* to the Minister is taken to be a reference to the Minister administering this Act.

## 155 Delegation by Minister of powers under Land Act 1994

- (1) The Minister may delegate the Minister's powers under a prescribed provision to the chief executive or to an officer or employee of the department.
- (2) In this section—

*prescribed provision* means a provision of the *Land Act 1994* that, under any of the following, applies to a lease—

  - (a) section 133, 134, 153 or 154;
  - (b) the *Housing (Freeholding of Land) Act 1957*, section 10J or 11.

## Division 7 Transitional provisions for Housing and Other Legislation Amendment Act 2013

### Subdivision 1 Interpretation

#### 156 Definitions for div 7

In this division—

*accommodation provider* means an entity that, immediately before the commencement, was—

- (a) registered under the former Act; and
- (b) providing a relevant housing service.

*amending Act* means the *Housing and Other Legislation Amendment Act 2013*.

***application period*** means the period—

- (a) starting on the commencement; and
- (b) ending on—
  - (i) the prescribed day; or
  - (ii) if a day is not prescribed—the day that is 1 year after the commencement.

***commencement*** means the day this section commences.

***existing assistance agreement*** means any of the following—

- (a) an assistance agreement under the former section 25 that was current immediately before the commencement;
- (b) a continuing agreement under the former section 127 that was current immediately before the commencement.

***former***, in relation to a provision, means as in force immediately before the repeal or amendment of the provision by the amending Act.

***former Act*** means the *Housing Act 2003*, as in force immediately before the commencement.

***other registered provider*** means an entity that, immediately before the commencement, was—

- (a) registered under this Act; and
- (b) providing a housing service under the former section 8 that was not, or did not include, a relevant housing service.

***relevant asset***, for an accommodation provider, means the following—

- (a) the provider's relevant property;
- (b) the provider's relevant receipts.

***relevant housing service*** means a housing service under the former section 8 that was, or included, the provision of housing to an individual for residential use, other than crisis accommodation.

***relevant property***, for an accommodation provider, means any of the following—

- (a) property transferred or leased by the chief executive or the Queensland Housing Commission (the ***QHC***) to the provider for the purpose of providing a relevant housing service;
- (b) property bought or leased by the provider using funds entirely or partly provided by—
  - (i) a grant, loan or other financial assistance given by the chief executive or the ***QHC*** for the purpose of providing a relevant housing service; or
  - (ii) other relevant receipts;
- (c) property, in which the provider has an interest, if work of any nature has been carried out in relation to the property—
  - (i) using funds entirely or partly provided by—
    - (A) a grant, loan or other financial assistance given by the chief executive, or the ***QHC***, for the purpose of providing a relevant housing service; or
    - (B) other relevant receipts; or
  - (ii) by the chief executive, or the ***QHC***, for the purpose of providing a relevant housing service; or
  - (iii) with other assistance given by the chief executive, or the ***QHC***, for the purpose of providing a relevant housing service.

***relevant receipts***, for an accommodation provider, means—

- (a) amounts paid to the provider by the chief executive or the ***QHC*** as grants, loans or other financial assistance for the purpose of providing a relevant housing service; and
- (b) rent or other income from the provider's relevant property; and



- 
- (c) the proceeds of sale of the provider's relevant property; and
  - (d) fees for providing relevant goods and services; and
  - (e) interest received on an amount mentioned in paragraphs (a) to (d).

*transitional period* means the period—

- (a) starting on the commencement; and
- (b) ending on—
  - (i) the prescribed day; or
  - (ii) if a day is not prescribed—the day that is 18 months after the commencement.

## **Subdivision 2      Other registered providers**

### **157      Existing registration of other registered providers is cancelled**

- (1) On the commencement, the registration of each other registered provider under the former Act is cancelled.
- (2) The cancellation under subsection (1) of another registered provider's registration does not affect the provision of funding to the provider under an existing assistance agreement to which the provider is a party.
- (3) As soon as practicable after the commencement, the chief executive must give each other registered provider a notice stating that—
  - (a) the provider's registration under the former Act has been cancelled; and
  - (b) the cancellation does not affect the provider's ability to continue providing a housing service that is an ancillary housing service under section 8; and
  - (c) the cancellation does not affect any existing assistance agreement between the provider and the chief executive.

### **Subdivision 3 Accommodation providers**

#### **158 Accommodation providers capable of registration under pt 4A**

- (1) This section applies to an accommodation provider if the provider—
  - (a) intends to continue providing a community housing service in this jurisdiction after the commencement, whether exclusively or in conjunction with an ancillary housing service; and
  - (b) is capable of being registered under part 4A as either—
    - (i) a national provider for which this jurisdiction is the primary jurisdiction; or
    - (ii) a state provider.
- (2) From the commencement—
  - (a) the accommodation provider's registration under the former Act continues and the provider must comply with—
    - (i) a prescribed requirement; and
    - (ii) the former section 37; and
  - (b) each existing assistance agreement to which the provider is a party continues.
- (3) Before the application period ends, the accommodation provider may apply under section 37B for registration.
- (4) If the accommodation provider applies under section 37B before the application period ends and the registrar approves the application, on the registration of the provider under part 4A—
  - (a) the provider's registration under the former Act is cancelled; and

- (b) an existing assistance agreement to which the provider is a party continues until it is terminated or otherwise ends.

**159 Transitional arrangements for particular accommodation providers mentioned in s 158**

- (1) This section applies if an accommodation provider mentioned in section 158—
  - (a) does not apply for registration under section 37B before the application period ends; or
  - (b) applies but is refused registration under part 4A.
- (2) The accommodation provider must transfer or otherwise dispose of each of the provider's relevant assets in the prescribed way—
  - (a) before the transitional period ends; or
  - (b) if the provider applies under section 65 for a review of the registrar's decision to refuse the application and the registrar's decision is confirmed on review—the day that is 6 months after the day the registrar's decision is confirmed.

**160 Cancellation of registration etc.**

- (1) On the completion of the transfer or disposition of an accommodation provider's relevant assets under section 159—
  - (a) the provider's registration under the former Act is cancelled; and
  - (b) an existing assistance agreement to which the accommodation provider is a party is terminated.
- (2) For subsection (1)(b), it does not matter that the accommodation provider is not required by the existing assistance agreement to be registered under the former Act to receive funding under the agreement.

- (3) If the accommodation provider fails to transfer or dispose of the provider's relevant assets within the time required under section 159, the provider is taken to have contravened each existing assistance agreement to which the provider is a party.

## **161 Accommodation providers not capable of registration under pt 4A**

- (1) This section applies to an accommodation provider if the provider—
  - (a) is a national entity; and
  - (b) was, immediately before the commencement, providing a relevant housing service in this jurisdiction; and
  - (c) intends, after the commencement, to continue providing a community housing service in this jurisdiction; and
  - (d) is not eligible to be registered under part 4A because the provider will be providing most of its community housing services in another participating jurisdiction.
- (2) From the commencement—
  - (a) the accommodation provider's registration under the former Act continues and the provider must comply with—
    - (i) a prescribed requirement; and
    - (ii) the former section 37; and
  - (b) each existing assistance agreement to which the provider is a party continues.
- (3) Before the application period ends, the accommodation provider may apply for registration under the corresponding law of the participating jurisdiction that would be the provider's primary jurisdiction (the *relevant jurisdiction*).
- (4) If the accommodation provider applies for registration under the corresponding law of the relevant jurisdiction before the application period ends, the provider must—

- 
- (a) as soon as practicable after the provider makes the application, give the registrar notice of the application; and
  - (b) as soon as practicable after the registrar of the relevant jurisdiction (the *other registrar*) decides the provider's application, give the registrar notice of the other registrar's decision.
- (5) If the other registrar approves the accommodation provider's application for registration, on the registration of the provider under the corresponding law—
- (a) the provider's registration under the former Act is cancelled; and
  - (b) an existing assistance agreement to which the provider is a party continues until it is terminated or otherwise ends.

**162 Transitional arrangements for particular accommodation providers mentioned in s 161**

- (1) This section applies if an accommodation provider mentioned in section 161—
  - (a) does not apply for registration under the corresponding law of the relevant jurisdiction before the application period ends; or
  - (b) applies but is refused registration by the other registrar.
- (2) The accommodation provider must transfer or otherwise dispose of each of the provider's relevant assets in the prescribed way—
  - (a) before the transitional period ends; or
  - (b) if the provider applies under the corresponding law of the relevant jurisdiction for a review of the other registrar's decision to refuse the application and the other registrar's decision is confirmed on the review—the day that is 6 months after the day the other registrar's decision is confirmed.

### **163 Cancellation of registration etc.**

- (1) On the completion of the transfer or disposition of an accommodation provider's relevant assets under section 162—
  - (a) the provider's registration under the former Act is cancelled; and
  - (b) an existing assistance agreement to which the accommodation provider is a party is terminated.
- (2) For subsection (1)(b), it does not matter that the accommodation provider is not required by the existing assistance agreement to be registered under the former Act in order to receive funding under the agreement.
- (3) If the accommodation provider fails to transfer or dispose of the provider's relevant assets within the time required under section 162, the provider is taken to have contravened each existing assistance agreement to which the provider is a party.

## **Subdivision 4 Other provisions**

### **164 Existing application under former s 28**

- (1) This section applies to an application made under the former section 28 that, immediately before the commencement, had not been finally dealt with.
- (2) From the commencement—
  - (a) if the application related to the proposed provision of a relevant housing service—the application is taken to have been made under section 37B; and
  - (b) if the application related to the proposed provision of a housing service other than a relevant housing service—the application is taken to have been withdrawn and no further action is to be taken in relation to it.

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**165 Existing application for cancellation of registration**

- (1) This section applies to an application under the former section 30 that, immediately before the commencement, had not been finally dealt with.
- (2) From the commencement, the application may be dealt with under the former section 30 and the former part 6 as if the amending Act had not commenced.

**166 Existing notice of proposed cancellation of registration**

- (1) A notice given to an accommodation provider under the former section 31 that had not, immediately before the commencement, been finally dealt with may, from the commencement, continue to be dealt with under that section as if the amending Act had not commenced.
- (2) If the chief executive decides to cancel the accommodation provider's registration, the former part 6 applies to that decision as if the decision had been made before the commencement.

**167 Existing appointment of interim manager continues**

- (1) This section applies if, immediately before the commencement, a person held office under the former part 5 as an interim manager of a funded service.
- (2) From the commencement, the person's appointment continues under the former part 5 as if the amending Act had not commenced, until the earlier of the following occurs—
  - (a) the period of the person's appointment ends;
  - (b) the chief executive ends the appointment under the former section 47.

**168 Review of decision to appoint interim manager**

- (1) This section applies if, immediately before the commencement—

- (a) a person was entitled to be given a notice about a decision by the chief executive to appoint an interim manager under the former part 5, division 2; and
  - (b) the period during which an application for review of the decision may be made had not ended.
- (2) From the commencement, the application for review may be made and decided as if the amending Act had not commenced.

### **169 No registration under former s 127**

From the commencement, an entity mentioned in the former section 127(1) can not be registered under section 127.

### **170 References in Acts and documents**

- (1) A reference in an Act or document to ‘assistance’ given by the chief executive under this Act is taken, from the commencement and if the context permits, to be a reference to ‘funding’.
- (2) A reference in an Act or document to an ‘assistance agreement’ under this Act is taken, from the commencement and if the context permits, to be a reference to a ‘funding agreement’.
- (3) A reference in an Act or document to a ‘funded service’ under this Act is taken, from the commencement and if the context permits, to be a reference to a ‘housing service for which a funded provider receives funding’.



**Division 8**                      **Transitional provision for Housing  
Legislation (Building Better  
Futures) Amendment Act 2017**

**171**    **Application of amended s 156, def *relevant property***

The commencement of the amendment of section 156, definition *relevant property*, by the *Housing Legislation (Building Better Futures) Amendment Act 2017*, section 6 is taken to have had effect from the commencement of the *Housing and Other Legislation Amendment Act 2013*, section 54.

*Note—*

The *Housing and Other Legislation Amendment Act 2013*, section 54 inserted section 156.

## **Schedule 1      National regulatory code**

section 37D(1)(b)

### **1      Tenant and housing services**

The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to the following—

- (a) determining and managing eligibility, allocation, and termination of housing assistance;
- (b) determining and managing rents;
- (c) setting and meeting relevant housing service standards;
- (d) supporting tenant and resident engagement;
- (e) facilitating access to support for social housing applicants and tenants with complex needs;
- (f) managing and addressing complaints and appeals relating to the provision of housing services;
- (g) maintaining satisfaction with the overall quality of housing services.

### **2      Housing assets**

The community housing provider manages its community housing assets in a manner that ensures suitable properties are available at present and in the future, particularly in relation to the following—

- (a) determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond (strategic asset management);
- (b) setting and meeting relevant property condition standards;

- (c) planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance);
- (d) planning and delivering its housing development program (asset development).

### **3 Community engagement**

The community housing provider works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities, specifically in relation to—

- (a) promoting community housing to local organisations that work with potential residents, tenants or clients; and
- (b) contributing to place renewal and social inclusion partnerships and planning relevant to the provider's community housing activities.

### **4 Governance**

The community housing provider is well-governed to support the aims and intended outcomes of its business, specifically in relation to the following—

- (a) ensuring coherent and robust strategic, operational, financial and risk planning;
- (b) ensuring effective, transparent and accountable arrangements and controls are in place for decision making to give effect to strategic, operational, financial and risk plans;
- (c) complying with legal requirements and relevant government policies;
- (d) ensuring that the governing body has members with appropriate expertise or that such expertise is available to the governing body.

## **5 Probity**

The community housing provider maintains high standards of probity relating to the business of the provider, specifically in relation to the following—

- (a) establishing and administering a code of conduct;
- (b) establishing and administering a system of employment and appointment checks;
- (c) establishing and administering a system for preventing, detecting, reporting on and responding to, instances of fraud, corruption and criminal conduct;
- (d) maintaining the reputation of the community housing sector.

## **6 Management**

The community housing provider manages its resources to achieve the intended outcomes of its business in a cost effective manner, specifically in relation to the following—

- (a) demonstrating it utilises its assets and funding to meet business goals;
- (b) implementing appropriate management structures, systems, policies and procedures to ensure the operational needs of its business can be met (including having people with the right skills and experience and the systems and resources to achieve the intended outcomes of its business).

## **7 Financial viability**

The community housing provider is financially viable at all times, specifically in relation to the following—

- (a) ensuring a viable capital structure;
- (b) maintaining appropriate financial performance;
- (c) managing financial risk exposure.

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## **Schedule 2      Conditions of registration applying to each registered provider**

section 37D(2)

### **1      Compliance with national regulatory code**

A registered provider must comply with the provisions of the national regulatory code in schedule 1 that are identified on the relevant register as applying to the provider.

### **2      Transfer of community housing asset**

A registered provider must comply with this Act in relation to the transfer of, or other dealing with, a community housing asset of the provider.

### **3      Provision of information relating to registered provider's functions**

A registered provider must, at the times and in the way approved by the registrar, give the registrar any information reasonably required by the registrar about the exercise of the provider's functions, including information relating to an arrangement the provider has with another person in relation to the exercise of the provider's functions.

### **4      Provision of document or information relating to registered provider's affairs**

- (1) A registered provider must comply with a written request by the registrar for information about the provider's affairs, including a request to produce a specified document or record.
- (2) The provider must comply with the request within—
  - (a) 14 days after receiving the request; or

- (b) if a longer period is stated in the request—the stated period.

## **5 Attendance at meeting with registrar to answer questions**

If the registrar makes a written request that a registered provider attend a meeting with the registrar to answer questions about the provider's affairs, the provider must ensure that an appropriately qualified officer or employee of the provider attends the meeting at the time and place stated in the request.

## **6 Allowing inspection of premises or records**

A registered provider must allow the registrar to enter the provider's premises during business hours for the purpose of the registrar inspecting the premises or the provider's records.

## **7 List of community housing assets**

- (1) A registered provider must keep a list, in the approved form, of—
  - (a) if the provider is a national provider—all of the provider's national community housing assets; or
  - (b) if the provider is a state provider—all of the provider's state community housing assets.
- (2) The provider must make the list, or a copy of the list, available to the registrar for inspection on request.

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## **Schedule 3      Particular conditions applying to registration of national providers or state providers**

section 37D(3) and (4)

### **Part 1                      Conditions applying to registration of national providers**

#### **1                      Compliance with corresponding law**

A national provider for which this jurisdiction is the primary jurisdiction must comply with any applicable requirement of the corresponding law of another participating jurisdiction in relation to the transfer of, or other dealing with, a national community housing asset of the provider.

#### **2                      Constitution to provide for transfer of national community housing assets on winding-up**

A national provider for which this jurisdiction is the primary jurisdiction must have provision in its constitution for each remaining national community housing asset of the provider to be transferred, on the winding-up of the provider—

- (a) if the asset is located in this jurisdiction—under this Act; or
- (b) if the asset is located in another participating jurisdiction—under the corresponding law of that jurisdiction.

#### **3                      Provision of information to registrar of another participating jurisdiction**

- (1) A national provider for which this jurisdiction is the primary jurisdiction must comply with a written request by a registrar

of another participating jurisdiction for information about the provider's affairs, including a request to produce a specified document or record.

- (2) This provider must comply with the request within—
- (a) 14 days after receiving the request; or
  - (b) if a longer period is stated in the request—the stated period.

#### **4 Attendance at meeting with registrar of another participating jurisdiction to answer questions**

If a registrar of another participating jurisdiction makes a written request that a national provider for which this jurisdiction is the primary jurisdiction attend a meeting with the registrar to answer questions about the provider's affairs, the provider must ensure that an appropriately qualified officer or employee of the provider attends the meeting at the time and place stated in the request.

#### **5 Allowing registrar of another participating jurisdiction to inspect premises or records**

A national provider for which this jurisdiction is the primary jurisdiction must allow a registrar of another participating jurisdiction to enter the provider's premises during business hours for the purpose of the registrar inspecting the premises or the provider's records.

#### **6 Requirement to notify registrar of particular events**

A national provider for which this jurisdiction is the primary jurisdiction must notify the registrar of any of the following events mentioned in column 1, within the time stated opposite the event, in column 2—



<b>Column 1</b>	<b>Column 2</b>
<b>Event</b>	<b>Time within which registrar must be notified</b>
a decision to appoint a voluntary administrator to the provider	as soon as practicable after the decision
a decision to wind-up the provider	as soon as practicable after the decision
the appointment of a receiver to the provider	as soon as practicable after the provider learns of the receiver's appointment
a decision to apply for cancellation of the provider's registration on the national register	as soon as practicable after the decision and at least 28 days before the day the application is made
a decision to conduct a vote at a meeting on a matter that may affect the provider's eligibility to remain registered on the national register or the category of the provider's registration	as soon as practicable after the decision and at least 28 days before the day the meeting is held
a change in the provider's affairs that may have an adverse impact on its compliance with this Act or the corresponding law of another participating jurisdiction	before the change or within 3 days after the change
any other event for which the registrar gives the provider notice	within the time stated in the notice

## **Part 2**

## **Condition applying to registration of state providers**

### **7 State provider to provide community housing service in this jurisdiction**

A state provider may provide a community housing service in this jurisdiction only.

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## Schedule 4      Dictionary

### section 7

*accommodation provider*, for part 10, division 7, see section 156.

*additional standard condition* see section 37E.

*amending Act*, for part 10, division 7, see section 156.

*ancillary housing service* see section 8(5).

*application period*, for part 10, division 7, see section 156.

*approved form*, for a purpose, means the form approved under section 100 for the purpose.

*approved provider* see section 94A.

*binding instructions* see section 38B.

*business*, for part 5, see section 39.

*category of registration*, for a national provider, means a category of registration under the guidelines mentioned in section 36H.

*commencement*, for part 10, division 7, see section 156.

*commencement day*, for part 10, division 4, see section 114.

*commission*, for part 10, division 4, see section 114.

*compliance notice* see section 35.

*community housing asset* means—

- (a) for a national provider—a national community housing asset; or
- (b) for a state provider—a state community housing asset.

*community housing service* see section 8(3).

*confidential information*, about a person, means information about the person's affairs, but does not include—

- (a) statistical or other information that could not reasonably be expected to result in the identification of the person; or
- (b) information that is publicly available.

***corresponding law*** means a law of a jurisdiction that contains provisions that substantially correspond to the provisions of part 4A.

***departmental financial-institution account*** means a departmental financial-institution account established and kept for the department under the *Financial Accountability Act 2009*, section 83.

***disclose***, for part 8, division 2A, see section 94A.

***executive officer***, of a corporation or other entity, means a person who is concerned with, or takes part in, the corporation's or entity's management, whether the person is a director or a member of the management committee, or the person's position is given the name of executive officer.

***exempt provider*** means a person or entity—

- (a) not registered under part 4A; and
- (b) prescribed as being eligible to receive funding to provide—
  - (i) a particular social housing service in this jurisdiction; or
  - (ii) any social housing service in this jurisdiction.

***existing assistance agreement***, for part 10, division 7, see section 156.

***former***, for part 10, division 7, see section 156.

***former Act***, for part 10, division 7, see section 156.

***funded ancillary provider***, for part 5, see section 39.

***funded property***, for part 5, see section 39.

***funded provider*** see section 21(2).

***funding*** see section 21(1).

***funding agreement*** see section 25.

***housing agency*** means each of the following—

- (a) for this jurisdiction—the chief executive as agent for the State;
- (b) for another participating jurisdiction—the body or officer declared by the corresponding law of that jurisdiction to be a housing agency for the jurisdiction.

***housing service*** see section 8(1).

***housing service decision*** means a decision of the chief executive or a registered provider about providing a housing service, including a decision about—

- (a) whether to give the service to a person; or

*Example—*

a decision about a person's eligibility for a loan to buy a house

- (b) the type and extent of the service; or

*Example—*

a decision, on an application by a person to rent a house, about the type of house to rent to the person or the area in which a house is made available to the person

- (c) how the service is to be provided; or
- (d) the terms on which the service is to be provided.

*Example—*

a decision about the amount of rent payable

***housing service information*** see section 16.

***interim manager*** means a person appointed under section 40 as interim manager for the business of a funded ancillary provider.

***loan***, for part 10, division 4, see section 114.

***national community housing asset*** means any of the following assets of a national provider, regardless of when the provider acquired it—

- (a) land—

- (i) transferred to the national provider under this Act by the chief executive, another national provider or a state provider; or
  - (ii) vested in the national provider under a corresponding law of a participating jurisdiction;
- (b) land acquired by the national provider wholly or partly with—
  - (i) funding provided to the provider by the chief executive; or
  - (ii) financial or other assistance given to the provider by a housing agency of another participating jurisdiction;
- (c) land held by the national provider on which housing has been constructed, or to which another improvement has been made—
  - (i) by the chief executive or using funding provided by the chief executive; or
  - (ii) by a housing agency of another participating jurisdiction;
- (d) a national provider receipt;
- (e) an amount paid to the national provider—
  - (i) by the chief executive under a funding agreement that remains unexpended when the funding agreement is terminated or otherwise ends; or
  - (ii) by the housing agency of another participating jurisdiction under an agreement that corresponds to a funding agreement, that remains unexpended when the agreement is terminated or otherwise ends; or
- (f) any other asset of the national provider that is of a class of assets declared by this Act or a corresponding law of another participating jurisdiction applying to the provider, or is prescribed, as a community housing asset for the purposes of the Act or the corresponding law.

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***national entity*** means each of the following entities that provides, or intends to provide, a community housing service—

- (a) a company limited by shares or guarantee under the *Corporations Act 2001* (Cwlth);
- (b) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth);
- (c) a body corporate, cooperative or incorporated association established under legislation of the Commonwealth or a State.

***national provider*** means a national entity registered on the national register.

***national provider receipt*** means any of the following—

- (a) funds in the form of grants, loans or other financial assistance paid to a national provider by the chief executive or the housing agency of another participating jurisdiction;
- (b) rent or other income, including proceeds of sale, from property—
  - (i) transferred or leased by the chief executive or a housing agency of another participating jurisdiction to a national provider for the purpose of providing a community housing service; or
  - (ii) bought or leased by a national provider using, entirely or partly, funds of the kind mentioned in paragraph (a) or by other receipts obtained by a national provider for a community housing service;
- (c) fees received by a national provider for providing goods or services in the course of providing a community housing service;
- (d) interest received by a national provider on an amount mentioned in paragraphs (a) to (c).

***national register*** means the register of national entities providing community housing services established under section 37(1).

***notice*** means written notice.

***notice of intent to cancel registration*** see section 38C.

***notice of noncompliance*** see section 38A.

***obstruct*** includes hinder, resist and attempt to obstruct.

***official***, for part 8, division 1, see section 87.

***other registered provider***, for part 10, division 7, see section 156.

***owner-occupied home loan*** means a loan to an individual, secured against a property that is the individual's place of residence.

***participating jurisdiction*** means a jurisdiction in which a corresponding law applies as a law of the jurisdiction.

***portfolio property*** means land held or administered by the chief executive on behalf of the State for the purposes of this Act.

***prescribed requirement*** means a requirement prescribed under section 33.

***prescribed state provider*** means an entity, or class of entity, other than a local government or a national entity, that—

- (a) is providing, or intends to provide, a community housing service in this jurisdiction; and
- (b) is prescribed as being eligible to be registered on the state register.

***primary jurisdiction*** see section 36A.

***primary registrar***, for a national provider, or a national entity providing or intending to provide a community housing service, means the registrar of the provider or entity's primary jurisdiction.

***public housing*** see section 8(4).



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***Queensland Housing Fund*** means the fund continued under section 10.

***registered provider*** means each of the following—

- (a) a national provider;
- (b) a state provider.

***registrar*** means the person appointed under section 36D as the registrar.

***registrar of another participating jurisdiction*** means the registrar appointed under the corresponding law of another participating jurisdiction as the registrar for that jurisdiction.

***registration*** means registration under part 4A.

***relevant agreement***, for part 5, see section 39.

***relevant asset***, for part 10, division 7, see section 156.

***relevant housing service***, for part 10, division 7, see section 156.

***relevant property***, for part 10, division 7, see section 156.

***relevant receipts***, for part 10, division 7, see section 156.

***repealed Act*** means the repealed *State Housing Act 1945*.

***residential tenancy agreement*** see the *Residential Tenancies and Rooming Accommodation Act 2008*, section 12.

***reviewable decision*** means a decision mentioned in section 63.

***social housing service*** see section 8(2).

***state community housing asset*** means any of the following assets of a state provider, regardless of when the provider acquired it—

- (a) land transferred to the state provider under this Act by the chief executive, a national provider or another state provider;
- (b) land acquired by the state provider wholly or partly with funding provided by the chief executive;

- (c) land held by the state provider on which housing has been constructed, or other improvements made—
  - (i) by the chief executive or
  - (ii) using funding provided by the chief executive;
- (d) a state provider receipt;
- (e) an amount paid to the state provider by the chief executive under a funding agreement that remains unexpended when the funding agreement is terminated or otherwise ends;
- (f) any other asset of the state provider that is of a class of assets declared by this Act, or prescribed, to be a state community housing asset.

**state provider** means a local government or a prescribed state provider registered on the state register.

*Note—*

‘Local government’ is defined in the *Acts Interpretation Act 1954*, section 36 to mean the Brisbane City Council or a local government under the *Local Government Act 2009*. Under the *Local Government Act 2009*, an indigenous regional council is a local government.

**state provider receipt** means any of the following—

- (a) funding in the form of grants, loans or other financial assistance paid to a state provider by the chief executive;
- (b) rent or other income, including proceeds of sale, from property—
  - (i) transferred or leased by the chief executive to a state provider for the purpose of providing a community housing service; or
  - (ii) bought or leased by a state provider using, entirely or partly, funds of the kind mentioned in paragraph (a) or by other receipts obtained by a state provider for a community housing service;
- (c) fees received by a state provider for providing goods or services in the course of providing a community housing service;

- (d) interest received by a state provider on an amount mentioned in paragraphs (a) to (c).

***state register*** means the register of local governments and prescribed state providers providing community housing services established under section 37(3).

***statutory manager*** see section 38D.

***transitional period***, for part 10, division 7, see section 156.