

Queensland



# HOUSING ACT 2003

**Reprinted as in force on 1 January 2004  
(includes commenced amendments up to 2005 Act No. 33)**

**See endnote 8 for information about retrospectivity**

**Reprint No. 1 revised edition**

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# Information about this reprint

This Act is reprinted as at 1 January 2004. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

# Queensland



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# HOUSING ACT 2003

[as amended by all amendments that commenced on or before 1 January 2004]

## **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;

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- (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<sup>1</sup> and Island custom;<sup>2</sup>
- (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.

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1 “**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.

2 “**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.

***Division 3—Interpretation*****7 Definitions**

The dictionary in schedule 3 defines particular words used in this Act.

**8 Meaning of “housing service”**

A “housing service” is any of the following—

- (a) providing housing to an individual for residential use;
- (b) 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;
- (c) 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;
- (d) a service prescribed under a regulation.

**9 Notes in text**

A note in the text of this Act is part of this Act.

***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 Administration and Audit Act 1977* applies to the fund.

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*Note—*

See the *Financial Administration and Audit Act 1977*, schedule 3, definition “fund to which this Act applies”, paragraph (c).

(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 Administration and Audit Act 1977* 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 Administration and Audit Act 1977* 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 Administration and Audit Act 1977*, section 12.

**“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.

## **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.

## **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 Administration and Audit Act 1977*, section 40C.<sup>3</sup>

(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

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<sup>3</sup> *Financial Administration and Audit Act 1977*, section 40C (No-one other than Treasurer may invest or otherwise lend an amount)

- (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 PUBLIC HOUSING AND OTHER GOVERNMENT HOUSING SERVICES**

## *Division 1—Giving information to the chief executive*

## **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 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 the chief executive. The rental agreement provides that only 4 persons may live in the house. In response to a query from the chief executive, the person gives false information about the number 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 a document containing housing service information if the person, when giving the document—

- (a) tells the chief executive, 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, the person must give the chief executive 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 Act 1994*.

## **PART 4—REGISTERED PROVIDERS**

### *Division 1—Preliminary*

#### **20 Explanation**

This part establishes a system under which the chief executive may register certain entities, give them assistance with which to provide housing services, and regulate some aspects of their operations.

#### **21 Entities that may be registered**

The following entities may be registered under this part—

- (a) nonprofit corporations;
- (b) local governments;
- (c) Aboriginal Councils;
- (d) the Aboriginal Coordinating Council;
- (e) Island Councils;
- (f) the Island Coordinating Council;
- (g) an entity, or an entity of a type, prescribed under a regulation.

#### **22 Meaning of “funded service”**

(1) A “**funded service**” is a housing service provided by a registered provider using assistance from the chief executive under this part.

*Examples of funded services—*

- a housing service provided using land transferred or leased to a registered provider under this part
- a housing service provided during the term of an assistance agreement, under which the chief executive makes periodic payments to the registered provider for the stated purpose of enabling the provider to provide the service

(2) For subsection (1), it does not matter—

- (a) if other resources are also used to provide the service; or

- (b) for a service that is still being provided using assistance from the chief executive under this part, that the agreement under which the assistance was provided has ended.

### *Division 2—Assistance*

#### **23 Ways of giving assistance**

The chief executive may give assistance to a registered provider in a way the chief executive considers appropriate, including, for example—

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

#### **24 Purpose of giving assistance**

The purpose of giving assistance to a registered provider is to enable it to provide housing services in ways that best achieve the objects of this Act.

#### **25 Assistance agreement**

(1) The chief executive may enter into an agreement with a registered provider (an “**assistance agreement**”) for providing assistance to the provider under this part.

(2) An assistance agreement may include the terms the chief executive considers appropriate.

*Example for subsection (2)—*

A term of an assistance agreement may provide that, if the registered 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) an assistance agreement with a registered provider ends; and
- (b) an amount that the chief executive paid to the registered provider under the agreement has not been expended.

(2) The chief executive may give the registered 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 registered 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 registered 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 registered 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 assistance**

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

***Division 3—Registration*****28 Application for registration**

(1) An entity mentioned in section 21 may apply to the chief executive for registration.

(2) The application must be in the approved form.

(3) Within 28 days after receiving the application, the chief executive must decide the application and give the entity notice of the decision.

(4) In deciding the application, the chief executive must have regard to the following matters—

- (a) the housing services provided, or proposed to be provided, by the entity;
- (b) the need for the services;
- (c) the entity's record of financial management;
- (d) how the entity conducts, or proposes to conduct, its operations;
- (e) another matter prescribed under a regulation.

## **29 Registration remains in force unless cancelled**

The registration of an entity remains in force unless it is cancelled under this division.

## **30 Application for cancellation of registration**

(1) A registered provider may apply to the chief executive for cancellation of the registration.

(2) The application must be in the approved form.

(3) Within 28 days after receiving the application, the chief executive must decide the application and give the entity notice of the decision.

(4) The chief executive must, and may only, grant the application if—

- (a) there is no assistance agreement in force with the provider; and
- (b) the chief executive is satisfied it is unlikely that the chief executive will wish to take action to enforce compliance by the provider with this Act.

(5) The chief executive may require the provider to take stated action before the chief executive grants the application.

*Example for subsection (5)—*

The chief executive may decide to cancel the registration but only after the provider gives the chief executive a deed of release dealing with stated matters.

**31 Cancellation of registration without application**

(1) The chief executive may cancel the registration of a registered provider, even though no application has been made under section 30, if—

- (a) there is no assistance agreement in force with the provider; and
- (b) the chief executive is satisfied it is unlikely that the chief executive will wish to do either of the following—
  - (i) take action to enforce compliance by the provider with this Act;
  - (ii) give assistance, or further assistance, to the provider under this part.

(2) Before cancelling the registration, the chief executive must give the provider a notice—

- (a) stating that the chief executive proposes to cancel the registration; and
- (b) stating the reasons for the proposed cancellation; and
- (c) inviting the provider to give a written response within a stated time of at least 30 days.

(3) The chief executive must consider any written response received from the provider within the stated time before deciding whether to cancel the registration.

(4) Immediately after deciding whether or not to cancel the registration, the chief executive must give the provider notice of the decision.

(5) The chief executive may cancel the registration of a registered provider, without complying with subsections (2) to (4), if the registered provider agrees.

**32 Cancellation of registration if provider no longer exists**

The chief executive must cancel the registration of a registered provider if it no longer exists.

***Division 4—Compliance with prescribed requirements*****33 Prescribed requirements**

(1) A regulation may prescribe requirements relating to the provision of funded services by registered providers.

(2) Without limiting subsection (1), a regulation may prescribe a requirement about—

- (a) how a registered provider conducts its operations while providing a funded service, including—
  - (i) financial management and accountability; and
  - (ii) corporate governance; and
- (b) how a registered 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 funded service, 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; or
- (c) maintaining accreditation on the basis of meeting national community housing standards or other relevant standards.

**34 Registered provider must comply with prescribed requirements**

A registered provider must not contravene a prescribed requirement relating to the provision of a funded service by the provider.

*Notes—*

1. Under section 35, a registered provider may be given a compliance notice requiring the provider to remedy a contravention of a prescribed requirement.

2. The extent of a registered 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—
  - (a) the further assistance, if any, to give to the provider under this part; and
  - (b) whether to cancel the provider's registration under section 30 or 31.
3. An assistance agreement may include a provision about the consequences of a contravention of a prescribed requirement.
4. Noncompliance with certain types of prescribed requirements may lead to the appointment of an interim manager to a funded service provided by a registered provider. See section 41(1)(a)(i).

### **35 Compliance notice**

**(1)** This section applies if the chief executive reasonably believes a registered 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 assistance, or further assistance, to the provider under an assistance 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 an assistance agreement; or
- (b) the chief executive's powers apart from this section.

### *Division 5—Keeping a register and related matters*

## **36 Chief executive must keep a register**

(1) The chief executive must keep a register containing a list of all registered providers.

(2) The chief executive may include in the register the information that the chief executive considers appropriate.

(3) The register may be kept in any way the chief executive considers appropriate.

(4) The chief executive must keep the register open for inspection, free of charge, by members of the public during ordinary office hours at an office of the department.

**37 Registered provider must give notice of changes**

A registered provider must give a notice, in the approved form, to the chief executive within 30 days after becoming aware of any of the following matters, unless the provider has a reasonable excuse—

- (a) the provider's address changes;
- (b) for a nonprofit corporation—the corporation is under external administration under the Corporations Act or a similar law of a foreign jurisdiction;
- (c) a matter prescribed under a regulation.

Maximum penalty—10 penalty units.

**PART 5—APPOINTMENT OF INTERIM MANAGER***Division 1—Preliminary***38 Application of pt 5**

This part does not apply to a registered provider that is an entity mentioned in section 21(b) to (f).

**39 Definitions for pt 5**

In this part—

**“funded property”**, in relation to a funded service, means property—

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

**“relevant agreement”**, in relation to a funded service, means a residential tenancy agreement for which—

- (a) the lessor is the registered provider; and
- (b) the residential premises are funded property.

***Division 2—Appointment*****40 Appointment**

The chief executive may appoint a person as interim manager of a funded service.

**41 Basis for appointment**

(1) The chief executive may make the appointment only if the chief executive is satisfied the appointment is reasonably necessary to ensure—

- (a) in relation to the funded service—
  - (i) compliance with a prescribed requirement about—
    - (A) deciding eligibility or priority for services; or
    - (B) rent assessment or collection; and
  - (ii) the proper and efficient use under the assistance agreement of funded property; or
- (b) in relation to a relevant agreement—compliance with an obligation under the *Residential Tenancies Act 1994*, section 103(2)(b) to (d) or (3)(a) to (c).<sup>4</sup>

(2) In deciding whether the appointment is reasonably necessary, the chief executive must have regard to all of the following matters—

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<sup>4</sup> *Residential Tenancies Act 1994*, section 103(2)(b) to (d) or (3)(a) to (c)—

**103 Lessor's obligations generally**

- (2) At the start of the tenancy, the lessor must ensure—
  - (b) the premises are fit for the tenant to live in; and
  - (c) the premises and inclusions are in good repair; and
  - (d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.
- (3) While the tenancy continues, the lessor—
  - (a) must maintain the premises in a way that the premises remain fit for the tenant to live in; and
  - (b) must maintain the premises and inclusions in good repair; and
  - (c) must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with.

- (a) the amount and type of property that the registered provider is managing in the course of providing the funded service;
- (b) the amount and type of assistance provided by the chief executive to the registered provider to provide the funded service;
- (c) the number of relevant agreements in force in relation to the funded service;
- (d) whether it appears the registered provider is unwilling or unable to provide the funded service, or provide the funded service properly;
- (e) the likely consequences for the tenants under relevant agreements if the funded service is not provided or not provided properly;
- (f) the likely consequences of the appointment, of which the chief executive is aware, for the registered 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.

(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 funded service;
- (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 appointment of a person as interim manager of the funded service must state the following matters—

- (a) the person's name;
- (b) details of the funded service;
- (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 of the funded service, the chief executive must give a copy of the appointment to the registered 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 funded service 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 registered 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 registered 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 of a funded service.

**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 registered 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 Act 1994*, on behalf of the registered provider, for residential premises that are funded property; and
- (b) may do anything in relation to a relevant agreement, on behalf of the registered provider, that the registered 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 Act 1994*, chapter 3, part 3.
2. The interim manager may give a notice to the tenant under the *Residential Tenancies Act 1994*, chapter 4, part 2.

(2) For the application of the *Residential Tenancies Act 1994*, the interim manager is not liable, as an agent of the registered 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 Act 1994*, section 14A, for provision about things required to be done by lessors or their agents.

## **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 registered 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 registered 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 registered provider.

(6) At the end of the manager's appointment, the manager must give to the registered 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 registered 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 registered 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 funded service, or access to records of the funded service, 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 of a funded service; 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 registered 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 registered 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 Registered provider liable for remuneration and other costs**

(1) If an interim manager is appointed to a funded service, the chief executive may give the registered 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 to a funded service 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 registered provider.

**61 Notation in the register**

If an interim manager is appointed to a funded service, the chief executive may include in the register a note about the appointment that the chief executive considers appropriate.

**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**

The following are reviewable decisions—

- (a) a decision by the chief executive about—
  - (i) a person's eligibility to be provided with public housing; or
  - (ii) the type of public housing to be provided to a person; or
  - (iii) the place where public housing is to be provided to a person;
- (b) a decision under section 28 to refuse an application for registration;
- (c) a decision under section 30 relating to an application for cancellation of registration—
  - (i) to refuse the application; or
  - (ii) to require the applicant to take stated action before the application is granted;
- (d) a decision under section 31 to cancel registration;
- (e) a decision to appoint an interim manager under part 5, division 2;
- (f) a decision to register an entity under section 127.

#### **64 Chief executive must give notice after making reviewable decision**

Immediately after making a reviewable decision in relation to a person, the chief executive must give the person a notice stating—

- (a) the reasons for the decision; and
- (b) that, within 28 days after receiving the notice, the person may apply to the chief executive for a review of the decision; and
- (c) how the person may apply for the review.

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

(1) A person entitled to be given a notice about a reviewable decision under section 64 may apply to the chief executive for a review of the decision.

(2) The application must be made—

- (a) if the chief executive gives the person a notice about the decision under section 64—within 28 days after the notice is given; or

(b) otherwise—within 28 days after the person becomes aware of the decision.

(3) The chief executive may extend the time for making the application.

(4) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

## **66 Stay of operation of original decision**

(1) An application under section 65 for a review of a decision does not stay the decision.

(2) However, the chief executive may give the person a notice staying the operation of the decision for a stated period.

(3) The stay may be granted on conditions the chief executive considers appropriate.

## **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.

## **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 part 3;<sup>5</sup> or
- (b) compliance by a registered provider with—
  - (i) a prescribed requirement; or
  - (ii) section 35(5), 37 or 55(1);<sup>6</sup> or
  - (iii) in relation to a relevant agreement within the meaning given by section 39—the *Residential Tenancies Act 1994*, section 103(2)(b) to (d) or (3)(a) to (c); or

*Note for paragraph (b)(iii)—*

This relates to a ground for appointing an interim manager to a funded service provided by the registered provider. See section 41(1)(b).

- (c) compliance with section 88 or 89.<sup>7</sup>

### *Division 2—Authorised officers*

#### **69 Appointment**

The chief executive may appoint an officer of the department as an authorised officer if the chief executive is satisfied the officer is qualified for appointment because the officer has the necessary expertise or experience.

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5 Part 3 (Obligations relating to public housing and other government housing services)

6 Section 35 (Compliance notice), 37 (Registered provider must give notice of changes) or 55 (Obstruction)

7 Section 88 (False or misleading statements) or 89 (False or misleading documents)

**70 Appointment conditions and limit on powers**

(1) An authorised officer holds office on any conditions stated in—

- (a) 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**

An authorised officer may resign by signed notice given to the chief executive.

**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.

(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.

(5) A person of whom a requirement is made under subsection (1) 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.

### *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.

## **PART 8—MISCELLANEOUS**

### *Division 1—Offences*

#### **87 Meaning of “official”**

In this division—

“**official**” means the chief executive or an authorised officer.

#### **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.

## **91 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

- (4) However, it is a defence for an executive officer to prove—
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

*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 standard fixed interest rate and a standard variable interest rate.

(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 3—Other matters*****95 Exemption from rating**

(1) Land that is portfolio property is not rateable land for the *Local Government Act 1993*.

(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,<sup>8</sup> 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.

### **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.

(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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8 Criminal Code, section 89 (Public officers interested in contracts)

## **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**

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.

***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.

(9) Despite subsection (2B), the *Land Act 1994*, chapter 4, part 3, division 3,<sup>9</sup> does not apply to a lease of any of the land situated at Inala, Brisbane, bounded by Inala Avenue, Kittyhawk Avenue, Wirraway Parade and Corsair Avenue.

(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.

(1AB) Where the fee simple of the land whereon the house is erected, or in the course of erection, or to be erected is not vested in the chief executive, the chief executive may, according as agreed upon with the purchaser, sell the house only and arrange for the grant to the purchaser of a perpetual lease for residential purposes of the land.

(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;

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9 *Land Act 1994*, chapter 4 (Land holdings), part 3 (Leases), division 3 (Conversion of tenure)

the power conferred on the chief executive by subsections (1) to (1AB) 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.

### **Sale of house only to person not already an owner**

(2) 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.

### **Terms and conditions of sale**

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

### **Purchasing price**

(3A) Subject to subsections (3B) to (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).

(3C) Except with the prior consent in writing of the Minister, the chief executive shall not sell at a purchasing price less than the capital cost to it of the house and other improvements (if any) upon the land appurtenant to the house, and of that land if it is sold together with the house reduced by such amount as the chief executive deems a reasonable allowance for wear and tear.

(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) to (3C) 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.

### **Instalments**

**(3E)** 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.

### **Improvements etc. after contract of sale entered into**

**(4)** Any alteration, enlargement, or improvement effected by the chief executive of or to a home which is the subject of a contract of sale upon the application of the purchaser thereof shall not prejudicially affect such contract; but the capital cost of such alteration, enlargement, or improvement, or so much thereof, as the chief executive deems fit, shall be added to the unpaid purchase money of the home and become part thereof, and the monthly instalment on the home shall be so increased as will permit of the liquidation of the increased purchase money together with interest not later than the date of the expiration of the original term of the contract of sale, and the contract of sale shall be deemed to be amended accordingly.

**(4A)** The necessary amendments of the contract of sale shall be endorsed upon the instrument, and when signed by the proper officer shall be deemed to be included in and shall become part of the contract of sale and binding on the parties.

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

(6) The Minister on the recommendation of the chief executive, may from time to time, cause any Crown land or land acquired for the purposes of this Act to be open for lease at a capital value approved by the Governor in Council as perpetual leases for residential purposes.

(6A) However, such leases for the purposes of homes shall not be offered at auction, and the only persons authorised or permitted to apply for or hold such leases shall be purchasers of homes erected on such lands and their transferees respectively.

(6B) The capital value of the land shall be exclusive of any improvements thereon.

(6G) Any lease under subsection (6) may contain such special covenants, conditions, stipulations, and provisions as may be deemed necessary or requisite for carrying into effect the provisions of this Act.

(6H) The rents in respect of all perpetual leases under subsection (6) shall be payable monthly in advance on the first day of each month to the chief executive, and all such rents from time to time received by it shall be paid into the fund.

(6I) Except as herein otherwise provided, every such perpetual lease is taken to be a perpetual lease for residential purposes under the *Land Act 1994*.

(6J) The *Land Act 1994* applies to a perpetual lease under this section as if a reference in that Act to the Minister were a reference to the Minister administering this Act.

#### *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<sup>10</sup> 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—

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10 Section 14 (Waiver of amounts owed)

- (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<sup>11</sup> 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.

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11 Section 93 (Lower interest rate in special circumstances)

**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<sup>12</sup> 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.

(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

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12 Section 21 (Entities that may be registered)

*Housing Act 2003*

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- (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),<sup>13</sup> 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.

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

(1) This section applies to a lease, granted under the repealed Act, section 22B,<sup>14</sup> 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),<sup>15</sup> 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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13 The repealed Act, section 18 (Power to vest other lands)

14 The repealed Act, section 22B (Provision of land for industry, trade or business)

15 The repealed Act, section 23A (Advances for the purchase of dwelling houses)

**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.<sup>16</sup>

(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,<sup>17</sup> 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

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16 The repealed Act, section 23B (Sale of lots under Building Units and Group Titles Act or BCCM Act to pensioners)

17 The repealed Act, section 24 (Power to commission to sell houses to eligible persons)

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<sup>18</sup> 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*.

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18 *Land Act 1994*, chapter 8 (Continued rights and tenures), part 2 (Freeholding leases)

**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,<sup>19</sup> 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.

**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<sup>20</sup> 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.

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19 The repealed Act, section 24A (Power of commission to provide home sites)

20 The repealed Act, section 24C (Rental provisions regarding perpetual leases)

**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)<sup>21</sup> 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),<sup>22</sup> 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.

**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.

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21 The repealed Act, section 25 (Discretion of commission as to making of contract of sale)

22 The repealed Act, section 26D (Sales of houses let or leased by employers)

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

(1) This section applies to a loan under the repealed Act, part 6A,<sup>23</sup> 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,<sup>24</sup> 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, 29Q 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.<sup>25</sup>

(2) While the contract or agreement is in force, the person does not commit an offence against the Criminal Code, section 89<sup>26</sup> in relation to the contract or agreement only because the person is a public service employee and a party to the contract or agreement.

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23 The repealed Act, part 6A (Advances to approved housing institutions)

24 The repealed Act, part 6C (Termination of housing trusts)

25 The repealed Act, section 30AA (Criminal Code does not apply in certain circumstances)

26 Criminal Code, section 89 (Public officers interested in contracts)

**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.<sup>27</sup>

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

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<sup>27</sup> The repealed Act, section 32AC (Interest rates for advances under transferred mortgages) or 32A (Interest rates payable by borrowers and purchasers in respect of certain advances and contracts of sale)

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

(1) The repealed Act, section 33,<sup>28</sup> 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,<sup>29</sup> 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.

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

The repealed Act, section 36,<sup>30</sup> 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**”).

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28 The repealed Act, section 33 (Rate of interest payable by borrowers and purchasers of homes)

29 The repealed Act, section 33A (Priority of amounts added to principal under mortgage)

30 The repealed Act, section 36 (Judgment of court not to affect security)

(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 Land Act 1994 applies to deed of grant**

A deed of grant issued under this Act is taken to have been 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<sup>31</sup> 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<sup>32</sup> 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.

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31 The repealed Act, schedule, sections 12 (Repayment of advance for dwelling houses), 13 (Prepayment of unpaid balance of advance), 15 (Remedies of the commission), 16 (Power to capitalise arrears of interest) and 17 (In event of no purchaser land to vest in commission)

32 The repealed Act, schedule, section 18 (Provisions for cases of hardship)

(4) Sections 20 to 24 of the schedule<sup>33</sup> 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<sup>34</sup> 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.

### **152 Transitional regulation-making power**

(1) A regulation (a “**transitional regulation**”) may make provision about a matter for which—

(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and

(b) this Act does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement day.

(3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire 12 months after the commencement day.

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33 The repealed Act, schedule, sections 20 (Mortgagor to effect necessary repairs), 21 (Conditions annexed to land whilst subject to advances), 22 (Power to lease in lieu of selling etc.), 23 (Abandoned dwelling houses) and 24 (Transfer of land)

34 The repealed Act, schedule, section 25 (Powers of commission as lessor)

## SCHEDULE 3

### DICTIONARY

section 7

**“Aboriginal Coordinating Council”** means the Aboriginal Coordinating Council under the *Community Services (Aborigines) Act 1984*.

**“Aboriginal Council”** means an Aboriginal Council under the *Community Services (Aborigines) Act 1984*.

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

**“assistance agreement”** see section 25.

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

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

**“compliance notice”** see section 35.

**“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.

**“departmental financial-institution account”** means a departmental financial-institution account established and kept for the department under the *Financial Administration and Audit Act 1977*, section 18.

**“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.

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

**“funded service”** see section 22.

**“housing service”** see section 8.

## SCHEDULE 3 (continued)

**“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.

**“Island Coordinating Council”** means the Island Coordinating Council under the *Community Services (Torres Strait) Act 1984*.

**“Island Council”** means an Island Council under the *Community Services (Torres Strait) Act 1984*.

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

**“nonprofit corporation”** means a corporation that is—

- (a) formed for a purpose other than financial gain for its members; and
- (b) prohibited from distributing its profits or assets to its members while it is a going concern or on winding up.

**“notice”** means written notice.

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

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

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

## SCHEDULE 3 (continued)

**“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.

**“public housing”** means housing directly provided by the State for residential use.

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

**“register”** means the register kept under section 36.

**“registered provider”** means an entity registered under part 4.

**“registration”** means registration under part 4.

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

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

**“residential tenancy agreement”** see the *Residential Tenancies Act 1994*, section 8.

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

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2004. Future amendments of the Housing Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

### 5 List of legislation

#### **Housing Act 2003 No. 52**

date of assent 15 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 332)

Note— (1) This Act contains provisions that were relocated from the State Housing Act 1945 (2003 No. 52 s 109 sch 1)

(2) ss 22B, 24 were relocated to the Housing Act 2003 as ss 112–113 (2003 No. 52 s 109 sch 1)

later retrospective amending legislation—

#### **Housing and Other Acts Amendment Act 2005 No. 33 ss 1–2, 7, 8(4), 11**

date of assent 18 August 2005

ss 1–2 commenced on date of assent

ss 7, 11 commenced 31 December 2003 (see s 2(1))

s 8(4) commenced 1 January 2004 (see s 2(2))

## **6 List of annotations**

### **Exemption from rating**

**s 95** amd 2005 No. 33 s 7 (retro)

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

**s 112** (prev 1945 9 Geo 6 No. 24 s 22B)  
reloc 2003 No. 52 s 109 sch 1

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

**s 113** (prev 1945 9 Geo 6 No. 24 s 24)  
reloc 2003 No. 52 s 109 sch 1  
amd 2005 No. 33 s 8(4) (retro)

### **Transitional regulation-making power**

**s 152** exp 1 January 2005 (see s 152(4))

## **PART 10—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS**

### **Division 1—Amendment of State Housing Act 1945**

**div 1 (s 109)** om R1 (see RA ss 7(1)(k) and 40)

## **PART 11—AMENDMENT OF ACTS**

**pt 11 (s 153)** om R1 (see RA ss 7(1)(k) and 40)

## **SCHEDULE 1—AMENDMENT OF STATE HOUSING ACT 1945**

om R1 (see RA s 40)

## **SCHEDULE 2—AMENDMENT OF ACTS**

amd 2005 No. 33 s 11 (retro)  
om R1 (see RA s 40)

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

### **Form 1—Housing Applicants—Version 1—C January 2004—Appeal Application**

pubd gaz 19 December 2003 p 1293

### **Form 2—Registered Providers—Version 1—P January 2004—Application for Review**

pubd gaz 19 December 2003 p 1293

## **8 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in footnotes to the text.