

# Aboriginal Housing Act 1998 No 47

[1998-47]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Public Sector Employment Legislation Amendment Bill 2006](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Aboriginal Housing Act 1998 No 47



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# Aboriginal Housing Act 1998 No 47



New South Wales

An Act to constitute the Aboriginal Housing Office; to confer functions on the Aboriginal Housing Office relating to housing assistance for Aboriginal people and Torres Strait Islanders and for other purposes; to amend certain Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Aboriginal Housing Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to ensure that Aboriginal people and Torres Strait Islanders have access to affordable and quality housing,
- (b) to ensure that such housing is appropriate having regard to the social and cultural requirements, living patterns and preferences of the Aboriginal people or Torres Strait Islanders to whom the housing is to be provided,
- (c) to enhance the role of Aboriginal people and Torres Strait Islanders in determining, developing and delivering policies and programs relating to Aboriginal housing,
- (d) to ensure that priority is given, in providing housing assistance for Aboriginal people and Torres Strait Islanders, to those individuals who are most in need,
- (d1) to ensure that the available supply of housing under this Act is shared equitably among Aboriginal people and Torres Strait Islanders who are most in need,
- (e) to increase the range of housing choices for Aboriginal people and Torres Strait Islanders so as to reflect the diversity of individual and community needs,
- (f) to ensure that registered Aboriginal housing organisations are accountable, effective

and skilled in the delivery of Aboriginal housing programs and services,

- (g) to ensure that the Aboriginal Housing Office's housing programs and services are administered efficiently and in co-ordination with other programs and services that are provided to assist Aboriginal people and Torres Strait Islanders,
- (h) to encourage the sustainable employment of Aboriginal people and Torres Strait Islanders in the delivery of Aboriginal housing assistance.

#### 4 Definitions

In this Act:

**Aboriginal Housing Office** (or **AHO**) means the Aboriginal Housing Office constituted by this Act.

**Aboriginal person** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person,

and the expression **Aboriginal people** has a corresponding meaning.

**Aboriginal Regional Housing Committee** means an Aboriginal Regional Housing Committee established under this Act.

**AHO housing agreement** means an agreement between the Aboriginal Housing Office and a registered Aboriginal housing organisation in accordance with this Act.

**ATSIC** means the Aboriginal and Torres Strait Islander Commission established under the Commonwealth Act.

**Board** means the Board of the Aboriginal Housing Office established by this Act.

**Chief Executive Officer** means the Chief Executive Officer of the Aboriginal Housing Office holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

**Commonwealth Act** means the [Aboriginal and Torres Strait Islander Commission Act 1989](#) of the Commonwealth.

**Commonwealth-State agreement** includes any agreement to which the Commonwealth and the State are parties, whether or not other persons or bodies are also parties to the agreement.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**government agency** means:

- (a) a department of the Public Service, or
- (b) a statutory body representing the Crown, or
- (c) a State owned corporation, or
- (d) any other public or local authority constituted by or under an Act.

**housing** includes any form of residential accommodation.

**land** includes:

- (a) a legal or equitable estate or interest in land, or
- (b) an easement, right, charge, power or privilege over, or in connection with, land.

**Land and Housing Corporation** means the New South Wales Land and Housing Corporation constituted by the [Housing Act 2001](#).

**New South Wales Aboriginal Land Council** means the New South Wales Aboriginal Land Council established under the [Aboriginal Land Rights Act 1983](#).

**registered Aboriginal housing organisation** means an eligible organisation (as defined in section 25) that is registered for the time being under Part 5.

**Torres Strait Islander** means a person who:

- (a) is a descendant of an indigenous inhabitant of the Torres Strait area within the meaning of the Commonwealth Act, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted by the Torres Strait Islander community as a Torres Strait Islander.

## 5 Notes

Notes included in this Act do not form part of this Act.

## Part 2 Constitution of Aboriginal Housing Office

### 6 Constitution of Aboriginal Housing Office

There is constituted by this Act a body corporate with the corporate name of the Aboriginal Housing Office.

### 7 Status of AHO

The Aboriginal Housing Office is, for the purposes of any Act, a statutory body representing the Crown.

**Note—**

The management of the Aboriginal Housing Office is provided for in Part 6 of this Act. The AHO has a Board and a Chief Executive Officer. The AHO is also subject to the control and direction of the Minister.

## **Part 3 Functions of Aboriginal Housing Office**

### **Division 1 Principal functions**

#### **8 Aboriginal housing assistance**

- (1) The Aboriginal Housing Office has the principal functions of:
  - (a) planning and developing programs and services to assist Aboriginal people and Torres Strait Islanders in meeting their housing needs, and
  - (b) delivering those programs and services, and
  - (c) evaluating those programs and services from time to time in order to determine whether they continue to effectively meet the housing needs of Aboriginal people and Torres Strait Islanders.
- (2) In exercising those principal functions, the AHO is:
  - (a) to liaise with other government agencies and non-government bodies in the delivery of Aboriginal housing programs and services, and
  - (b) to co-ordinate Aboriginal housing programs and services with other programs and services that are provided by government agencies (including Commonwealth agencies) and non-government bodies to assist Aboriginal people and Torres Strait Islanders, and
  - (c) to develop priorities for Aboriginal housing programs and services in accordance with the objects of this Act, and
  - (d) to advise the Minister on Aboriginal housing policy, and
  - (e) to develop and implement strategies for the employment of Aboriginal people and Torres Strait Islanders in the delivery of Aboriginal housing programs and services.

#### **9 Functions of AHO in relation to registered Aboriginal housing organisations**

- (1) The Aboriginal Housing Office may:
  - (a) subject to this Act, provide funding out of the Aboriginal Housing Fund to registered Aboriginal housing organisations, and
  - (b) assist registered Aboriginal housing organisations in developing and implementing effective asset and management strategies, and



- (c) provide assistance to registered Aboriginal housing organisations in the form of advice, support services and training, or in such other form as the AHO considers appropriate.

**Note—**

The AHO is required to register Aboriginal housing organisations under Part 5 of this Act.

- (2) The AHO may, with the approval of the Minister:
  - (a) transfer or lease property to registered Aboriginal housing organisations, and
  - (b) construct housing for registered Aboriginal housing organisations.
- (3) Subsection (2) does not limit the forms of assistance that can be provided by the AHO to registered Aboriginal housing organisations under subsection (1).
- (4) No duty is chargeable under the *Stamp Duties Act 1920* or the *Duties Act 1997* on a transfer or lease of property to a registered Aboriginal housing organisation by the AHO.

**10 Power to enter into agreements with registered Aboriginal housing organisations**

- (1) The Aboriginal Housing Office may enter into agreements with registered Aboriginal housing organisations in relation to funding, housing and other assistance provided to registered Aboriginal housing organisations under this Act.
- (2) The AHO must not, unless the Minister otherwise directs:
  - (a) provide funding to a registered Aboriginal housing organisation, or
  - (b) transfer land to a registered Aboriginal housing organisation, or
  - (c) construct housing for or on behalf of a registered Aboriginal housing organisation, or
  - (d) provide any other assistance to a registered Aboriginal housing organisation in such other circumstances as the Minister may determine,unless the AHO has entered into an agreement with the registered Aboriginal housing organisation in relation to the provision of that assistance.

**Note—**

Part 4 sets out the types of conditions that may be contained in an agreement entered into under this section.

**11 Provision of rental housing**

- (1) The Aboriginal Housing Office may provide housing to Aboriginal people and Torres Strait Islanders by leasing property to individuals or in such other manner as it considers appropriate.

- (2) The AHO may assist Aboriginal people and Torres Strait Islanders with the cost of such housing by providing rental subsidies, rental rebates or any other assistance it considers appropriate.

## **Division 2 Functions relating to property**

### **12 General property functions**

- (1) The Aboriginal Housing Office may:
  - (a) generally control and manage the property owned by the AHO, and
  - (b) develop and implement effective asset and management strategies with respect to the property owned by the AHO.
- (2) In exercising its functions, the AHO may lease, sell, exchange or otherwise dispose of or deal with any property owned by the AHO in such manner, and subject to such terms and conditions, as it thinks fit.
- (3) Without limiting subsection (2), the AHO may:
  - (a) provide, construct or relocate, or arrange for the provision, construction or relocation of, any of the following:
    - (i) housing,
    - (ii) utility services,
    - (iii) community facilities,
    - (iv) housing related infrastructure, and
  - (b) demolish any building on any land, and
  - (c) subdivide and re-subdivide any land, and consolidate subdivided or re-subdivided land, and
  - (d) set out and construct access roads on any land, and
  - (e) erect, alter, repair and renovate buildings and make other improvements to any land.
- (4) The functions referred to in subsection (3) (b)–(e) are, if the land concerned is not owned by the AHO, exercisable by the AHO only with the permission of the owner of the land or other person having the control or management of the land.

### **13 Acquisition of land**

- (1) The Aboriginal Housing Office may acquire land, for the purposes of this Act, by agreement or by compulsory process in accordance with the [Land Acquisition \(Just](#)

*Terms Compensation) Act 1991.*

- (2) For the purposes of the *Public Works Act 1912*, any acquisition of land under this Act is taken to be an authorised work, and the AHO is, in relation to that authorised work, taken to be the Construction Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply to or in respect of works constructed under this Act.

#### **14 Other powers relating to property**

- (1) The Aboriginal Housing Office may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the AHO has agreed.

### **Division 3 Miscellaneous**

#### **15 Agency agreements**

The Aboriginal Housing Office may enter into any agreement with any person or body, including the Department of Housing, under which the person or body agrees to act as an agent of the AHO for the purpose of exercising any of its functions under this Act, and such person or body may exercise those functions in accordance with that agreement.

#### **16 Other functions**

The Aboriginal Housing Office:

- (a) has such other functions as are necessary to implement any Commonwealth-State agreement, in so far as it relates to housing for Aboriginal people and Torres Strait Islanders, and
- (b) has such other functions as are conferred or imposed on the AHO by or under this or any other Act (including the regulations made under this Act), and
- (c) may do all things that are supplemental or incidental to the exercise of its functions.

#### **17 Delegation of functions**

- (1) The Aboriginal Housing Office may delegate to an authorised person any of the functions of the AHO (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the AHO if the delegate is authorised in writing to do so by the AHO.
- (3) In this section:

**authorised person** means:

- (a) a member of staff of the Aboriginal Housing Office, or
- (b) a member of the Board, or
- (c) a person of a class prescribed by the regulations or approved by the Minister.

## **Part 4 AHO housing agreements**

### **18 Circumstances in which AHO is considered to have interest in certain land**

For the purposes of this Part, the Aboriginal Housing Office is taken to have an interest in land of a registered Aboriginal housing organisation in the following circumstances:

- (a) if the land is transferred to the registered Aboriginal housing organisation by the AHO,
- (b) if the land is acquired by the registered Aboriginal housing organisation wholly or partly with funding provided by the AHO,
- (c) if the AHO constructs housing or makes other improvements on the land,
- (d) if an AHO housing agreement with the registered Aboriginal housing organisation identifies the land as being land in which the AHO has an interest.

### **19 Terms and conditions of AHO housing agreements**

- (1) An AHO housing agreement:
  - (a) may be in a standard form approved by the Minister, and
  - (b) may contain such terms and conditions as the AHO considers appropriate (whether or not the standard form of agreement is used), and
  - (c) is to contain such terms and conditions as may be prescribed by the regulations.
- (2) Without limiting subsection (1) the AHO may, under the conditions of an AHO housing agreement:
  - (a) require the registered Aboriginal housing organisation concerned to meet specified standards and targets in relation to the Aboriginal housing services and programs provided by that Aboriginal housing organisation, and
  - (b) ensure that the funding, housing and other assistance provided to the registered Aboriginal housing organisation is used for the purposes for which it was provided.

### **20 Rights of AHO in relation to land in which it has an interest**

- (1) An AHO housing agreement may include conditions relating to any land of the registered Aboriginal housing organisation in which the AHO has an interest, including

conditions that have effect if:

- (a) the registered Aboriginal housing organisation fails to use the land for the purposes contemplated by the agreement, or
- (b) the registered Aboriginal housing organisation proposes to sell or otherwise dispose of the land, or
- (c) the registration of the registered Aboriginal housing organisation is revoked under this Act.

(2) For example, the conditions may:

- (a) confer on the AHO an option or right to reacquire land transferred to the Aboriginal housing organisation, and
- (b) confer on the AHO an option or right to acquire land purchased by the registered Aboriginal housing organisation with funding provided by the AHO, and
- (c) require the registered Aboriginal housing organisation to pay to the AHO a sum determined in a manner specified in the agreement if the AHO does not exercise the option or right referred to in paragraph (a) or (b), and
- (d) require the registered Aboriginal housing organisation to pay to the AHO a sum determined in a manner specified in the agreement for housing or other improvements made to the land by the AHO.

## **21 No dealings in land in which AHO has an interest without consent of AHO**

- (1) A registered Aboriginal housing organisation must not transfer or otherwise deal with land in which the Aboriginal Housing Office has an interest unless:
  - (a) the AHO consents to the transfer or other dealing, or
  - (b) the transfer or other dealing is authorised, or is of a class that is authorised, by an AHO housing agreement with that registered Aboriginal housing organisation (**an exempt transaction**), or
  - (c) an AHO housing agreement with the registered Aboriginal housing organisation provides that this section does not apply to the land concerned.
- (2) The Registrar-General must, on application by the AHO, make a recording in the Register kept under the *Real Property Act 1900* to signify that the land specified in the application is subject to this section.
- (3) The application is to provide details of any exempt transactions.
- (4) If a recording under subsection (2) has been made by the Registrar-General, the Registrar-General is not to register under the *Real Property Act 1900* a transfer of that

land or any other dealing that is otherwise registrable under that Act unless:

- (a) the consent of the AHO to the transfer or other dealing has been endorsed on the transfer or other dealing, or
  - (b) the transfer or other dealing is an exempt transaction (as notified to the Registrar-General by the AHO), or
  - (c) the recording has ceased to have effect (as recorded by the Registrar-General under subsection (5)).
- (5) The Registrar-General must, on the application of the AHO, make in the Register a recording to signify that a recording made under subsection (2) has ceased to have effect.
  - (6) An application by the AHO under this section is to be made in an approved form under the *Real Property Act 1900* and is to be accompanied by such fee, if any, as may be prescribed by the regulations under that Act.
  - (7) If the AHO makes an application under this section, the Registrar-General is not to inquire into whether the AHO has an interest in the land concerned or into the terms of any AHO housing agreement.
  - (8) This section does not affect the operation of any other prohibition or restriction relating to transfers or other dealings in land.

## **22 Creation of charge in agreement**

- (1) An AHO housing agreement may provide that land of a registered Aboriginal housing organisation is to be charged with the payment of money that is or may become payable under the AHO housing agreement.
- (2) If the land is land to which the *Real Property Act 1900* applies, section 56 of that Act applies in respect of any such charge.

## **23 Agreements binding on registered Aboriginal housing organisations**

- (1) An AHO housing agreement is binding on the registered Aboriginal housing organisation to which it relates.
- (2) The AHO may monitor the activities of a registered Aboriginal housing organisation to determine whether it is complying with the terms and conditions of an AHO housing agreement.

## **24 Regulations relating to AHO housing agreements**

The regulations may make provision for or with respect to AHO housing agreements.

## Part 5 Registration of Aboriginal housing organisations

### 25 Definition of “eligible organisation”

In this Part:

**eligible organisation** means:

- (a) an Aboriginal or Torres Strait Islander corporation (within the meaning of the Commonwealth Act), or
- (b) an Aboriginal Land Council (within the meaning of the [Aboriginal Land Rights Act 1983](#)), or
- (c) a body corporate which the AHO is satisfied is controlled, either directly or indirectly, by Aboriginal people or Torres Strait Islanders (or both).

### 26 Registration of Aboriginal housing organisations

- (1) An eligible organisation may apply to the Aboriginal Housing Office to be registered under this Part.
- (2) The form and manner of application is to be determined by the AHO.
- (3) The AHO may register an eligible organisation under this Part if the AHO is satisfied that the organisation concerned:
  - (a) provides, or proposes to provide, housing or housing related services for Aboriginal people or Torres Strait Islanders, and
  - (b) is, having regard to such matters as may be determined by the AHO, suitable to be registered.
- (4) The matters referred to in subsection (3) may, without limiting that subsection, include the following:
  - (a) the level of the applicant’s involvement in the provision of Aboriginal housing or housing related services,
  - (b) the applicant’s ability to comply with particular standards and targets relating to the delivery of housing or housing related services to Aboriginal people or Torres Strait Islanders.
- (5) An applicant for registration must provide such information in connection with the application as the AHO may require.
- (6) The regulations may make further provision for or with respect to any matter that relates to the registration of an eligible organisation under this Part.

## **27 Revocation of registration**

- (1) The registration of a registered Aboriginal housing organisation under this Part may be revoked at any time by the AHO for such reasons as the AHO thinks fit.
- (2) Without limiting the generality of subsection (1), the registration of a registered Aboriginal housing organisation may be revoked:
  - (a) if the AHO is satisfied that the organisation concerned has contravened an AHO housing agreement that is binding on the organisation, or
  - (b) at the request of the organisation, or
  - (c) if the organisation is wound up.

## **28 Register of registered Aboriginal housing organisations**

- (1) The Aboriginal Housing Office is to keep a register of registered Aboriginal housing organisations.
- (2) The register is to be kept in the form and manner determined by the AHO.
- (3) The register may include:
  - (a) information that relates to the housing and other property owned by, or under the control of, a registered Aboriginal housing organisation, and
  - (b) such other information, provided by a registered Aboriginal housing organisation at the request of the AHO, as the AHO considers appropriate for inclusion in the register.

## **Part 6 Management of Aboriginal Housing Office**

### **29 Ministerial control**

- (1) The Aboriginal Housing Office is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) An approval of the Minister under a provision of this Act may apply generally or be limited to a particular case.

### **30 Board of AHO**

- (1) There is to be a Board of the Aboriginal Housing Office.
- (2) The Board is to consist of the following members:
  - (a) the Chief Executive Officer,
  - (b) such Aboriginal persons as are appointed by the Minister.



- (3) The number of appointed members is to be determined by the Minister, but is not to be less than 6 nor more than 14.
- (4) The Minister may determine the criteria for eligibility for appointment, including by requiring one or more of the appointed members to be nominated for appointment by a relevant body, group or person (such as ATSIC or the New South Wales Aboriginal Land Council).
- (5) Of the members appointed by the Minister, one is to be appointed by the Minister as Chairperson of the Board. The person appointed as Chairperson of the Board may be appointed as a full-time or part-time member of the Board.
- (6) All other members of the Board appointed by the Minister are to be appointed as part-time members of the Board.
- (7) Schedule 1 has effect with respect to the constitution and procedure of the Board.

### **31 Functions of Board**

The functions of the Board are as follows:

- (a) to determine policies of the Aboriginal Housing Office,
- (b) such other functions as may be imposed or conferred on it by or under this or any other Act.

### **32 Aboriginal Regional Housing Committees**

- (1) There is to be established an Aboriginal Regional Housing Committee:
  - (a) for each region of the State that is a region under the Commonwealth Act, or
  - (b) for such regions as may be determined by the Board.
- (2) The Board is to determine the membership, constitution and procedure of an Aboriginal Regional Housing Committee.
- (3) An Aboriginal Regional Housing Committee has the following functions:
  - (a) to advise the Board on Aboriginal housing issues,
  - (b) such other functions as are delegated to the Committee by the Board.

#### **Note—**

The Commonwealth Act provides for the division of Australia into regions for the purposes of the establishment of Regional Councils under that Act.

### **33 Chief Executive Officer to manage affairs of AHO**

- (1) The Chief Executive Officer is responsible for the day to day management of the

affairs of the Aboriginal Housing Office in accordance with the specific policies and general directions of the Board.

- (2) Any act, matter or thing done in the name of, or on behalf of, the AHO by the Chief Executive Officer is taken to have been done by the AHO.

### **34 Staff of AHO**

- (1) The staff of the Aboriginal Housing Office is (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The AHO may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency. For the purposes of this Act, a person whose services are utilised under this subsection is a member of the staff of the AHO.
- (3) The AHO may engage consultants or other persons for the purpose of obtaining expert advice.

## **Part 7 Finance**

### **35 Aboriginal Housing Fund**

- (1) There is to be established in the Special Deposits Account an Aboriginal Housing Fund (the **Fund**) into which is to be paid:
  - (a) all money advanced to the Aboriginal Housing Office by the Treasurer or appropriated by Parliament for the purposes of the AHO, and
  - (b) all money directed or authorised to be paid into the Fund by or under this Act or any other Act, and
  - (c) the proceeds of the investment of money in the Fund, and
  - (d) all money received by the AHO from any other source.
- (2) The Fund is to be applied for the purpose of enabling the AHO to exercise its functions.
- (3) All expenditure incurred by the AHO, including the salaries of the AHO's staff, is to be paid from the Fund.
- (4) The Fund may be applied for the purposes of providing any property, funding or other assistance to a registered Aboriginal housing organisation only with the approval of the Minister.

### **36 Investment of money in Fund**

The Aboriginal Housing Office may invest money in the Aboriginal Housing Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*,

or

- (b) if that Act does not confer power on the AHO to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

## **Part 8 Miscellaneous**

### **37 Strategic plan**

- (1) The Aboriginal Housing Office is required to prepare and submit to the Minister a strategic plan in relation to Aboriginal housing:
  - (a) from time to time in accordance with the requirements of any Commonwealth-State agreement relating to the operations of the AHO, or
  - (b) if there are no such requirements—every 3 years.
- (2) Each such strategic plan is to be reviewed by the AHO annually and may be revised by the AHO following the review.
- (3) A strategic plan, and any revision to a strategic plan, is not to be implemented by the AHO except with the approval of the Minister.

### **38 Personal liability**

A matter or thing done or omitted to be done by the Aboriginal Housing Office, the Board or a member of the Board, an Aboriginal Regional Housing Committee or a member of such a Committee, the Chief Executive Officer or any person acting under the direction of the AHO, the Board, an Aboriginal Regional Housing Committee or the Chief Executive Officer does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member of the Board, the member of the Committee, the Chief Executive Officer or the person so acting personally to any action, liability, claim or demand.

### **39 Financial year**

- (1) The financial year of the Aboriginal Housing Office is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the [Public Finance and Audit Act 1983](#).

### **40 Seal of AHO**

The seal of the Aboriginal Housing Office is to be kept by the Chief Executive Officer, or by a member of the staff of the AHO authorised in that behalf by the Chief Executive Officer, and may be affixed to a document only:

- (a) in the presence of the Chief Executive Officer or that member of the staff, and

- (b) with an attestation by the signature of the Chief Executive Officer or that member of staff of the fact of the affixing of the seal.

#### **41 Recovery of money**

Any charge, fee or money due or payable to the Aboriginal Housing Office may be recovered as a debt in a court of competent jurisdiction.

#### **42 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### **43 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **44 (Repealed)**

#### **45 Savings, transitional and other provisions**

Schedule 3 has effect.

#### **46 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 Constitution and procedure of Board**

(Section 30 (7))

#### **Part 1 General**

##### **1 Definitions**

In this Schedule:

***appointed member*** means an Aboriginal person who is appointed by the Minister as a member of the Board.

***member*** means any member of the Board.

## Part 2 Constitution

### 2 Terms of office of members

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 3 Remuneration

- (1) If the Chairperson of the Board is appointed on a full-time basis, the Chairperson is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.
- (2) An appointed member who is a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Note—**

Only the Chairperson of the Board may be appointed as a full-time member of the Board.

- (3) If a part-time appointed member of the Board holds an office under the Commonwealth Act, or the *Aboriginal Land Rights Act 1983*, that is a full-time position, he or she is only entitled to be paid such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

### 4 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove an appointed member from office if:

(a) the Minister is satisfied that the member has failed to carry out the member's duties satisfactorily, or

(b) the Minister is satisfied that the member has engaged in misconduct or is incapable of carrying out the member's duties, or

(c) in the case of a member appointed on the nomination of a particular body, group or person, the Minister is satisfied, on the advice of that body, group or person, that the member no longer holds the office by virtue of which he or she was nominated by the body, group of person.

## **5 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **6 Chairperson**

(1) The Chairperson vacates office as Chairperson if he or she:

(a) is removed from that office by the Minister under this clause, or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member of the Board.

(2) The Minister may at any time remove the Chairperson from office as Chairperson.

## **7 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A member is not to be regarded as having an interest requiring disclosure under this clause merely because the member was nominated as a member by a particular body or organisation.

- (3) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (4) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (5) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (6) For the purposes of the making of a determination by the Board under subclause (5), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (7) A contravention of this clause does not invalidate any decision of the Board.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any

remuneration payable to the person under this Act as a member.

## **Part 3 Procedure**

### **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

### **10 Quorum**

The quorum for a meeting of the Board is a majority of its voting members for the time being.

### **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the voting members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

- (1) Only the appointed members of the Board are entitled to vote at meetings of the Board. The Chief Executive Officer is not entitled to vote at meetings of the Board.
- (2) A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),



the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **14 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

### **Schedule 2 (Repealed)**

### **Schedule 3 Savings, transitional and other provisions**

(Section 45)

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

#### **Part 2 Provisions consequent on enactment of this Act**

##### **2 Definitions**

- (1) In this Part:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description

(including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**transferor** means the body or person from whom any assets, rights or liabilities are transferred under this Division.

(2) In this Part, a reference to the **State** includes an authority of the State.

### **3 Transfer of assets, rights and liabilities to Aboriginal Housing Office**

- (1) The Minister may direct, by order in writing, that any of the assets, rights and liabilities of the State that relate to Aboriginal housing be transferred to the Aboriginal Housing Office.
- (2) The assets, rights and liabilities of the State that relate to Aboriginal housing are those that the Minister considers relate to housing services provided to Aboriginal people or Torres Strait Islanders (such as housing services provided to Aboriginal people by the Land and Housing Corporation or the Department of Housing).
- (3) If those assets, rights and liabilities are under the control of a government agency for which the Minister is not responsible, an order may only be made under this clause in respect of those assets, rights and liabilities with the consent of the responsible Minister concerned.
- (4) Such an order may be made on such terms and conditions as are specified or referred to in the order.

### **4 Transfer of certain housing agreements to AHO**

- (1) Without limiting clause 3, an order may transfer to the Aboriginal Housing Office the assets, rights and liabilities of the State in connection with an existing housing agreement identified in the order.
- (2) An **existing housing agreement** is an agreement that was entered into by or on behalf of the State (including by a Minister of the Crown, the Department of Urban Affairs and Planning or the Land and Housing Corporation) before the commencement of this clause that the Minister considers relates to a program or policy for which the Aboriginal Housing Office has assumed or will assume responsibility on or after the commencement of this clause.

(3) The Minister may, by notice in writing, confirm that an agreement is an existing housing agreement for the purposes of this clause.

(4) Such a notice is conclusive evidence of that fact.

## **5 Effect of transfer of assets, rights and liabilities**

(1) If any asset, right or liability is transferred in accordance with this Part, the following provisions have effect:

- (a) the asset vests in the Aboriginal Housing Office by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
- (b) the right or liability becomes by virtue of this clause the right or liability of the Aboriginal Housing Office,
- (c) all proceedings relating to the asset, right or liability commenced before the transfer by or against the transferor pending immediately before the transfer are taken to be proceedings pending by or against the Aboriginal Housing Office,
- (d) any act, matter or thing done or omitted to be done in relation to the asset, right or liability before the transfer by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Aboriginal Housing Office,
- (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the transferor is (to the extent that it relates to the asset, right or liability but subject to any regulations under this Schedule) to be read as, or as including, a reference to the Aboriginal Housing Office.

(2) The operation of this Part is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to a contract or instrument, or as causing or permitting the termination of any contract or instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or instrument.

(3) No attornment to the Aboriginal Housing Office by a lessee from the transferor is required.

(4) A transfer is subject to the terms and conditions specified in the order that gives effect to the transfer.

## **6 Date of vesting**

A transfer under this Part takes effect on the date specified in the order that gives effect to the transfer.

## **7 Duty not payable**

Duty is not chargeable in respect of:

- (a) a transfer under this Part, or
- (b) anything certified by the Minister as having been done as a consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

## **8 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Part.
- (2) Such a notice is conclusive evidence of that transfer.

## **9 Agreements relating to previous assistance**

- (1) The Aboriginal Housing Office may enter into agreements with a registered Aboriginal housing organisation in relation to funding, housing and other assistance provided to the organisation by or on behalf of the State or ATSIC to the registered Aboriginal housing organisation before the commencement of section 10.
- (2) Such an agreement, despite section 10 (1), is taken to be an AHO housing agreement even if it relates solely to assistance provided otherwise than under this Act.
- (3) For avoidance of doubt, section 18 (d) extends to land acquired by a registered Aboriginal housing organisation before the commencement of section 18.

## **10 Certain transferred agreements taken to be AHO housing agreements**

- (1) If an order under this Part transfers the assets, rights and liabilities of the State in connection with an existing housing agreement (as referred to in clause 4) to the Aboriginal Housing Office, and a person or body who is a party to that agreement is or becomes a registered Aboriginal housing organisation under this Act, the agreement is taken, unless the AHO otherwise directs, to be an AHO housing agreement under this Act.
- (2) The AHO is taken, for the purposes of section 18, to have an interest in land of the registered Aboriginal housing organisation, even if the land was acquired by the organisation before the commencement of this clause, if in connection with the existing housing agreement:
  - (a) the land was transferred to the registered Aboriginal housing organisation by or on

behalf of the State, or

(b) the land was acquired by the registered Aboriginal housing organisation with funding provided by or on behalf of the State, or

(c) housing was constructed on the land, or other improvements were made to it, by or on behalf of the State.

(3) Section 21 applies in relation to that land.

(4) Despite subclause (3), section 21 (1) is taken not to apply to any transfer or other dealing in relation to that land that is lodged with the Registrar-General before the Registrar-General makes a recording in respect of the land on the application of the AHO (as provided for by section 21 (2)). Accordingly, section 21 (4) does not prevent the registration of such a transfer or dealing.

(5) This clause does not prevent an existing housing agreement being varied or replaced by further agreement between the AHO and the registered Aboriginal housing organisation concerned.

#### **11 Application of sections 18 and 21 to land identified in other transferred agreements**

(1) If an order under this Part transfers the assets, rights and liabilities of the State in connection with an existing housing agreement (as referred to in clause 4) to the Aboriginal Housing Office, and the agreement contains a provision that gives, or purports to give, a person or body that represents the State a right (however expressed) to lodge a caveat on the title of land identified in the agreement that is owned or acquired by a person or body that is a party to the agreement, then the AHO is taken, for the purposes of section 18, to have an interest in that land.

(2) Section 21 applies in relation to that land as if the party to the agreement that owns or acquires that land were a registered Aboriginal housing organisation.

(3) Despite subclause (2), section 21 (1) is taken not to apply to any transfer or other dealing in relation to that land that is lodged with the Registrar-General before the Registrar-General makes a recording in respect of the land on the application of the AHO (as provided for by section 21 (2)). Accordingly, section 21 (4) does not prevent the registration of such a transfer or dealing.

#### **12 Application of section 21 generally**

Section 21 (1) does not apply in respect of any transfer or other dealing lodged with the Registrar-General before the commencement of section 21 and section 21 (4) does not prevent the registration of such a transfer or other dealing.