

Housing Act 1985 No 163

[1985-163]



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—

- **Repeal**

The Act was repealed by the [Housing Act 2001 No 52](#), sec 76 (3) with effect from 1.7.2001.

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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Housing Act 1985 No 163



New South Wales

An Act to establish the New South Wales Land and Housing Corporation in conjunction with the Department of Housing; to make provision for the exercise of certain functions relating to housing and land supply; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Housing Act 1985*.

2 Commencement

- (1) Sections 1, 2 and 24 and Schedule 1 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on 1 January 1986.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Corporation means the New South Wales Land and Housing Corporation constituted by this Act.

council has the same meaning as it has in the *Local Government Act 1993*.

Department means the Department of Housing.

Director means the Director of Housing holding office as such under the *Public Service Act 1979*.

Housing Acts means this Act, the *Housing Act 1912* and the *Housing Act 1976*.

officer of the Department means an officer or employee of the Department or of the administrative office attached to the Corporation.

regulation means a regulation made under this Act.

- (2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Objects

4 Objects

(1) The objects of this Act are:

- (a) to maximise the opportunities for all people in New South Wales to have access to secure, appropriate and affordable housing,
- (b) to ensure that housing opportunities and assistance are available to all sections of the community with housing needs,
- (c) to ensure that public housing is developed as a viable and diversified form of housing choice,
- (d) to ensure that public housing reflects general community housing standards and is designed to cater for the ongoing needs of consumers,
- (e) to maximise the opportunities for tenants of public and community housing programmes to participate in the management of their housing and in the development of public and community housing policies,
- (f) to promote orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practicable cost to consumers,
- (g) to promote equity between levels of assistance provided to people living in public rental housing, private rental housing and those who own or are purchasing their homes,
- (h) to maintain an efficient housing administration to ensure the effective co-ordination and provision of all housing services,
- (i) to encourage social mix and the integration of different housing forms in existing and new communities,
- (j) to encourage the planning and development of new urban areas as communities with a full range of appropriate services and facilities available in the shortest practicable time,
- (k) to promote a viable and stable building and construction industry in the residential sector,
- (l) to facilitate the provision of an adequate supply of affordable home finance for

persons in receipt of low and moderate incomes,

- (m) to encourage the development of flexible and innovative financial arrangements to facilitate access to home ownership for persons in receipt of low and moderate incomes, and
- (n) to ensure appropriate mechanisms and forums are established to allow input into housing policy by representative community organisations and non-government agencies involved in housing policy and provision.

- (2) In the administration of the Housing Acts regard shall, to the maximum extent possible having regard to the needs of the State and available resources, and subject to any directions of the Minister, be had to the objects of this Act.

Part 3 Administration

5 Establishment of Department of Housing

- (1) There is established by this Act a Department of the Government with the name of the “Department of Housing”.
- (2) The Department shall be deemed to have been established under section 49 of the [Constitution Act 1902](#), and nothing in this section affects the power conferred by that section to abolish, or change the name of, the Department.
- (3) This section does not operate if a Department of Housing has been established before the commencement of this Act and is in existence at that commencement.

6 New South Wales Land and Housing Corporation

- (1) There is constituted by this Act a corporation under the corporate name of the “New South Wales Land and Housing Corporation”.
- (2) The affairs of the Corporation shall be managed by the Director.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Director, or with the authority of the Director, shall be deemed to have been done by the Corporation.
- (4) The Corporation is subject to the control and direction of the Minister.

7 Functions of Corporation

- (1) The Corporation shall have and may exercise the functions conferred or imposed on it by or under the Housing Acts or any other Act.
- (2) The Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.

- (3) The Corporation and the Department shall, to the maximum extent possible, act in a complementary manner, so as to achieve a unified administration of the Housing Acts.

Part 4 Finance

8 Housing Account

- (1) There shall be established in the Special Deposits Account in the Treasury a Housing Account.
- (2) The Housing Account shall consist of:
 - (a) all money advanced to the Department or the Corporation by the Treasurer or appropriated by Parliament for the purposes of the Department or the Corporation,
 - (b) all money received in respect of land sold or leased under the Housing Acts,
 - (c) all money directed or authorised to be paid into the Housing Account by or under the Housing Acts or any other Act, and
 - (d) all money received by the Department or the Corporation from any other source.
- (3) The Housing Account shall be applied for the purpose of enabling the Department and the Corporation to exercise their functions.
- (4) All expenditure incurred by the Department, including salaries, shall be met from the Housing Account.

9 Money advanced by Commonwealth

- (1) Except as otherwise determined by the Treasurer of the State, any money received by the State from the Treasurer of the Commonwealth in pursuance of any enactment of the Commonwealth passed either before or after the commencement of this Act under which money is granted to the States to be applied by the States for purposes contemplated by any of the Housing Acts, shall be paid by the Treasurer of the State to a special account in the Treasury.
- (2) From a special account referred to in subsection (1) the Treasurer of the State, on the recommendation of the Minister, shall from time to time make available to the Corporation money to meet expenditure incurred or to be incurred in carrying out the purposes for which the money was granted by the Commonwealth.
- (3) The Corporation shall keep a separate account within the Housing Account in respect of all money made available to the Corporation under this section.
- (4) This section does not apply in respect of any money received by the State that is to be applied for the purposes of the *Aboriginal Housing Act 1998*.

10 Proceeds of sale of certain land to be paid to Consolidated Fund

The net proceeds of the sale of any land vested in the Corporation and of a class or description for the time being determined by the Treasurer, with the concurrence of the Minister, shall be paid from the Housing Account to the Consolidated Fund in accordance with arrangements determined from time to time by the Treasurer.

11 General provisions

- (1) The financial year of the Corporation shall be the same as that of the Department.
- (2) Nothing in this Part affects the operation of the *Public Finance and Audit Act 1983*.

Part 5 Miscellaneous

12 Staff of Corporation

- (1) Such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the *Public Service Act 1979*.
- (2) The Corporation may, with the approval of the Minister and of the Minister administering a government department or administrative office, arrange for the use of the services of any staff or facilities of the department or office.
- (3) The Corporation may, with the approval of the Minister and of a local authority constituted by or under an Act, arrange for the use of the services of any staff or facilities of the local authority.
- (4) The Corporation may employ such casual employees as it considers necessary on such terms and conditions as may be approved by the Public Service Board.
- (5) The provisions of the *Public Service Act 1979* do not apply to or in respect of the appointment of any casual employees under subsection (4) and any such casual employee is not subject to that Act during the period of the casual employee's employment.
- (6) The Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation or the Department, or both.

13 Misuse of information

- (1) Where, through his or her association with the Department, a person has knowledge of specific information relating to proposals made, or to be made, under or for the purposes of the Housing Acts in respect of the acquisition, use, development or disposal of land and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of that land, that person contravenes this subsection if that person:
 - (a) deals, directly or indirectly, in that or in any other land for the purpose of gaining

a personal advantage by the use of that information, or

- (b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in that or in any other land.

Maximum penalty: 20 penalty units.

- (2) Where, through his or her association with the Department, a person is in a position to influence proposals made, or to be made, under or for the purposes of the Housing Acts in respect of the acquisition, use, development or disposal of land and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, that person contravenes this subsection if that person:

- (a) does so for the purpose of gaining a personal advantage, or
- (b) does so for the purpose of enabling another person to gain an advantage.

Maximum penalty: 20 penalty units.

- (3) Where:

- (a) a contravention of subsection (1) occurs and an advantage, referred to in that subsection, is gained from any dealing in land to which the contravention relates, or
- (b) a contravention of subsection (2) occurs and an advantage, referred to in that subsection, is gained from any dealing in land which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence in respect of a contravention of subsection (1) or (2), as the case may be, liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

- (4) Where a loss referred to in subsection (3) is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is the difference between the price at which the dealing was effected and:
 - (a) in the case of any dealing to which subsection (1) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information used to gain that advantage had been generally known at that time, or
 - (b) in any case to which subsection (2) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been

the market price of the land at the time of the dealing if the proposals concerned had not been influenced.

- (5) An action to recover a loss, referred to in subsection (3), may be brought only within 5 years after the dealing in land in relation to which the loss was incurred.
- (6) For the purposes of this section, a person is associated with the Department:
 - (a) if the person is an officer of the Department,
 - (b) if the person is an officer or employee of the Department of Environment and Planning or a person who is a member of a committee or subcommittee established by or under the *Environmental Planning and Assessment Act 1979*,
 - (c) if the person is a councillor or an employee of a council,
 - (d) if the person acts or has acted as banker, solicitor, auditor or professional adviser or in any other capacity for the Department, the Corporation, the Minister, the Department of Environment and Planning or a council, or
 - (e) if the person is a director, manager or secretary of a body corporate so associated by virtue of paragraph (d).

14 Disclosure of information

A person shall not disclose any information obtained in connection with the administration or execution of the Housing Acts (or any other Act conferring or imposing functions on the Corporation) unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of the Housing Acts (or any such other Act),
- (c) for the purposes of any legal proceedings arising out of the Housing Acts (or any such other Act) or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

15 Delegation by Corporation or Director

- (1) The Corporation may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) The Director may delegate to an officer of the Department the exercise of any of the Director's functions under the Housing Acts (including any function delegated to the

Director under this section), other than this power of delegation.

(3) A delegation under this section:

(a) shall be in writing,

(b) may be general or limited,

(c) may be revoked, wholly or partly, by the Corporation or Director, as the case requires, and

(d) may be made to the person for the time being holding or acting in an office or position.

(4) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(5) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Corporation or Director, as the case requires.

(6) A delegation under this section does not prevent the exercise of a function by the Corporation or Director, as the case requires.

(7) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

16 Reports from Corporation to Minister

(1) The Corporation shall furnish the Minister with full information as to any business of the Corporation which the Minister may require.

(2) The Corporation shall at all times allow the Minister and every person authorised by the Minister to inspect all books, papers, documents, accounts, buildings, property and places under its control.

17 References to Corporation etc

(1) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the "Land and Housing Corporation" shall be read as a reference to the New South Wales Land and Housing Corporation constituted by this Act.

(2) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires:

(a) a reference to the Housing Commission of New South Wales or the Land

Commission of New South Wales or a member of either Commission shall be read as a reference to the Corporation, and

(b) a reference to an officer of either Commission shall be read as:

(i) subject to subparagraph (ii)—a reference to the person holding the office or position (if any) in the staff establishment of the Department or Corporation that corresponds to the office or position held by that officer, or

(ii) a reference to the person holding such office or position in the staff establishment of the Department or Corporation as may be determined by the Director from time to time in writing.

(3) On and from 20 February 1983, a reference in any other Act, in any instrument made under any Act or in any document of any kind, being a reference, or a reference to be construed as a reference, to:

(a) The Housing Commission of New South Wales, or

(b) the corporation constituted by section 3 of the *Housing Act 1912* as in force immediately before 20 February 1983, or

(c) the Homes for Unemployed Trust, or

(d) The Housing Improvement Board of New South Wales,

is taken to be a reference to the Corporation.

(4) Subclause (3) is taken to have commenced on 20 February 1983 (the date of commencement of Schedule 4 to the *Housing (Amendment) Act 1982*).

(5) Subclause (3) re-enacts (with minor modifications) clause 6 (a) of Schedule 4 to the *Housing (Amendment) Act 1982*. Subclause (3) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

18 Service of documents

(1) A document may be served on the Corporation by leaving it at, or by sending it by post to:

(a) the office of the Corporation, or

(b) if it has more than one office—any one of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in a manner not provided for by subsection (1).

19 Authentication of certain documents

Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by the Director or by any officer of the Department authorised to do so by the Director.

20 Provisions relating to Corporation

(1) The Corporation:

- (a) has perpetual succession,
- (b) shall have an official seal,
- (c) may take proceedings, and be proceeded against, in its corporate name,
- (d) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Corporation is constituted, and
- (e) is, for the purpose of any Act, a statutory body representing the Crown.

(2) The regulations may make provision for or with respect to:

- (a) the custody and use of the seal of the Corporation, and
- (b) the keeping of records concerning the acts, decisions and proceedings of the Corporation.

(3) All courts and persons acting judicially:

- (a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document, and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

21 Annual report

A report under the [Annual Reports \(Departments\) Act 1985](#) in respect of the Department may include any report required to be made annually in respect of the Corporation under the [Annual Reports \(Statutory Bodies\) Act 1984](#).

22 Recovery of charges etc by Corporation

Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

23 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be disposed of

summarily before a Local Court constituted by a Magistrate sitting alone.

24 Savings, transitional and other matters

Schedule 1 has effect.

25 Regulations

- (1) 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.
- (2) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

Schedule 1 Savings, transitional and other matters

(Section 24)

1 Definitions

In this Schedule:

appointed day means 1 January 1986.

cognate Acts means this Act, the *Housing (Amendment) Act 1985*, the *Land Commission (Housing) Amendment Act 1985*, the *Public Authorities (Financial Accommodation) (Housing) Amendment Act 1985* and the *Public Finance and Audit (Housing) Amendment Act 1985*.

Commission means the Housing Commission of New South Wales constituted by the *Housing Act 1912* or the Land Commission of New South Wales constituted by the *Land Commission Act 1976*.

2 Abolition of Commissions

On the appointed day, the Commissions are abolished.

3 Members of Commissions

- (1) A person holding office as a member of a Commission immediately before the appointed day shall cease to hold office as such on that day.

- (2) A member of a Commission who ceases to hold office as such by reason of the operation of the cognate Acts is not entitled to be paid any remuneration or compensation by reason of the member ceasing to hold that office.
- (3) A person who held office as a member of a Commission immediately before the appointed day on a full-time basis and who ceases to hold office as such by reason of the operation of the cognate Acts is, if the person:
 - (a) was, immediately before being appointed as such a member, an officer of the Public Service, and
 - (b) is under the age of 60 years,entitled to be appointed to some position in the Public Service not lower in classification and salary than that which the person held immediately before being appointed as such a member.

4 Assets and liabilities of Commissions

- (1) On and from the appointed day:
 - (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to a Commission shall vest in and belong to the Corporation,
 - (b) all money and liquidated and unliquidated claims that, immediately before that day, were payable to or recoverable by a Commission shall be money and liquidated and unliquidated claims payable to or recoverable by the Corporation,
 - (c) all proceedings commenced before that day by a Commission and pending immediately before that day shall be deemed to be proceedings pending on that day by the Corporation and all proceedings so commenced by any person against a Commission and pending immediately before that day shall be deemed to be proceedings pending on that day by that person against the Corporation,
 - (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, a Commission and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Corporation,
 - (e) the Corporation may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of actions and proceedings so referred to as a Commission might have done but for the enactment of the cognate Acts,
 - (f) the Corporation may enforce and realise any security or charge existing immediately before that day in favour of a Commission and may exercise any

powers thereby conferred on a Commission as if the security or charge were a security or charge in favour of the Corporation, and

- (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, a Commission shall be debts due by, money payable by and claims recoverable against, the Corporation.
- (2) Any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of a Commission, or a member, officer or employee of a Commission, shall, to the extent that, but for the enactment of the cognate Acts, that act, matter or thing would on or after that day have had any force or effect or been in operation, be deemed to have been done by, to or in respect of the Minister, Department or Corporation or an officer of the Department, whichever of them is, on or after that day, appropriate in relation to the doing of or the omission to do that act, matter or thing.
- (3) On and from the appointed day, the Corporation may, in the exercise of its functions under the Housing Acts, use the name "Landcom" or any other business name of a Commission.

5 Property acquired by gift etc

For the purposes of section 13 of the *Housing Act 1976*, any property that was held by a Commission immediately before the appointed day by way of gift, devise or bequest, whether pursuant to section 4E of the *Housing Act 1912*, section 13 of the *Land Commission Act 1976* or otherwise, and that becomes property of the Corporation by virtue of this Schedule shall be deemed to have been acquired by the Corporation under this Act, and any condition subject to which it was so held by a Commission shall be deemed to be a condition to which the Corporation has agreed.

6 Proceeds of sale of certain land to be paid to Consolidated Fund

Section 10 applies to the proceeds of the sale of land vested in the Land Commission and sold before the appointed day, being proceeds received by the Corporation on or after that day, in the same way as it applies to the proceeds of the sale of land vested in the Corporation.

7 Continuity of Housing Account

- (1) The Housing Account established by this Act is a continuation of the Housing Account established by the *Housing Act 1912*.
- (2) Any money standing to the credit of the Housing Account immediately before the appointed day shall be money standing to the credit of the Housing Account as established by this Act.

8 Funds of Land Commission

Any money held by the Land Commission immediately before the appointed day shall be paid to the Housing Account.

9 Action under *Public Service Act 1979*

Action may be taken under the *Public Service Act 1979* in relation to the Department or Corporation before the appointed day.

10 First annual report of Department

The first annual report of the Department and Corporation:

- (a) shall be made in respect of the period of 12 months ending 30 June 1986,
- (b) in respect of the first 6 months of that period, shall be made in respect of the Commissions, and
- (c) may be referred to as a first report instead of an annual report.

11 Repeal of regulation

The *Land Commission (General) Regulation 1977* is repealed on the appointed day.

12 Regulations

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of the cognate Acts.
- (2) A provision made under subclause (1) may take effect as from the appointed day or a later day.
- (3) To the extent to which a provision referred to in subclause (1) 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 therein, 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 therein.
- (4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule, other than clauses 2, 3 and 11.