

CLAUSE NOTES

Homes Amendment Bill 2016

PART 1 – PRELIMINARY PROVISIONS

Clause 1 **Short Title**

This clause provides that the Bill will be cited as the *Homes Amendment Act 2016*.

Clause 2 **Commencement**

This clause provides for the Act to commence on the day on which it receives the Royal Assent.

PART 2 – HOMES ACT 1935 AMENDED

Clause 3 **Principal Act**

This clause provides that the Act to which Part 2 of the Bill applies is the *Homes Act 1935*.

Clause 4 **Long title amended**

This clause amends the Act's long title to refer to the provision of assistance to persons or bodies providing housing support services.

Clause 5 **Section 2 inserted**

This clause inserts a new section to the Act.

Section 2. Purposes of Act

The new section provides that the Act's purposes are to provide, or enable the provision of, housing assistance to eligible persons and to assist in the provision of housing support to eligible persons.

Clause 6 **Section 3 amended (Interpretation)**

This clause amends section 3 of the Act to modify the way in which certain terms and phrases used in the Act are to be understood.

The clause:

- Amends the meaning of “advance” and “applicant” to update cross-references which appear in those meanings
- Amends the meaning of “dwelling-house” to include:
 - Units and apartments that are used for the provision of residential accommodation, including temporary accommodation
 - Any land on which a house, unit or apartment is situated

- o Any common property, in relation to a unit or apartment
- Amends the meaning of “eligible person” to enable the Director of Housing to determine a class of eligible person and to clarify the matters that the Director must be satisfied of before determining that a person, or a class of persons, is or are eligible people for the purposes of the Act.

The ability for the Director to determine a class of persons for the purposes of the Act is particularly important for the sale, transfer or lease of land by the Director of Housing to housing providers and housing support providers. Provisions for this purpose enable the Director of Housing to sell, transfer or lease land to housing providers and housing support providers for particular purposes, including providing eligible people with residential accommodation.

In these instances it will be necessary to clearly identify the people or categories of people who will benefit from the sale, transfer or lease of the land to the housing provider, before the relevant arrangement is entered into.

The amendment also makes it clear that the Director may only make a determination of eligibility if satisfied that the person or member of a class of people is, or will be, in need of housing assistance because of particular characteristics or circumstances. This may include, for example, that the person is on a low income.

Lastly the amendment clarifies the Director of Housing's ability to determine a person to be an eligible person because of the circumstances or characteristics of a person with whom the eligible person resides. This is to accommodate circumstances where a child is in need of housing assistance because of, for example, disability. The meaning recognises that in this case, the child's parents have the necessary legal capacity to purchase a dwelling-house or enter into a lease and as such need to be recognised as eligible persons for the purposes of the Act.

- Inserts a new meaning for “housing assistance”. While this term is used in the Act currently, it is not defined. This has caused difficulties in identifying the nature of the assistance that a person requires, to be identified as an eligible person. The amendments address this issue by clarifying how the term should be understood. In particular, the new meaning makes it clear that housing assistance encompasses short term accommodation and the provision of financial assistance to an eligible person so that the person can pay rent or bond.
- Inserts a new meaning for “housing provider”. This meaning

has been inserted into the Act to complement the inclusion of provisions enabling the Director of Housing to sell, transfer or lease dwelling-houses to housing providers in relevant circumstances. The new meaning has been drafted to accommodate:

- Housing developers and builders who construct, alter, repair or improve dwelling-houses so that the dwelling-houses can be sold or leased to provide residential accommodation to eligible persons
- Non-government organisations who are concerned with the sale or lease of dwelling-houses to eligible persons or the provision of residential accommodation to eligible persons.
- Inserts a new meaning for “housing support provider”. This meaning has been inserted into the Act to complement the inclusion of provisions enabling the Director of Housing to sell, transfer or lease dwelling-houses to housing support providers in relevant circumstances.
- Inserts a new meaning for “housing support services”. This meaning has relevance for the meaning of “housing support provider” because a housing support provider is defined as a person or body that provides housing support services to eligible persons. The meaning captures services that assist people to obtain or remain in residential accommodation or that coordinate the provision of such services to eligible persons. The intention is to accommodate services such as:
 - Tenancy support services to help people who are on low incomes to secure access to affordable housing
 - Financial management support services to help people with gambling-related and other money problems.
- Inserts a new meaning of “land”. The meaning makes it clear that for the purposes of the Act, the term “land” includes any dwelling-house or other structure situated on the land, as well as vacant land.
- Amends the meaning of “purchaser”. This amendment follows from the proposed new meaning of “dwelling-house”, which is defined to include the land on which the dwelling-house is situated.

Clause 7

Section 6 repealed

This clause repeals section 6 of the Act in favour of the new purposes provision (new section 2).

Clause 8

Section 6A amended (Director of Housing)

This clause amends subsections 3 and 3A of section 6A.

Subsection 3 of the Act currently provides that the Director of Housing shall be a corporation sole for the purposes of acquiring, holding, disposing of and otherwise dealing with land under the Act. The amendment makes it clear that the Director of Housing is a corporation sole for the purpose of the Act generally and has been included to remove any limitation which the words could otherwise be interpreted as imposing on the Director's status as a corporation sole.

Subsection 3A lists powers of the Director of Housing that are additional to the powers conferred on the Director under the Act's substantive provisions. This includes the power to make grants and allocate funds for housing purposes, and to undertake and participate in joint ventures with private developers and public authorities.

The power for the Director of Housing to make grants is being inserted to the Act via new section 18F, while the power for the Director to undertake and participate in joint ventures will be clarified in the Act via new sections 18AA and 18AB. This makes continued reference to these powers in subsection 3A unnecessary.

Clause 9

Section 6AB amended (Delegation)

This clause amends section 6AB of the Act to ensure gender-neutral language.

The *Acts Interpretation Act 1931* contains provisions regulating delegations. These are of general application to all Tasmanian legislation which confers a power on a person to delegate a function or power, including the Act. The inclusion of provisions for this purpose in the *Acts Interpretation Act* renders the inclusion of like provisions in the Act unnecessary. This clause amends section 6AB to remove subsections 2, 3, 4, 5 and 6 of section 6AB for this reason.

Clause 10

Section 11 amended (Power of Director to acquire land)

This clause amends section 11 of the Act to ensure gender-neutral language.

Clause 11

Section 11A amended (Purchase of easements, &c)

This clause amends section 11A of the Act to ensure gender-neutral language.

Clause 12

Section 12A amended (Grant of easements, &c)

This clause amends section 12A of the Act to ensure gender-neutral language.

- Clause 13 **Section 13 amended (Sale of dwelling-houses before the cost of subdivision is determined)**
- This clause:
- Amends subsection 1 to make it clear that the section applies to the sale of dwelling-houses that are erected by the Director of Housing only, and does not extend to the sale of dwelling-houses that have been built by housing providers
 - Amends subsection 2 to ensure gender-neutral language.
- Clause 14 **Section 14A amended (Development of land for ancillary purposes)**
- This clause amends subsection 1 to:
- Ensure gender-neutral language
 - Reflect clause 5 which inserts a new purposes provision (new section 2) and clause 7 which repeals the existing purposes provision (current section 6).
- Clause 15 **Section 14B amended (Power of Director, &c., to enter on lands)**
- This amends section 14B of the Act to replace outdated terms such as “servants” and “workmen” with their modern equivalents.
- Clause 16 **Section 15 repealed**
- This clause repeals section 15 in favour of new section 19A Advances to municipal councils.
- New section 19A broadly replicates current section 15 and has been relocated to sit alongside other provisions which regulate advances.
- Clause 17 **Section 15A amended (Power of Director to provide dwelling-houses for employees of public authorities and persons carrying on industrial undertakings)**
- This amends section 15A of the Act to:
- Ensure gender-neutral language
 - Update cross-references which appear in the section.
- Clause 18 **Part IIIA inserted**
- This clause inserts a new Part IIIA to the Act.
- New Part IIIA regulates the leasing and subleasing of dwelling-houses and consists of new sections 15AA, 15AB, 15AC and 15AD.
- Part IIIA – LEASING AND SUB-LEASING OF DWELLING-HOUSES**

Section 15AA. Leasing and sub-leasing by Director of dwelling-houses to eligible persons

New Section 15AA provides the Director of Housing with the ability to lease dwelling-houses that the Director of Housing owns, to an eligible person.

The new section also allows the Director of Housing to sub-lease a dwelling-house that the Director of Housing has leased from another person or body, to an eligible person.

Under the new section the Director of Housing may:

- Lease or sub-lease a dwelling-house on the terms and conditions that the Director thinks fit
- Determine that the amount of rent payable by an eligible person under a lease or sub-lease is to be reduced.

Section 15AB. Director may subsidise rent and bonds payable by eligible persons

New section 15AB provides the Director of Housing with the ability to pay all or part of a bond or rent that is payable by an eligible person in respect of a lease or sub-lease of a dwelling-house, and to pay the bond or rent by instalment.

The Director of Housing may provide the subsidy to:

- An eligible person who leases or sub-leases a dwelling-house
- An eligible person who intends to lease or sub-lease a dwelling-house
- A housing provider who leases out a dwelling-house to an eligible person
- A housing provider who intends to lease out a dwelling-house to an eligible person
- Any other person who leases out, or who intends to lease out, a dwelling-house to an eligible person.

The Director of Housing may also provide the subsidy to a housing support provider so that the housing support provider can pay all or part of the rent or bond that is payable by an eligible person under a lease or sub-lease in relation to a dwelling-house.

Section 15AC. Director may let out dwelling-houses to or from housing providers or housing support providers

New section 15AC provides the Director of Housing with the ability to lease a dwelling-house that is owned by the Director to a housing provider or housing support provider.

The Director of Housing may only lease a dwelling-house to a housing provider or housing support provider if the Director is

satisfied that the provider intends to:

- Sub-lease the dwelling-house to eligible persons
- Provide residential accommodation to eligible persons
- Provide housing support services.

Section 15AD. Director may lease dwelling-houses

New section 15AD provides the Director of Housing with the ability to lease a dwelling-house from another person so that the Director can sub-lease the dwelling-house to:

- An eligible person
- A housing provider, so that the provider can sub-lease the dwelling-house to an eligible person
- A housing provider, so that the provider can provide, or arrange for the provision of, residential accommodation to an eligible person
- A housing support provider, so that the housing support provider can provide housing support services.

Clause 19

Part IV: Heading amended

This clause amends the title of Part IV of the Act to reflect the Part's amended subject matter.

Clause 20

Section 15B amended (Interpretation of Part IV)

This clause removes the meaning of “dwelling-house” from section 15B in favour of the new meaning proposed to be inserted to section 3 of the Act by virtue of clause 6.

The term has application for Part IV of the Act only and is inconsistent with the meaning for dwelling-house provided in section 3 (Interpretation).

Clause 6 proposes a new meaning of “dwelling-house” which includes the land on which the house, unit or apartment is situated. This is consistent with the meaning of dwelling-house provided in section 15B of the Act.

The meaning of dwelling-house is being removed from section 15B for this reason.

Clause 21

Section 16 repealed

This clause repeals section 16 of the Act in favour of:

- New section 15AA, which provides the Director of Housing with the ability to lease dwelling-houses that the Director of Housing owns, to an eligible person
- New section 15AC, which provides the Director of Housing with the ability to lease dwelling-houses that the Director of

Housing owns, to a housing provider or housing support provider.

In respect of leases to eligible people, new section 15AA enables the Director of Housing to lease or sub-lease a dwelling-house on the terms and conditions that the Director thinks fit, and to subsidise rent or bonds payable.

Clause 22 Section 17 amended (Sale of land, whether or not dwelling-house situated on the land)

This clause amends section 17 of the Act to:

- Reflect the new meanings for “dwelling-house” and “land” proposed to be included in section 3 (Interpretation) by virtue of clause 6
- Ensure gender-neutral language.

Clause 23 Section 17AA amended (Calculation of adjustment rate)

This clause amends section 17AA to ensure gender-neutral language.

Clause 24 Section 17A amended (Sale by Director subject to mortgage)

This clause amends section 17A of the Act to:

- Update cross-references used in the section
- Ensure gender-neutral language
- Reflect the new meanings for “dwelling-house” and “land” proposed to be included in section 3 (Interpretation) by virtue of clause 6
- Provide the Director of Housing with the power to require a person who has applied to have land or a share of interest in land sold or transferred to him or her to provide the Director with the security that the Director thinks fit in respect of the sale or transfer.

Clause 25 Section 17B amended (Contract of sale subject to mortgage)

This clause amends section 17B of the Act to:

- Update cross-references used in the section
- Ensure gender-neutral language
- Reflect the new meanings for “dwelling-house” and “land” proposed to be included in section 3 (Interpretation) by virtue of clause 6.

Clause 26 Section 18 amended (Sale of land in certain cases)

This clause amends section 18 of the Act to:

- Update cross-references used in the section
- Ensure gender-neutral language.

Clause 27

Part IVA: Heading amended

This clause amends the title of Part IVA of the Act to reflect the Part's amended subject matter.

Clause 28

Section 18A substituted

This clause repeals current section 18A of the Act and inserts four new sections: new section 18A, new section 18AA, new section 18AB and new section 18AC.

New Section 18A. Interpretation of Part IVA

New section 18A defines the term “associated land” for the purposes of Part IVA of the Act.

The term “associated land” is defined to mean land that is required, by the terms and conditions of a contract or arrangement entered into with a housing provider under new section 18G, to be:

- Leased to an eligible person
- Leased for the provision of residential accommodation to an eligible person
- Sold to an eligible person
- Used for the construction of dwelling-houses that are to be situated on the land, so that the dwelling-houses can be:
 - Leased to eligible persons
 - Sold to eligible persons
 - Used for the provision of residential accommodation to eligible persons.
- Used for the alteration, enlargement, repair or improvement of dwelling-houses that are already situated on the land, so that the dwelling-houses can be:
 - Leased to eligible persons
 - Sold to eligible persons
 - Used for the provision of residential accommodation to eligible persons.

The term does not include land that has been sold or transferred by the Director of Housing to the provider under the Act. Rather, the intention is to capture land that is already owned by the housing provider, or that is to be purchased or leased by the provider from another person.

Section 18AA. Sale or transfer of land to housing providers

This clause provides the Director of Housing with the ability to sell or transfer land to a housing provider to enable the housing provider to:

- Lease, or arrange for the lease of, dwelling-houses that are situated on the land to eligible persons
- Lease, or arrange for the lease of, dwelling-houses that are situated on associated land to eligible persons
- Provide, or arrange for the provision of, dwelling-houses that are situated on the land for the residential accommodation of eligible persons
- Provide, or arrange for the provision of, dwelling-houses that are situated on associated land for the residential accommodation of eligible persons
- Sell, or arrange for the sale of, dwelling-houses that are situated on the land to eligible persons
- Sell, or arrange for the sale of, dwelling-houses that are situated on associated land to eligible persons
- Construct, or arrange for the construction of, dwelling-houses that are to be situated on the land so that the dwelling-houses may be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Alter, enlarge, repair or improve, or arrange for the alteration, enlargement, repair or improvement of dwelling houses that are situated on the land so that the dwelling-houses may be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.

The clause also provides the Director of Housing with the ability to sell or transfer land to a housing provider so that the housing provider can use the land as security to raise funds to enable the provider to:

- Lease, or arrange for the lease of, dwelling-houses that are situated on any land to eligible persons
- Lease, or arrange for the lease of, dwelling-houses that are situated on associated land to eligible persons
- Provide, or arrange for the residential accommodation of eligible persons in dwelling-houses that are situated on any land
- Provide, or arrange for the residential accommodation of

eligible persons in dwelling-houses that are situated on associated land

- Sell, or arrange for the sale of, dwelling-houses that are situated on any land to eligible persons
- Sell, or arrange for the sale of, dwelling-houses that are situated on associated land to eligible persons
- Construct, or arrange for the construction of, dwelling-houses that are to be situated on any land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Construct, or arrange for the construction of, dwelling-houses that are to be situated on associated land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Alter, enlarge, repair or improve, or arrange for the alteration, enlargement, repair or improvement of dwelling-houses that are situated on any land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Alter, enlarge, repair or improve, or arrange for the alteration, enlargement, repair or improvement of dwelling-houses that are situated on associated land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.

The clause additionally provides the Director of Housing with the ability to sell or transfer land to a housing provider so that the housing provider can sell or lease the land to any person to provide funds to enable the provider to:

- Lease, or arrange for the lease of, dwelling-houses that are situated on any land to eligible persons
- Lease, or arrange for the lease of, dwelling-houses that are situated on associated land to eligible persons
- Provide, or arrange, for the residential accommodation of

eligible persons in dwelling-houses that are situated on any land

- Provide, or arrange, for the residential accommodation of eligible persons in dwelling-houses that are situated on associated land
- Sell, or arrange for the sale of, dwelling-houses that are situated on any land to eligible persons
- Sell, or arrange for the sale of, dwelling-houses that are situated on associated land to eligible persons
- Construct, or arrange for the construction of, dwelling-houses that are to be situated on any land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Construct, or arrange for the construction of, dwelling-houses that are to be situated on associated land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Alter, enlarge, repair or improve, or arrange for the alteration, enlargement, repair or improvement of dwelling houses that are situated on any land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.
- Alter, enlarge, repair or improve, or arrange for the alteration, enlargement, repair or improvement of dwelling houses that are situated on associated land so that the dwelling-houses can be:
 - Leased or sold to eligible persons
 - Used to provide residential accommodation to eligible persons.

The Director of Housing's ability to sell or transfer land for these purposes applies whether or not the funds that are raised are also used to provide housing for people who are not eligible persons.

In each case the Director of Housing may only sell or transfer land to a housing provider with the approval of the Minister administering the *Homes Act 1935*.

Section 18AB. Sale or transfer of land to housing support providers

This clause provides the Director of Housing with the ability to sell or transfer land to a housing support provider so that the housing support provider can:

- Provide housing support services to eligible persons
- Use the land as security to raise finance to enable the housing support provider to provide housing support services to eligible persons
- Sell or lease the land to any person, to provide funds to the housing support provider to enable the provider to provide housing support services to eligible persons.

The Director of Housing's ability to sell or transfer land to a housing support provider for these purposes applies whether or not the housing support provider also provides housing support services to people who are not eligible persons.

In each case the Director of Housing may only sell or transfer land to a housing support provider with the approval of the Minister administering the *Homes Act 1935*.

Section 18AC. Terms and conditions of sale or transfer of land under this Part

This clause provides the Director of Housing with the power to determine the terms and conditions to which a sale or transfer of land under Part IVA of the Act is to be subject.

In the case of a sale of land, the Director of Housing may also determine the price.

The clause provides the Minister administering the *Homes Act 1935* with the power to direct the Director of Housing as to the terms and conditions to which a sale or transfer is to be subject.

The clause also provides guidance around the terms and conditions that may be imposed and requires the terms and conditions that are determined by the Director of Housing or Minister to include terms and conditions that are reasonably necessary to ensure that all or part of the land that is sold or transferred is used for the purpose for which it is sold or transferred.

In the case of associated land the clause requires the terms and conditions that are determined by the Director of Housing or Minister to include terms and conditions that are reasonably necessary to ensure that all or part of the associated land is used to enable dwelling-houses that are situated on the associated land to be sold or leased, or used to provide residential accommodation, to eligible persons.

Clause 29 **Section 18B amended (Enforcement of restriction on transfers, &c., of land sold)**

This clause amends section 18B of the Act to:

- Enable the Director of Housing to lodge a notification with the Recorder of Titles under the *Land Titles Act 1980* preventing certain transactions relating to land that is sold or transferred to a housing provider or housing support provider under a contract entered into by the Director for the purposes of the Act, or that is associated land under a contract or arrangement entered into under section 18G of the Act, from taking place
- Enable a notification to have effect for at least 5 years and up to 30 years after the notification is lodged
- Ensure gender-neutral language.

Clause 30 **Section 18C amended (Guarantee by Treasurer)**

This clause clarifies the language of subsection 1 of section 18C to remove ambiguity.

The intention is to clarify the Treasurer's power to execute a guarantee, guaranteeing the repayment of finance that has been provided by a person to another person, who in turn lends money to a third person.

Clause 31 **Part IVC inserted**

This clause inserts a new Part to the Act to regulate grants.

The Director of Housing's power to make grants and allocate funds for housing purposes to local authorities, eligible persons and community groups is currently provided for in section 6A(3A)(a) of the Act.

Section 6A(3A)(a) of the Act does not place any parameters around the grant of money to housing providers or housing support providers nor does it require money that is granted to be used for any particular purpose.

While the Act enables the Director to exercise his or her power to provide housing providers and housing support providers with certain benefits, such as the benefit of reduced interest rates via a loan guaranteed by the Secretary, the manner in which these arrangements may and should be made is not regulated.

The intention is to regulate these matters through the new Part.

Part IVC – GRANTS AND ARRANGEMENTS

Section 18F. Grants to housing providers or housing support providers

New section 18F enables the Director of Housing to grant money

to a housing provider or housing support provider so that the provider can use the money to:

- Sell dwelling-houses to people including eligible persons
- Lease dwelling-houses to people including eligible persons
- Provide residential accommodation to people including eligible persons
- Provide housing support services to people including eligible persons.

A grant may be subject to terms and conditions; and the Director may refuse to pay any further instalment of a grant if the provider to whom the grant was given has not applied the money for the purpose for which it was granted, or has not carefully and economically expended the money.

Section 18G. Arrangements with housing providers and housing support providers

New section 18G enables the Director to enter into an arrangement with a housing provider or housing support provider which involves the Director agreeing to exercise a power that he or she has under another section of the Act to enable the provider to:

- Sell dwelling-houses to people including eligible persons
- Lease dwelling-houses to people including eligible persons
- Provide residential accommodation to people including eligible persons
- Provide housing support services to people including eligible persons .

An arrangement of this kind may be subject to terms and conditions, including conditions that the Director of Housing considers are necessary to ensure that all or part of any land that is sold or transferred as part of the arrangement entered into by the Director, is used for the purposes for which it is sold or transferred.

The Director may refuse to carry out any further obligations of the Director under an arrangement made under this new section, if the provider to whom the grant was given has not complied with any terms and conditions to which the grant was subject.

Clause 32

Section 19 amended (Advances for homes)

This clause amends section 19 to:

- Make it clear that an advance will not always be subject to security
- Ensure gender-neutral language.

Clause 33

Sections 19A and 19B Inserted

This clause inserts two new sections, sections 19A and 19B, to the Act.

Section 19A. Advances to municipal councils

This new section replaces current section 15 (Power of Director to make advances to municipal councils in certain cases).

New section 19A broadly replicates section 15 and has been relocated to sit alongside other provisions which regulate advances.

Section 19B. Advances to housing providers and housing support providers

This clause enables the Director of Housing to make an advance to a housing provider or housing support provider, repayable on the terms, and subject to the conditions that are agreed to between the Director and the provider, to enable the provider to:

- Sell dwelling-houses to people including eligible persons
- Lease dwelling-houses to people including eligible persons
- Provide residential accommodation to people including eligible persons
- Provide housing support services to people including eligible persons.

Clause 34

Section 20 amended (Application for advance)

This clause amends section 20 to:

- Replace the requirement for an application for an advance to contain prescribed particulars in favour of a requirement for an application to be in a form approved by the Director
- Ensure gender-neutral language.

Clause 35

Sections 22 and 23 substituted

This clause repeals current sections 22 and 23 of the Act, which relate to advances secured by mortgage, and inserts a new section 22 which provides for security for advances generally.

Section 22. Security for advances

New section 22 enables the Director of Housing to require a borrower to provide security in respect of an advance.

This may consist of a first or second mortgage.

The clause excludes the application of the Commonwealth *Personal Property Securities Act 2009* to the mortgage or other security executed under the provisions of the Act.

- Clause 36** **Section 24 amended (How advances are repayable)**
- This clause amends section 24 of the Act to:
- Insert references to the terms and conditions of an advance. This reflects the inclusion in new section 19B of an ability for the Director of Housing to make an advance subject to terms and conditions
 - Replace references to “loans” where they appear in the section with the term “advance”. This is to ensure consistency in the language used throughout the Act.
- Clause 37** **Section 25 amended (Provisions relating to advances)**
- This clause amends section 25 of the Act to replace references to “loans” where they appear in the section with the term “advance”. This is to ensure consistency in the language used throughout the Act.
- Clause 38** **Section 27 amended (Director may refuse to enter into contract, &c.)**
- This clause amends section 27 to reflect the inclusion of new sections 18F and 18G which enable the Director of Housing to make a grant or enter into an arrangement.
- The amendment is intended to make it clear that the Director of Housing may refuse to make a grant under section 18F or enter into an arrangement under section 18G.
- Clause 39** **Section 28 amended (Power of Treasurer to fix or annul rate of interest or table of instalments)**
- This clause amends section 28 of the Act to replace references to “loans” where they appear in the section with the term “advance”. This is to ensure consistency in the language used throughout the Act.
- Clause 40** **Section 28A amended (Power of Treasurer to authorize variable interest rates)**
- This clause amends section 28A of the Act to enable the Treasurer to authorise a person, other than the Director of Housing, to provide for the payment of interest in a mortgage under the Act.
- Clause 41** **Section 30 amended (Property to be kept in repair until payment in full)**
- This clause amends section 30 of the Act to:
- Update cross-references which appear in the section
 - Ensure gender-neutral language.

- Clause 42 **Section 31 amended (Disposal without consent)**
This clause amends section 31 of the Act to update cross-references which appear in the section.
- Clause 43 **Section 32 amended (Sale where borrower bankrupt)**
This clause amends section 32 of the Act to ensure gender-neutral language.
- Clause 44 **Section 33 amended (Application of section 35 to sale under sections 31 and 32)**
This clause amends section 33 of the Act to update cross-references which appear in the section.
- Clause 45 **Section 37 amended (In the event of no purchaser land to revert to the Crown)**
This clause amends section 37 of the Act to replace outdated terminology.
- Clause 46 **Section 37B amended (Purpose of provision of moveable dwelling units)**
This clause amends section 37B of the Act to ensure gender-neutral language.
- Clause 47 **Section 37D amended (Agreements with respect to moveable dwelling units)**
This clause amends section 37D of the Act to ensure gender-neutral language.
- Clause 48 **Section 38 repealed**
The clause repeals section 38 of the Act in favour of provisions of general application, contained in the *Acts Interpretation Act 1931*, regulating the service of notices.
- Clause 49 **Section 39 amended (Extension of time for repayment)**
This clause amends section 39 of the Act to ensure gender-neutral language.
- Clause 50 **Section 43 amended (Sale or leasing of land, &c., not immediately required)**
This clause amends section 43 of the Act to:
- Ensure gender-neutral language
 - Clarify when the Director of Housing may be satisfied that land is not immediately required for the purposes of the Act. This includes if the Director is satisfied that other land is likely to be more suited to the provision of accommodation to eligible persons.

- Clause 51** **Section 43B amended (Sale, &c., of plant not immediately required)**
- This clause amends section 43B of the Act to ensure gender-neutral language.
- Clause 52** **Section 43C amended (Work for other State instrumentalities)**
- This clause amends section 43C of the Act to:
- Update cross-references which appear in the section
 - Ensure gender-neutral language.
- Clause 53** **Section 47 amended (Regulations)**
- This clause amends section 47 of the Act to enable the Governor to make regulations under the Act that are of a savings or transitional nature consequent on the enactment of the *Homes Amendment Bill 2016*.
- Section 54** **Section 49 inserted**
- This clause inserts a new section 49 Validation of certain actions.
- Section 49. Validation of certain actions**
- This clause validates certain retrospective actions taken in good faith by the Director of Housing or person acting at the direction of the Director of Housing, prior to the amendments which are the subject of the *Homes Amendment Bill 2016*.
- This includes actions taken in good faith by the Director of Housing before the Bill's commencement that would, had they been taken in accordance with the amendments, have been valid and effectual.
- This provides certainty for past and present housing initiatives.
- The clause also clarifies certain matters with respect to applications for advances made immediately before the commencement day.

PART 3 – RESIDENTIAL TENANCY ACT 1997 AMENDED

- Clause 55** **Principal Act**
- This clause identifies the *Residential Tenancy Act 1997* as the Act to which the amendments set out in Part 3 are to apply.
- Clause 56** **Section 6 amended (Non-application of Act)**
- This clause amends section 6 of the *Residential Tenancy Act 1997* to exclude any lease to a social housing provider, by the Director of Housing, of residential premises, from the Act's scope.
- This includes leases of land from the Director of Housing to housing providers and housing support providers who are also social housing providers within the meaning of the *Residential*

Tenancy Act 1997 entered into under the amendments proposed to be made to the *Homes Act 1935*.

The intention is to make it clear that leases of this kind are not residential tenancy agreements within the meaning of the *Residential Tenancy Act 1997*.

Clause 57

Section 10 amended (Residential tenancy agreement)

This clause amends section 10 of the *Residential Tenancy Act 1997* to make it clear that a sub-lease between a housing provider or housing support provider that is also a social housing provider and another person (including an eligible person), in respect of premises that the social housing provider has leased from the Director of Housing under the amendments proposed to be made to the *Homes Act 1935*, gives rise to a residential tenancy agreement.

This ensures that tenants of social housing providers leasing premises from the Director of Housing are afforded the same protections that are available to tenants of other lessees.

Clause 58

Section 42 amended (Notice to vacate by owner)

This clause amends section 42 of the *Residential Tenancy Act 1997* to make it clear that an owner of residential premises may serve a notice to vacate on a tenant of the premises if the residential tenancy agreement relates to social housing provided by a housing provider or housing support provider who is a social housing provider within the meaning of the *Residential Tenancy Act 1997*, who leases the premises from the Director of Housing, if the lease from the Director to the provider has expired or terminated, or is to expire or be terminated.

Clause 59

Section 43 amended (Effect of notice to vacate)

This clause amends section 43 of the *Residential Tenancy Act 1997* to reflect the proposed amendments to section 42 of that Act.

Clause 60

Section 49 amended (Subletting)

Under section 49 of the *Residential Tenancy Act 1997* tenants who sub-let premises are entitled to the benefit of the residential tenancy agreement relating to the premises by virtue of the primary lease.

Section 49 requires a tenant who wishes to sub-lease premises – thereby invoking the benefit of the residential tenancy agreement for the tenants to whom the premises are to be sublet - to be in occupation of the premises.

Most housing providers or housing support providers who are lessees in respect of premises owned by the Director of Housing are not in occupation of the premises. This means that the benefit of the residential tenancy agreement in place between the owner

of the premises and the lessee does not have application to tenants of those premises.

The amendment addresses this issue by making it clear that residential premises may be sublet by a lessee who is not in occupation of the relevant premises. This will ensure that tenants of the relevant premises will have the benefit of the residential tenancy agreement in place between the owner and the lessee.

Clause 61

Repeal of Act

This clause provides for the automatic repeal of the *Homes Amendment Act 2016* within 365 days of that Act's commencement.