



**HOUSING AND CONSTRUCTION ACT (REPEAL)
ACT 1983**

No. 24 of 1983

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AN ACT to provide for the abolition of the Department of Housing and Construction, the abolition of the office of the Director-General of Housing and Construction, the repeal of the Housing and Construction Act 1977, and to provide for related matters.
[Royal Assent 19 July 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Housing and Construction Act* Short title. *(Repeal) Act 1983.*

Commence-
ment.

2—This Act shall commence on the day on which it receives the royal assent.

Interpretation.

3—In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“instrument” means a document, other than an Act, that creates, evidences, modifies, or extinguishes rights or obligations;

“legal proceedings” includes an arbitration;

“property” means any legal or equitable estate or interest, whether present or future and whether vested or contingent or real or personal property of any description, and includes things in action;

“the relevant day” means the day on which regulations made under section 21 (4) of the *Public Service Act 1973* to provide for the constitution of a new department or, as the case may be, of new departments, comprising or including the officers and employees who, immediately before that day, comprised the Department of Housing and Construction take effect.

Abolition of
Department of
Housing and
Construction,
&c.

4—(1) On the relevant day the following provisions have effect:—

- (a) the Department of Housing and Construction is abolished;
- (b) the Director-General of Housing and Construction shall cease to be a corporation sole and the corporation is dissolved;
- (c) the office of the Director-General of Housing and Construction is abolished;
- (d) all property held by the Director-General of Housing and Construction under the *Homes Act 1935* is transferred to and vests in the Director of Housing;
- (e) each Act specified in column 1 of Schedule 1 is amended in the manner specified opposite the reference to that Act in column 2 of that Schedule;
- (f) each of the provisions of the Acts specified in column 1 of Schedule 2 is amended by omitting “Director-General”, as indicated in column 2 of that Schedule, and substituting “Director”;
- (g) the *Housing and Construction Act 1977** is repealed.

* Act No. 29 of 1977.

(2) On and after the relevant day, except in so far as the context or subject-matter otherwise indicates or requires, where in an instrument that was in force immediately before that day there is a reference to the Director-General of Housing and Construction, and that instrument relates to the performance of a function, or the exercise of a power, by him under the *Homes Act 1935* or the *Substandard Housing Control Act 1973*, that instrument shall continue in force as if that reference were a reference to the Director of Housing.

5—Without limiting the effect of section 4, the following provisions have effect on and from the relevant day:—

Supplementary provisions with respect to legal proceedings, documents, &c.

- (a) except as provided in paragraph (e), legal proceedings instituted by or against the Director-General of Housing and Construction before and pending at the relevant day may be continued by or, as the case may be, against the Crown;
- (b) except as provided in paragraph (f), legal proceedings by or against the Director-General of Housing and Construction to enforce a right that had accrued before, and is in existence at, the relevant day may be commenced by or, as the case may be, against the Crown;
- (c) except as provided in paragraph (g), a judgment or order of a court obtained by or against the Director-General of Housing and Construction may be enforced by or, as the case may be, against the Crown;
- (d) except as provided in paragraph (h), a document addressed to and purporting to be served on the Director-General of Housing and Construction shall be deemed to be served on the Crown;
- (e) legal proceedings instituted by or against the Director-General of Housing and Construction which relate to the exercise by him of a power under the *Homes Act 1935* or the *Substandard Housing Control Act 1973* may be continued by or, as the case may be, against the Director of Housing;
- (f) legal proceedings by or against the Director-General of Housing and Construction to enforce a right which arises under the *Homes Act 1935* or the *Substandard Housing Control Act 1973* and had accrued before, and is in existence at, the relevant day may be commenced by or, as the case may be, against the Director of Housing;

- (g) a judgment or order of a court obtained by or against the Director-General of Housing and Construction which relates to the exercise by him of a power under the *Homes Act 1935* or the *Substandard Housing Control Act 1973*, or the enforcement of a right which arises under that Act, may be enforced by or, as the case may be, against the Director of Housing;
- (h) a document addressed to and purporting to be served on the Director-General of Housing and Construction which relates to a matter referred to in paragraph (e), (f), or (g) shall be deemed to be served on the Director of Housing.

Officers.

6—(1) The person holding office as Director, Housing Division of the Department of Housing and Construction under section 6A of the *Homes Act 1935* immediately before the relevant day shall, on that day, be deemed to have been appointed as Director of Housing, and shall hold that office on the same terms and conditions as he held the first-mentioned office for the remainder of the period specified in the instrument of his appointment under that section.

(2) The persons who were employed in the Department of Housing and Construction under the *Public Service Act 1973* immediately before the relevant day shall continue to be employed by the Crown subject to and in accordance with that Act and shall retain any rights that, immediately before the relevant day, have accrued to them or are accruing to them as officers or employees of the Public Service.

(3) The persons who were engaged by the Director-General of Housing and Construction for work for the purposes of the *Homes Act 1935* pursuant to section 6B (5) of that Act immediately before the relevant day shall, on that day, be deemed to have been engaged by the Director of Housing pursuant to that section as substituted by this Act, and shall retain any rights that, immediately before the relevant day, have accrued to them or are accruing to them as persons engaged pursuant to that section.

Power to
make
regulations.

7—Notwithstanding the provisions of section 4 of the *Housing and Construction Act 1977*, regulations may be made under section 21 (4) of the *Public Service Act 1973* to provide for the constitution of a new department or, as the case may be, of new departments, comprising or including the officers and employees who, immediately before the date that the regulations take effect, comprised the Department of Housing and Construction.

SCHEDULE 1

Section 4 (1) (e)

AMENDMENT OF SPECIFIED ACTS

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
No. 35 of 1979	<i>Fire Service Act 1979</i>	Section 82 (5)— Omit “ Director-General of Housing and Construction ” and substitute “ Director of Housing ”.
26 Geo. V No. 98	<i>Homes Act 1935</i>	Section 88 (3) (a)— Omit “ Director-General of Housing and Construction ” and substitute “ Director of Housing ”.
		Section 3 (1)— (a) Omit the definition of “ Department ” and substitute the following definition:— “ Department ” means the Housing Department;
		(b) Omit the definition of “ Director-General ” and substitute the following definition:— “ Director ” means the Director of Housing appointed pursuant to this Act;
		Section 6— Repeal the section.
		Section 6AA— Repeal the section.
		Section 6A— Repeal the section and substitute the following section:—
	Director of Housing.	6A—(1) The Governor may, subject to this Act, appoint a Director of Housing.
		(2) For the purposes of the <i>Public Service Act 1973</i> , the Director shall be deemed to be the permanent head of the Department and shall have the same powers and authority in relation to that department as if he were an officer under that Act.
		(3) For the purpose of acquiring, holding, disposing of, and otherwise dealing with, land under this Act, the Director shall be a corporation sole by the name of the Director of Housing, and by that name shall have perpetual succession and a seal of office.

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
	<p>Delegation.</p>	<p>(4) All courts, judges, and persons acting judicially shall take judicial notice of the official seal of the Director that has been affixed to a document and shall, unless the contrary is proved, presume that the seal was properly affixed.</p> <p>(5) Schedule 2 has effect with respect to the term of office and conditions of service of the Director.</p> <p>Section 6AB—</p> <p>Repeal the section and substitute the following section:—</p> <p>6AB—(1) The Director may, by instrument in writing, delegate to a person who is specified in the instrument the performance or exercise of such of his functions and powers under this Act or any other Act (other than this power of delegation) as are specified in the instrument, and may, by instrument in writing, revoke wholly or in part any such delegation.</p> <p>(2) A function or power, the performance or exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.</p> <p>(3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.</p> <p>(4) Notwithstanding any delegation under this section, the Director may continue to perform or exercise all or any of the functions or powers delegated.</p> <p>(5) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by or to the Director and shall be deemed to have been done by or to the Director.</p>

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
	Engagement of employees.	<p>(6) An instrument purporting to be signed by a delegate of the Director in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Director under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Director under this section.</p> <p>Section 6B— Repeal the section and substitute the following section:—</p> <p>6B—(1) The Director may, with the approval of the Minister, engage any person for the purposes of this Act for work, other than work of a clerical or administrative nature, and pay to him such remuneration as is prescribed in the industrial award that is applicable to his employment, such remuneration as the Minister may approve, and may dismiss any such person.</p> <p>(2) For the purposes of this section, “ industrial award ” means—</p> <p>(a) an order or award under the <i>Conciliation and Arbitration Act 1904</i> of the Commonwealth and an agreement under that Act having the force of an order or award; and</p> <p>(b) an award under the <i>Industrial Relations Act 1975</i>.</p> <p>Section 9AA— Repeal the section.</p> <p>The Second Schedule — Repeal the Schedule and substitute the following Schedule:—</p>

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
		SCHEDULE 2
		Section 6A (5)
		PROVISIONS WITH RESPECT TO TERM OF OFFICE AND CONDITIONS OF SERVICE OF DIRECTOR
	Appointment of Director.	1—The Director shall be appointed for a term, not exceeding 5 years, specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time for a term not exceeding 5 years, specified in the instrument of his re-appointment.
	Age of Director.	2—A person who is of or above the age of 65 years shall not be appointed as Director or continue in that office.
	Director to hold office on terms and conditions specified in instrument of appointment.	3—Subject to the provisions of this Schedule, the Director shall hold office on such terms and conditions as may be specified in the instrument of his appointment.
	Director not to engage in paid employment outside duties of his office.	4—The Director shall not, during his term of office, engage in any paid employment outside the duties of his office except with the approval of the Governor.
	<i>Public Service Act 1973</i> not to apply.	5—The provisions of the <i>Public Service Act 1973</i> do not apply to or in respect of the appointment by the Governor of the Director and the Director is not subject to the provisions of that Act during his term of office as Director.
	Remuneration of Director.	6—The Director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine in respect of him.
	Director deemed to be an employee for purposes of certain Acts.	7—The Director shall be deemed to be an employee for the purposes of the <i>Retirement Benefits Act 1982</i> and the <i>State Employees (Long-Service) Leave Act 1950</i> .

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
	Removal from office.	<p>8—(1) The Governor may remove the Director from office if he is satisfied that the Director—</p> <ul style="list-style-type: none"> (a) has become permanently incapable of carrying out the duties of his office; (b) has misconducted himself in the performance of the duties of his office; (c) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded or entered into an arrangement with his creditors; <p>OR</p> <ul style="list-style-type: none"> (d) has been convicted in this State of a crime or an offence that is punishable by imprisonment for a term of 12 months or more, or has been convicted of a crime or an offence which would, if committed in this State, be a crime or an offence so punishable. <p>(2) The Director shall not be removed from office otherwise than in accordance with subclause (1).</p>
	Director entitled to retain certain rights in certain circumstances.	<p>9—(1) If an officer of the Public Service is appointed to the office of Director under this Act, he is entitled to retain all his existing and accruing rights as if his service in that office were a continuation of his service as an officer of the Public Service.</p> <p>(2) Where a person referred to in subclause (1) ceases to hold the office of Director and becomes an officer of the Public Service, his service in that office shall be regarded as service in a permanent capacity in the Public Service for the purposes of determining his rights as an officer of the Public Service.</p>

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
		<p>(3) In this clause—</p> <p>“ officer of the Public Service ” means a person employed in any capacity in any branch of the Public Service, and includes a person who, having previously been an officer of the Public Service, was appointed to an office or position in respect of which his existing or accruing rights as an officer of the Public Service were retained as if his service in that office or position were service as an officer of the Public Service, but does not include a person temporarily employed;</p> <p>“ Public Service ” has the meaning assigned to that expression in the <i>Public Service Act 1973</i>.</p>
4 and 5 Geo. VI No. 82	<i>Homes (Old Age Pensioners) Act 1940</i>	<p>Section 1A—</p> <p>Omit the definition of “ Director-General ” and substitute the following definition:—</p> <p>“ Director ” means the Director of Housing.</p>
No. 55 of 1956	<i>Housing Agreement Act 1956</i>	<p>Section 2—</p> <p>Omit the definition of “ Director-General ” and substitute the following definition:—</p> <p>“ Director ” means the Director of Housing.</p>
No. 18 of 1961	<i>Housing Agreement Act 1961</i>	<p>Section 2—</p> <p>Omit the definition of “ Director-General ” and substitute the following definition:—</p> <p>“ Director ” means the Director of Housing.</p>
No. 27 of 1966	<i>Housing Agreement Act 1966</i>	<p>Section 2—</p> <p>Omit the definition of “ Director-General ” and substitute the following definition:—</p> <p>“ Director ” means the Director of Housing.</p>

COLUMN 1		COLUMN 2
Year and number of Act affected	Short title of Act affected	Amendment
No. 51 of 1973	<i>Housing Agreement Act</i> 1973	Section 2— Omit the definition of “Director-General” and substitute the following definition:— “Director” means the Director of Housing.
No. 17 of 1978	<i>Housing Agreement Act</i> 1978	Section 2— Omit the definition of “Director-General” and substitute the following definition:— “Director” means the Director of Housing.
No. 5 of 1982	<i>Housing Agreement Act</i> 1982	Section 3— Omit the definition of “Director-General” and substitute the following definition:— “Director” means the Director of Housing.
26 Geo. V No. 41	<i>State Advances Act</i> 1935	Section 5 (2) (b)— Omit the paragraph and substitute the following paragraph:— (b) the Director of Housing, appointed under the <i>Homes Act</i> 1935; and Section 5 (7)— (1) Omit “Director-General of Housing and Construction” and substitute “Director of Housing”. (2) Omit “Director-General” and substitute “Director of Housing”.
No. 99 of 1973	<i>Substandard Housing Control Act</i> 1973	Section 2 (1)— Omit the definition of “Director-General” and substitute the following definition:— “Director” means the Director of Housing. Section 19A (4)— Omit the subsection and substitute the following subsection:— (4) In this section, “prescribed persons” means any officers of the Department as the Director determines.

SCHEDULE 2

Section 4 (1) (f)

AMENDMENT OF REFERENCES IN SPECIFIED ACTS TO THE DIRECTOR-GENERAL

COLUMN 1		COLUMN 2	
Year and number of Act affected	Short title of Act affected	Provisions of Act amended by omitting " Director-General " and substituting " Director "	Number of times word omitted occurs in provision
26 Geo. V No. 98	<i>Homes Act</i> 1935	Section 3 (1)— definition of " capital cost "	1
		definition of " contract of sale "	1
		definition of " eligible person "	1
		definition of " purchaser "	1
		Section 3 (2)	1
		Section 4 (1)	1
		Section 5	2
		Section 7A (1)	1
		(2)	1
		Section 7B (1)	2
		(2)	1
		Section 7C	2
		Section 7D	2
		Section 11 (1)	1
		(2)	1
		Section 11A	1
		Section 12 (1)	1
		(2)	1
		(3)	1
		Section 12A (1)	1
		(2)	2
		(3)	1
		Section 13 (2)	1
		Section 14	1
		Section 14A (1)	1
		(2)	1
		(3)	1
		Section 14B	2
		Section 15 (1)	2
		(2)	1
		(3)	1
		Section 15A (1)	2
		(2)	1
		Section 16 (1)	1
		(2)	1
		Section 17 (1)	1
		(1A)	1
		(1B)	1
		(2)	1

COLUMN 1		COLUMN 2	
Year and number of Act affected	Short title of Act affected	Provisions of Act amended by omitting " Director-General " and substituting " Director "	Number of times word omitted occurs in provision
		(4)	1
		(5)	3
		(6)	4
		(6A)	2
		(6C)	1
		(6D)	4
		Section 17A (1)	1
		(2)	1
		(4)	3
		Section 17B (1)	1
		(3)	1
		Section 18 (1)	3
		(2)	2
		Section 18A (1)	1
		(2)	1
		(3)	1
		Section 18B (1)	2
		Section 27 (b)	1
		Section 27A (1)	1
		(2)	1
		Section 32	2
		Section 35 (2) (b)	2
		(3)	1
		Section 37B (1)	1
		Section 37C	1
		Section 37D (1)	1
		(2) (i)	1
		(3)	1
		(6)	1
		(7)	1
		Section 37E (1)	1
		(2)	1
		Section 39 (1)	2
		Section 40 (1)	1
		Section 41 (1)	2
		(2)	1
		Section 43 (1)	1
		(2)	1
		Section 43A	2
		Section 43B	2
		Section 43C (1)	1
		(2)	2
		Section 44	2

COLUMN 1		COLUMN 2	
Year and number of Act affected	Short title of Act affected	Provisions of Act amended by omitting " Director-General " and substituting " Director "	Number of times word omitted occurs in provision
4 and 5 Geo. VI No. 82	<i>Homes (Old Age Pensioners) Act</i> 1940	Section 2 (1)	1
		(3)	1
		(4)	1
		(5)	1
		Section 3	2
No. 55 of 1956	<i>Housing Agreement Act</i> 1956	Section 4 (2)	2
		(3)	1
		(4) (b)	1
		Section 5	1
No. 18 of 1961	<i>Housing Agreement Act</i> 1961	Section 4 (2)	2
		(3)	1
		(4) (b)	1
		Section 5	1
No. 27 of 1966	<i>Housing Agreement Act</i> 1966	Section 4 (2)	2
		(3)	1
		(4) (b)	1
		Section 5	1
No. 51 of 1973	<i>Housing Agreement Act</i> 1973	Section 4 (2) (b)	1
		Section 5	1
No. 17 of 1978	<i>Housing Agreement Act</i> 1978	Section 4 (2) (b)	1
		Section 5	1
No. 5 of 1982	<i>Housing Agreement Act</i> 1982	Section 5 (2) (b)	1
		Section 6	1
No. 99 of 1973	<i>Substandard Housing Control Act</i> 1973	Section 4 (1)	2
		(2)	1
		(3)	1
		(4)	1
		(5)	2
		(6)	3
		(7)	1
		Section 6 (1)	1
		(2)	1
		Section 7 (1)	1
		(2)	1
		Section 8 (1)	7
		(4)	2

COLUMN 1		COLUMN 2	
Year and number of Act affected	Short title of Act affected	Provisions of Act amended by omitting " Director-General " and substituting " Director "	Number of times word omitted occurs in provision
		Section 8B (1)	1
		(2)	1
		(3)	1
		(5)	2
		Section 9 (1)	1
		(4)	1
		(7)	1
		Section 10 (1)	1
		Section 14 (1)	1
		Section 18 (4)	1
		Section 18A (1)	1
		Section 19A (1)	1
		(2)	2
		(3)	2
		Section 23 (4)	1
		Section 25 (1)	1
		Section 26	1

