



Defence Housing Authority Amendment Act 2006

No. 45, 2006

**An Act to amend the *Defence Housing Authority Act
1987*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the *Defence Housing Authority Act 1987*, and for related purposes

[Assented to 22 May 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Housing Authority Amendment Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 May 2006
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	22 November 2006
3. Schedule 2, item 1	At the same time as the provision(s) covered by table item 2.	22 November 2006
4. Schedule 2, item 2	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of Schedule 1 to the <i>Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 March 2007 (paragraph (b) applies)
5. Schedules 3 and 4	At the same time as the provision(s) covered by table item 2.	22 November 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Defence Housing Authority Act 1987

1 Title

Omit “a Defence Housing Authority”, substitute “Defence Housing Australia”.

2 Section 1

Omit “*Defence Housing Authority*”, substitute “*Defence Housing Australia*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

3 Subsection 3(1) (definition of *appointed member*)

Omit “paragraph 12(1)(ca) or (e)”, substitute “paragraph 12(1)(b), (c), (d) or (f)”.

4 Subsection 3(1) (definition of *Authority*)

Repeal the definition.

5 Subsection 3(1)

Insert:

Board means the Board of Directors of DHA established by section 11A.

6 Subsection 3(1) (definition of *Chairperson*)

Omit “Authority”, substitute “Board”.

7 Subsection 3(1)

Insert:

DHA means Defence Housing Australia.

8 Subsection 3(1)

Insert:

DHA Advisory Committee means the Defence Housing Australia Advisory Committee established by section 27.

9 Subsection 3(1) (definition of *Managing Director*)

Omit “the Authority”, substitute “DHA”.

10 Subsection 3(1) (definition of *member*)

Omit “Authority”, substitute “Board”.

11 Subsection 3(2)

Omit “the Authority”, substitute “DHA”.

12 Part II (heading)

Repeal the heading, substitute:

**Part II—Establishment, functions and powers of
DHA**

13 Section 4

Repeal the section, substitute:

4 Defence Housing Australia

The body known immediately before the commencement of this section as the Defence Housing Authority is continued in existence with the new name, Defence Housing Australia.

14 Subsection 5(1)

Before “function”, insert “main”.

Note: The heading to section 5 is altered by omitting “**Function**” and substituting “**Main function**”.

15 Subsection 5(1)

Omit “the Authority”, substitute “DHA”.

16 Subsection 5(1)

After “housing for”, insert “, and housing-related services to”.

17 At the end of paragraph 5(1)(a)

Add “and”.

18 Paragraph 5(1)(c)

Repeal the paragraph, substitute:

- (c) persons contracted to provide goods or services to the Defence Force, and their families; and
- (d) persons contracted to provide goods or services to the Department, and their families;

19 Subsection 5(2)

Omit “The Authority”, substitute “DHA”.

20 Subsection 5(2)

After “housing”, insert “and housing-related services”.

21 Subsection 5(2)

Omit “the Authority” (wherever occurring), substitute “DHA”.

22 Section 6

Repeal the section, substitute:

6 Additional functions

- (1) The first additional function of DHA is to provide adequate and suitable housing for, and housing-related services to:
 - (a) officers and employees of an Agency (within the meaning of the *Financial Management and Accountability Act 1997*) other than the Department, and their families; and
 - (b) persons contracted to provide goods or services to an Agency (within the meaning of the *Financial Management and Accountability Act 1997*) other than the Department, and their families;in order to meet the requirements of that Agency.
- (2) The second additional function of DHA is to provide services ancillary to the services mentioned in subsection (1) and in subsection 5(1), to persons mentioned in those subsections, in order to meet the requirements of an Agency (within the meaning of the *Financial Management and Accountability Act 1997*).

- (3) DHA may perform a function mentioned in subsection (1) or (2) only to the extent mentioned in a determination under subsection (4).
- (4) The Minister may determine, in writing, the extent to which DHA may perform the function in relation to any of the following:
 - (a) the persons to whom services can be provided;
 - (b) the kinds of services that can be provided;
 - (c) any other matter.
- (5) A determination made under subsection (4) is a legislative instrument, but section 42 and Part 6 of the *Legislative Instruments Act 2003* do not apply to the determination.
- (6) DHA's gross revenue from the performance of all of the following functions for a financial year must not exceed the amount mentioned in subsection (7):
 - (a) the function mentioned in subsection (1);
 - (b) the function mentioned in subsection (2), to the extent that it relates to the function mentioned in subsection (1).
- (7) The amount is DHA's total gross revenue for the financial year multiplied by:
 - (a) if a percentage under 25% is prescribed by the regulations for the purposes of this subsection—that percentage; or
 - (b) otherwise—25%.
- (8) For the purposes of subsections (6) and (7), DHA's gross revenue and total gross revenue for the financial year are to be determined from its audited annual accounts.

23 Subsection 7(1)

Omit "The Authority", substitute "DHA".

24 Paragraph 7(1)(n)

Omit "the Authority", substitute "DHA".

25 Subsection 7(2)

Omit "The Authority" , substitute "DHA".

26 At the end of subsection 7(2)

Add “, or a greater amount specified in a determination under subsection (3)”.

27 At the end of section 7

Add:

- (3) The Minister may determine, in writing, an amount for the purposes of subsection (2).
- (4) A determination made under subsection (3) is not a legislative instrument.

28 Section 8

Repeal the section.

29 Section 9

Repeal the section.

30 Section 10

Repeal the section.

31 Part III (heading)

Repeal the heading.

32 Subsection 11(1)

Repeal the subsection, substitute:

- (1) DHA:
 - (a) is a body corporate; and
 - (b) is to have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to DHA. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of executive officers.

Note: The heading to section 11 is altered by omitting “**Authority**” and substituting “**DHA**”.

33 Subsection 11(2)

Omit “common”.

34 Subsection 11(2)

Omit “the Authority” (first occurring), substitute “DHA”.

35 Subsection 11(2)

Omit “Authority” (second and third occurring), substitute “Board”.

36 Subsection 11(3)

Omit “common seal of the Authority”, substitute “seal of DHA”.

37 After section 11

Insert:

Part III—The Board

11A Establishment of the Board

A Board of Directors of DHA is established by this section.

11B Functions of the Board

- (1) The functions of the Board are to ensure the proper and efficient performance of the functions of DHA and, subject to the provisions mentioned in subsection (2), to determine the policy of DHA with respect to any matter.
- (2) The provisions are as follows:
 - (a) subsection 5(2);
 - (b) section 31;
 - (c) section 60;
 - (d) section 63A;
 - (e) section 66A.

38 Section 12(1)

Omit “Authority”, substitute “Board”.

Note: The heading to section 12 is replaced by the heading “**Membership of the Board**”.

39 Paragraphs 12(1)(b) to (e)

Repeal the paragraphs, substitute:

- (b) a current or former APS employee or Agency Head (within the meaning of the *Public Service Act 1999*), with a background in Defence, nominated by the Secretary of the Department;
- (c) a current or former member of the Defence Force nominated by the Chief of the Defence Force;
- (d) a person nominated by the Secretary of the Department administering the *Financial Management and Accountability Act 1997*;
- (e) the Managing Director;
- (f) 4 commercial members.

40 Subsection 12(1A)

Repeal the subsection.

41 Subsection 12(2)

Omit “function”, substitute “functions”.

42 Subsection 12(2)

Omit “the Authority” (first occurring), substitute “DHA”.

43 Subsection 12(2)

Omit “Authority” (second occurring), substitute “Board”.

44 Subsection 14(1)

Repeal the subsection, substitute:

- (1) The Chairperson and the other appointed members, other than the appointed member referred to in paragraph 12(1)(d), are to be appointed by the Minister by written instrument.
- (1A) The appointed member referred to in paragraph 12(1)(d) is to be appointed by the Finance Minister by written instrument.

45 Subsection 14(2)

Omit “ paragraph 12(1)(e)”, substitute “paragraph 12(1)(f)”.

46 Subsection 14(2)

Omit “Governor-General”, substitute “Minister”.

47 Section 19

Before “An appointed member may”, insert “(1)”.

48 Section 19

Omit “Governor-General”, substitute “Minister”.

49 At the end of section 19

Add:

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

50 Subsection 20(4)

Omit “the Authority”, substitute “DHA”.

51 Subsection 21(1)

Omit “Governor-General”, substitute “Minister”.

52 Paragraph 21(2)(aa)

Repeal the paragraph.

53 Subsection 21(2)

Omit “Authority” (wherever occurring), substitute “Board”.

54 Subsection 21(2)

Omit “Governor-General”, substitute “Minister”.

55 Subsection 23(1)

Omit “paragraph 12(1)(e)”, substitute “paragraph 12(1)(f)”.

56 Subsection 23(2)

Omit “paragraph 12(1)(ca) or (e)”, substitute “paragraph 12(1)(b), (c) or (f)”.

57 Paragraph 23(2)(b)

Omit “Authority”, substitute “Board”.

58 After subsection 23(2)

Insert:

(2A) The Finance Minister may appoint a person nominated by the Secretary of the Department administering the *Financial Management and Accountability Act 1997* to act as the appointed member referred to in paragraph 12(1)(d) during a vacancy in the office of such a member (whether or not an appointment has previously been made to the office).

59 Subsection 23(3)

Omit “or (2)”, substitute “(2), or (2A)”.

60 Subsection 23(4)

Omit “or (2)”, substitute “(2), or (2A)”.

61 Paragraph 23(5)(a)

After “paragraph (2)(b)”, insert “or subsection (2A)”.

62 Subsection 24(1)

Omit “Authority”, substitute “Board”.

63 Subsection 24(1)

Omit “function”, substitute “functions”.

64 Subsections 24(2), (3), (4), (5), (6) and (7)

Omit “Authority” (wherever occurring), substitute “Board”.

65 Paragraph 24(7)(a)

Omit “6”, substitute “5”.

66 Subsections 24(8) and (9)

Omit “Authority” (wherever occurring), substitute “Board”.

67 Subsection 25(1)

Omit “Authority” (wherever occurring), substitute “Board”.

68 Subsection 26(1)

Omit “Authority”, substitute “Board”.

69 Subsection 26(1)

Omit “function”, substitute “functions”.

70 Subsections 26(2), (3) and (4)

Omit “Authority” (wherever occurring), substitute “Board”.

71 Paragraph 26(6)(c)

Omit “the Authority”, substitute “DHA”.

72 After Part III

Insert:

Part IIIA—DHA Advisory Committee

27 DHA Advisory Committee

- (1) The Defence Housing Australia Advisory Committee is established by this section.
- (2) The Defence Housing Australia Advisory Committee consists of the following:
 - (a) the Chair of the Advisory Committee, who is to be the member mentioned in paragraph 12(1)(b) or the member mentioned in paragraph 12(1)(c), as nominated by DHA;
 - (b) either:
 - (i) unless subparagraph (ii) applies—the National Convenor of Defence Families Australia; or
 - (ii) if the regulations specify a similar office—the person occupying that office;
 - (c) a person appointed by the Chief of Navy;
 - (d) a person appointed by the Chief of Army;
 - (e) a person appointed by the Chief of Air Force;
 - (f) a person appointed by DHA.
- (3) The persons mentioned in paragraphs (2)(c), (d), (e) and (f) are to be appointed in writing. They hold office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: The persons are eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (4) The persons mentioned in subsection (2) hold office on a part-time basis.

28 Function of the DHA Advisory Committee

The DHA Advisory Committee's function is, either on its own initiative or at the request of DHA, to give advice and information to DHA about the performance of DHA's functions.

29 Remuneration

- (1) The person mentioned in paragraph 27(2)(b) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the person is to be paid the remuneration that is prescribed.
- (2) The person is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

73 Part IV (heading)

Repeal the heading, substitute:

Part IV—Operation of DHA

74 Section 28

Repeal the section.

75 Section 30

Repeal the section.

76 Subsections 31(1) and (2)

Omit "the Authority" (wherever occurring), substitute "DHA".

Note: The heading to section 31 is altered by omitting "Authority" and substituting "DHA".

77 Subsection 31(2)

Omit "function", substitute "functions".

78 Subsection 31(3)

Omit “The Authority”, substitute “DHA”.

79 Subsection 31(4)

Omit “the Authority” (wherever occurring), substitute “DHA”.

80 Section 32

Omit “the Authority” (wherever occurring), substitute “DHA”.

81 Section 33

Repeal the section.

82 Section 34

Repeal the section.

83 Section 35

Repeal the section.

84 Section 36

Omit “the Authority”, substitute “DHA”.

85 Subsection 37(1)

Omit “The Authority”, substitute “DHA”.

86 Section 37

Omit “the Authority” (wherever occurring), substitute “DHA”.

87 Section 38

Omit “the Authority” (wherever occurring), substitute “DHA”.

Note: The heading to section 38 is altered by omitting “**Authority**” and substituting “**DHA**”.

88 Section 39

Omit “The Authority”, substitute “DHA”.

Note: The heading to section 39 is altered by omitting “**Authority**” and substituting “**DHA**”.

89 Section 40

Omit “The Authority”, substitute “DHA”.

90 Paragraph 41(1)(a)

Omit “the Authority”, substitute “DHA”.

91 Subsection 41(9)

Omit “the Authority” (wherever occurring), substitute “DHA”.

92 Section 45

Omit “the Authority”, substitute “DHA”.

93 Subsection 46(1)

Omit “the Authority”, substitute “DHA”.

94 Subsection 46(2)

Omit “Authority”, substitute “Board”.

95 Subsection 46(3)

Omit “the Authority” (wherever occurring), substitute “DHA”.

96 Subsection 47(1)

Omit “Authority”, substitute “Board”.

97 Paragraph 48(1)(b)

Omit “Authority’s”, substitute “Board’s”.

98 Section 49

Omit “Authority”, substitute “Board”.

99 Subsection 51(2)

Omit “Authority”, substitute “Board”.

100 Section 53

Repeal the section.

101 Subsections 54(1) and (5)

Omit “Authority”, substitute “Board”.

102 Section 55

Repeal the section.

103 Section 56

Omit “Authority”, substitute “Board”.

104 Subsection 57(1)

Omit “the Authority” (wherever occurring), substitute “DHA”.

105 Subsection 58(1)

Omit “The Authority”, substitute “DHA”.

106 Subsections 58(1) and (2)

Omit “the Authority” (wherever occurring), substitute “DHA”.

107 Subsection 59(1)

Omit “the Authority” (first occurring), substitute “DHA”.

108 Subsection 59(1)

Omit “Authority” (second occurring), substitute “Board”.

109 Subsection 59(1)

Omit “and to section 6”.

110 Subsection 59(2)

Omit “The Authority shall, as soon as practicable after the commencement of this Act”, substitute “The Board must”.

111 Subsection 59(3)

Omit “Authority” (wherever occurring), substitute “Board”.

112 Section 60

Omit “the Authority” (wherever occurring), substitute “DHA”.

Note: The heading to section 60 is altered by omitting “**Authority**” and substituting “**DHA**”.

113 Section 61

Omit “the Authority”, substitute “DHA”.

114 Section 62

Omit “the Authority”, substitute “DHA”.

Note: The heading to section 62 is altered by omitting “**Authority**” and substituting “**DHA**”.

115 After section 62

Insert:

62A Liability to Commonwealth taxation

- (1) DHA is subject to taxation under the laws of the Commonwealth.
- (2) DHA is not a public authority for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*.

116 Subsection 63(1)

Omit “the Authority”, substitute “DHA”.

Note: The heading to section 63 is replaced by the heading “**Exemption from State and Territory taxation**”.

117 Subsection 63(1)

Omit “the Commonwealth or of”.

118 Subsection 63(2)

Omit “the Authority” (wherever occurring), substitute “DHA”.

119 Subsection 63(2)

Omit “the Commonwealth or of”.

120 Paragraphs 63(4)(a) and (b)

Omit “the Commonwealth or of” (wherever occurring).

121 Subsection 63(5)

Omit “the Authority” (wherever occurring), substitute “DHA”.

122 After section 63

Insert:

63A DHA must make tax-equivalent payments to the Commonwealth

- (1) The Minister may inform DHA in writing of arrangements that are to apply to DHA in relation to a tax-equivalent payment to be made by DHA to the Commonwealth in respect of each financial year.

- (2) To avoid doubt, an instrument under subsection (1) may relate to more than 1 financial year.
- (3) The amount of the payment to be made under the arrangements is to be worked out having regard to the purpose of ensuring that DHA does not enjoy net competitive advantages over its competitors because of:
 - (a) the operation of section 63 (exemption from State and Territory taxation); or
 - (b) any other exemption from taxation liability applying to DHA.
- (4) DHA must pay the amount to the Commonwealth within 4 months after the end of the financial year concerned, unless the Minister determines a period other than 4 months within which the amount, or a specified part of the amount, must be paid.

123 Subsection 64(1)

Omit “The Authority”, substitute “DHA”.

Note: The heading to section 64 is altered by omitting “**Authority**” and substituting “**DHA**”.

124 Subsection 64(1)

Omit “common”.

125 Paragraphs 64(1)(a) and (b)

Omit “Authority”, substitute “Board”.

126 Paragraph 64(1)(c)

Omit “the Authority”, substitute “DHA”.

127 Subsection 64(2)

Omit “the Authority”, substitute “DHA”.

128 Subsection 64(3)

Omit “Authority”, substitute “Board”.

129 Subsection 64(4)

Omit “the Authority”, substitute “DHA”.

130 Subsection 65(1)

Omit “the Authority”, substitute “DHA”.

131 Subsection 66A(1)

Omit “8,”.

Schedule 2—Amendments of other Acts

Defence Force (Home Loans Assistance) Act 1990

1 Paragraph 37(c)

Omit “Authority”, substitute “Australia”.

Occupational Health and Safety (Commonwealth Employment) Act 1991

2 Schedule 1 (table)

Omit “Authority”, substitute “Australia”.

Schedule 3—Saving and application

1 No effect on existing appointment of Managing Director

The amendment made by Schedule 1 to subsection 47(1) of the *Defence Housing Authority Act 1987* does not affect the validity of an appointment under that subsection that is in force immediately before the commencement of this item.

2 Application of section 62A in respect of certain taxes

- (1) This item applies in relation to a tax that is payable by reference to a period.
- (2) In respect of such a tax, section 62A of the *Defence Housing Australia Act 1987* applies in relation to such periods starting on or after the commencement of this item.

Schedule 4—Minor technical amendments

Defence Housing Authority Act 1987

1 Subsection 20(4)

Omit “(4)”.

2 Subsection 48(1)

Omit “(1)”.

*[Minister’s second reading speech made in—
House of Representatives on 30 March 2006
Senate on 11 May 2006]*

(42/06)
