



New South Wales

# Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and *State Environmental Planning Policy (Housing) 2021* to ensure that affordable housing is retained in perpetuity for very low, low and moderate income households.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      Amendment of Environmental Planning and Assessment Act 1979 No 203

**Schedule 1[1]** omits the definition of *affordable housing* from section 1.4.

**Schedule 1[2]** inserts proposed Division 4.12 into the *Environmental Planning and Assessment Act 1979 (the Act)*. Proposed Division 4.12, section 4.71 introduces a new definition of *affordable housing* that requires affordable housing to be held in perpetuity for the benefit of very low, low and moderate income households, and ensures that affordable housing can only be leased to these households at no more than 30% of the household's gross income. The proposed section inserts other definitions into the Act related to affordable housing that are currently contained in *State Environmental Planning Policy (Housing) 2021*. The proposed division also inserts sections 4.72

and 4.73. Proposed section 4.72 requires a consent authority to be satisfied that, from the date of the issue of the occupation certificate and continuing in perpetuity, the affordable housing component of a development will be used for affordable housing and managed by a registered community housing provider. Proposed section 4.73 requires the Minister administering the Act to keep a register of affordable housing, and requires consent authorities to provide certain information to the Minister within 14 days after the date on which the occupation certificate is issued for development that includes affordable housing.

## **Schedule 2      Amendment of Environmental Planning and Assessment Regulation 2021**

**Schedule 2[1]–[6]** amend sections 82 and 84 of the *Environmental Planning and Assessment Regulation 2021* to ensure that, for development for the purposes of affordable housing carried out under *State Environmental Planning Policy (Housing) 2021*, Chapter 2, Part 2, Divisions 1 and 5, it is a condition of the development consent that the affordable housing component of the development is used for affordable housing and managed by a registered community housing provider in perpetuity.

## **Schedule 3      Amendment of State Environmental Planning Policy (Housing) 2021**

**Schedule 3[1]** makes an amendment consequent on the amendments made to the Act by the proposed Act.

**Schedule 3[2]** amends *State Environmental Planning Policy (Housing) 2021*, section 21 to provide that a consent authority must not grant consent for development for the purposes of affordable housing carried out under the policy, Chapter 2, Part 2, Division 1, unless the consent authority is satisfied the affordable housing component of the residential development will be used for affordable housing and managed by a registered community housing provider from the date of the issue of the occupation certificate and continuing in perpetuity.

**Schedule 3[3]** amends *State Environmental Planning Policy (Housing) 2021*, section 40 to provide that a consent authority must not grant consent for development for the purposes of affordable housing carried out under the policy, Chapter 2, Part 2, Division 5, unless the consent authority is satisfied the affordable housing component of the residential development will be used for affordable housing and managed by a registered community housing provider from the date of the issue of the occupation certificate and continuing in perpetuity.



New South Wales

# Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*



New South Wales

## **Environmental Planning and Assessment Amendment (Affordable Housing) Bill 2024**

No. \_\_\_\_\_, 2024

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### **A Bill for**

An Act to amend the *Environmental Planning and Assessment Act 1979* to amend the definition of affordable housing to ensure the benefit of affordable housing is retained in perpetuity; to make other amendments about affordable housing; and for related purposes.

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*The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.*

*Legislative Council*

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*Clerk of the Parliaments*

**Tabling copy**

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Environmental Planning and Assessment Amendment (Affordable Housing) Act 2024*.

3

4

**2 Commencement**

5

This Act commences on the date of assent to this Act.

6

<b>Schedule 1</b>	<b>Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	1
		2
<b>[1] Section 1.4 Definitions</b>		3
	Omit the definition of <i>affordable housing</i> from section 1.4(1). Insert instead—	4
	<i>affordable housing</i> —see section 4.71.	5
<b>[2] Section 1.4(1)</b>		6
	Insert in alphabetical order —	7
	<i>Greater Sydney</i> —see section 4.71.	8
	<i>low income household</i> —see section 4.71.	9
	<i>moderate income household</i> —see section 4.71.	10
	<i>National Rental Affordability Scheme</i> —see section 4.71.	11
	<i>registered community housing provider</i> —see section 4.71.	12
	<i>Rest of NSW</i> —see section 4.71.	13
	<i>very low income household</i> —see section 4.71.	14
<b>[3] Part 4, Division 4.12</b>		15
	Insert after Division 4.11—	16
	<b>Division 4.12 Affordable housing</b>	17
<b>4.71 Definitions</b>		18
	In this division—	19
	<i>affordable housing</i> means housing—	20
	(a) for very low income households, low income households or moderate income households, and	21
	(b) held in perpetuity for the benefit of very low income households, low income households or moderate income households, and	23
	(c) leased to very low income households, low income households or moderate income households at no more than 30% of the household’s gross income.	25
	<i>Greater Sydney</i> means the area that the Australian Bureau of Statistics determines from time to time to be the Greater Sydney—Greater Capital City Statistical Area.	28
	<i>low income household</i> means—	31
	(a) a household that—	32
	(i) has a gross income that is between 50% and 80% of the median household income for Greater Sydney or the Rest of NSW, and	33
	(ii) pays no more than 30% of the gross income in rent, or	34
	(b) a household that—	35
	(i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and	36
	(ii) pays no greater amount of rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.	37
	<i>moderate income household</i> means—	38
		39
		40
		41
		42

(a) a household that—	1
(i) has a gross income that is between 80% and 120% of the median household income for Greater Sydney or the Rest of NSW, and	2
(ii) pays no more than 30% of the gross income in rent, or	3
(b) a household that—	4
(i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and	5
(ii) pays no greater amount of rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.	6
<i>National Rental Affordability Scheme</i> has the same meaning as in the <i>National Rental Affordability Scheme Act 2008</i> of the Commonwealth.	7
<i>registered community housing provider</i> has the same meaning as in the <i>Community Housing Providers (Adoption of National Law) Act 2012</i> .	8
<i>Rest of NSW</i> means the area that the Australian Bureau of Statistics determines from time to time to be the Rest of NSW—Greater Capital City Statistical Area.	9
<i>very low income household</i> means—	10
(a) a household that—	11
(i) has a gross income that is less than 50% of the median household income for Greater Sydney or the Rest of NSW, and	12
(ii) pays no more than 30% of the gross income in rent, or	13
(b) a household that—	14
(i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and	15
(ii) pays no greater amount of rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.	16
<b>4.72 Must be used for affordable housing in perpetuity</b>	17
Development consent must not be granted to development that includes affordable housing unless the consent authority is satisfied that, from the date of the issue of the occupation certificate and continuing in perpetuity, the affordable housing component of the development—	18
(a) will be used for affordable housing, and	19
(b) will be managed by a registered community housing provider.	20
<b>4.73 Register of development consents for affordable housing</b>	21
(1) The Minister must keep a register of development for the purposes of affordable housing.	22
(2) If a consent authority grants development consent to development for the purposes of affordable housing, the consent authority must provide the following information to the Minister within 14 days after the date on which the occupation certificate is issued for the development—	23
(a) the address of the building,	24
(b) the number of dwellings in the building that will be used for affordable housing,	25
(c) the following details in relation to each dwelling that will be used for affordable housing—	26

- (i) the number of bedrooms in the dwelling, 1
- (ii) whether the dwelling is accessible to people with a disability, 2
- (d) the name and contact details of the registered community housing provider that will manage the dwellings used for affordable housing. 3  
4



<b>Schedule 2</b>	<b>Amendment of Environmental Planning and Assessment Regulation 2021</b>	1
		2
<b>[1] Section 80 Definitions</b>		3
	Omit the definitions of <i>Aboriginal Housing Office</i> and <i>Land and Housing Corporation</i> .	4
<b>[2] Section 82 In-fill affordable housing</b>		5
	Omit section 82(1). Insert instead—	6
	(1) This section applies to development permitted under <i>State Environmental Planning Policy (Housing) 2021</i> , Chapter 2, Part 2, Division 1.	7
		8
<b>[3] Section 82(3)</b>		9
	Omit the subsection. Insert instead—	10
	(3) It is a condition of the development consent that, from the day on which an occupation certificate is issued for the development—	11
		12
	(a) the affordable housing component must be used for affordable housing, and	13
		14
	(b) the affordable housing component must be managed by a registered community housing provider, and	15
		16
	(c) notice of a change in the registered community housing provider who manages the affordable housing dwellings must be given to the following no later than 3 months after the change—	17
		18
	(i) the Registrar of Community Housing,	19
		20
	(ii) the consent authority,	21
		22
	(iii) the Minister.	22
<b>[4] Section 82(4)</b>		23
	Omit the definitions of <i>affordable housing component</i> and <i>relevant period</i> .	24
	Insert instead—	25
	<i>affordable housing component</i> has the same meaning as in <i>State Environmental Planning Policy (Housing) 2021</i> , section 15B.	26
		27
<b>[5] Section 84 Residential flat buildings—social housing providers, public authorities and joint ventures</b>		28
		29
	Omit section 84(1). Insert instead—	30
	(1) This section applies to development permitted under <i>State Environmental Planning Policy (Housing) 2021</i> , Chapter 2, Part 2, Division 5.	31
		32
<b>[6] Section 84(3)</b>		33
	Omit the subsection. Insert instead—	34
	(3) It is a condition of the development consent that from the day on which an occupation certificate is issued for the development—	35
		36
	(a) 50% of the dwellings to which the development consent relates must be used for affordable housing (the <i>affordable housing dwellings</i> ), and	37
		38
	(b) the affordable housing dwellings must be managed by a registered community housing provider, and	39
		40

(c)	notice of a change in the registered community housing provider who manages the affordable housing dwellings must be given to the following no later than 3 months after the change—	1
		2
		3
	(i) the Registrar of Community Housing,	4
	(ii) the consent authority,	5
	(iii) the Minister.	6
<b>[7]</b>	<b>Section 84(4)</b>	7
	Omit the subsection.	8

<b>Schedule 3</b>	<b>Amendment of State Environmental Planning Policy (Housing) 2021</b>	1
		2
<b>[1] Section 13 Affordable housing—the Act, s 1.4(1)</b>		3
Omit the section.		4
<b>[2] Section 21</b>		5
Omit the section. Insert instead—		6
<b>21 Must be used for affordable housing in perpetuity</b>		7
Development consent must not be granted under this division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—		8
		9
		10
(a) the affordable housing component of the residential development will be used for affordable housing, and		11
		12
(b) the affordable housing component will be managed by a registered community housing provider.		13
		14
<b>[3] Section 40</b>		15
Omit the section. Insert instead—		16
<b>40 Must be used for affordable housing in perpetuity</b>		17
Development consent must not be granted under this division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—		18
		19
		20
(a) at least 50% of the dwellings to which the development relates will be used for affordable housing, and		21
		22
(b) the dwellings used for affordable housing will be managed by a registered community housing provider.		23
		24