

## **Housing Act 1980**

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### **THE TEXT OF THE LEGISLATION FOLLOWS**



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Western Australia

## **Housing Act 1980**

**An Act relating to housing, to make better provision for housing and improving housing standards and conditions in the State, to encourage the use, development and redevelopment of land for housing and related purposes, to enable the carrying out of agreements and arrangements with respect to housing, to preserve and continue The State Housing Commission and for other purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Housing Act 1980*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Repeal**

The *State Housing Act 1946* is hereby repealed.

### **4. Objects**

The objects of this Act are —

- (a) the improvement of existing housing conditions;
- (b) the provision of housing and land for housing;
- (c) the provision of assistance to enable persons to obtain accommodation or improve the standard of their accommodation;
- (d) the encouragement of the development and redevelopment of land for housing and related purposes;
- (e) the carrying into effect of agreements and arrangements entered into with the Commonwealth with respect to housing.

### **5. Interpretation**

(1) In this Act unless the contrary intention appears —

- (a) **“appointed member”** means a member of the Commission other than the General Manager;
- “approved form”** means a form approved by the Minister;
- “chairman”** means the chairman of the Commission;



**“house”** means any building (including any single, attached or multi-storey dwelling unit, tent, edifice, structure or erection (whether temporary or permanent)) or any part thereof which or any part of which has been used or is used or is intended to be used as a dwelling, and includes outbuildings, fences, walls and permanent provision for lighting, heating, water supply, drainage and sewerage and other appurtenances of a house, and any shop, or business premises being a portion of or attached to a house;

**“land”** includes any estate or interest in land and any easement, right or privilege in, over or affecting land and any building or other structure or improvements on land;

**“loan”** includes a part of a loan;

**“local government”** means a local government or a person exercising the powers of a local government under the *Health Act 1911*;

**“member”** means a member of the Commission;

**“mortgage”** means any deed, memorandum of mortgage, instrument or agreement whereby security for repayment of advances or payment of moneys together with interest (if any) thereon, is made in favour of the Commission over real or personal property or any estate or interest therein;

**“officer of the Commission”** means an officer referred to in section 17(a) or (b);

**“owner”** in relation to land means the person for the time being entitled to receive the rent of the land or premises in connection with which the word is used (whether on his own account or as the agent of or trustee for any other person) or who would be entitled to receive the rent if the land or premises were let at a rent and includes the person who is purchasing land on terms or deferred payments;

**“public authority”** means a department, instrumentality or agency of the Crown in right of the State or the Commonwealth, a local government and any other person or body, whether corporate or not, who or which under the authority of any Act is charged with the carrying out of any duty whilst acting in the discharge of that duty;

**“purchase”** includes to acquire by way of exchange;

**“section”** means section of this Act;

**“sell”** includes to dispose of by way of exchange;

**“street”** includes any street, road, footway, square, court, alley or right of way whether a thoroughfare or not;

**“subsection”** means subsection of the section in which the term is used;

**“tenancy agreement”** includes a lease or agreement to lease, and includes any instrument under which any person derives title under the original tenant;

**“tenant”** includes lessee, and includes any person deriving title under the original tenant;

**“the Commission”** means the body corporate known as The State Housing Commission preserved and continued pursuant to section 6;

**“the Fund”** means The State Housing Commission Fund referred to in section 62;

**“the repealed Act”** means the Act repealed by section 3;

**“Treasurer”** means Treasurer of the State;

- (b) a reference to the erection of a house or other building includes a reference to the conversion or modification of an existing building;

- (c) a reference to the family of a person is a reference to the spouse, de facto partner and children of, and the parents or other relatives dependent upon, that person;
  - (d) a reference to land held by the Commission is a reference to any land —
    - (i) vested in or granted to the Commission;
    - (ii) reserved for the use and requirements of the Commission or for the purposes of this Act;
    - (iii) purchased or otherwise acquired by the Commission;  
or
    - (iv) donated, given, devised or bequeathed to the Commission;
  - (e) a reference to a house or other building held by the Commission is a reference to a house or other building situated on land held by the Commission.
- (2) A reference in a provision of this Act to an **“eligible person”** is a reference to a person who satisfies the conditions of eligibility from time to time determined by the Commission and approved by the Minister for the purposes of that provision.
- (3) The conditions of eligibility mentioned in subsection (2) shall be determined and approved by reference to income criteria and, without limiting the generality of the foregoing, may provide for the incomes of more than one member of a household to be taken into consideration.

*[Section 5 amended by No. 14 of 1996 s.4; No. 28 of 2003 s. 84.]*

## **Part II — The State Housing Commission**

### **Division 1 — Constitution of Commission**

#### **6. Continuation of the Commission**

The body corporate constituted under the repealed Act by the name “The State Housing Commission” is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate name and corporate identity.

#### **7. Commission a body corporate and Crown agency**

- (1) The Commission —
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) is capable in law in its corporate name of suing and being sued.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document and shall presume that it was duly affixed.
- (3) The Commission is an agent of the Crown in right of the State.

#### **8. Membership of the Commission**

- (1) The Commission shall consist of 7 members of whom —
  - (a) one shall be the person for the time being occupying the office of General Manager of the Commission; and
  - (b) 6 shall be appointed by the Governor.
- (2) One of the members shall be appointed by the Governor as chairman of the Commission and another of the members shall be appointed by the Minister as deputy chairman of the Commission.

- (3) The Minister may appoint an officer of the Commission to be the deputy of the member referred to in subsection (1)(a).
- (4) The Governor may appoint a person to be the deputy of an appointed member.
- (5) A person appointed under subsection (3) or (4) is entitled, in the absence from a meeting of the Commission of the member of whom he is the deputy, to attend that meeting, and while so attending, is deemed to be a member and has all the powers, functions and duties of a member.
- (6) If at any time the office of an appointed member becomes vacant before his term of office expires, the person who was at that time the deputy of that member is, until the office of member is filled by the appointment of another member, deemed to be a member and has all the powers, functions and duties of a member.

**9. Terms and conditions of membership of appointed members**

- (1) Subject to this Act each appointed member shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment and is eligible for reappointment.
- (2) The office of an appointed member shall become vacant if —
  - (a) his term of office expires;
  - (b) he becomes permanently incapable of performing his duties as a member;
  - (c) he resigns his office by written notice addressed to the Minister;
  - (d) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
  - (e) he is removed from office by the Governor on the grounds of neglect of duty, misbehaviour or incompetence.

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**Division 1**       Constitution of Commission

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- (3) Acceptance of or acting in the office of an appointed member, or deputy of an appointed member by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.
- (4) Subject to subsection (5) the appointed members and their deputies shall be paid such remuneration and travelling and other allowances as are approved by the Governor.
- (5) No remuneration or allowances shall be paid under subsection (4) to a person to whom Part 3 of the *Public Sector Management Act 1994* applies except with the prior approval in writing of the Chairman of the Public Service Board<sup>2</sup> constituted under that Act.
- (6) The Governor may grant leave of absence to an appointed member upon such terms and conditions as the Minister determines.

*[Section 9 amended by No. 32 of 1994 s.19.]*

**10. Meetings of Commission**

- (1) The Commission shall hold such meetings as are necessary for the performance of its functions.
- (2) The chairman may at any time convene a meeting of the Commission.
- (3) The chairman or, in his absence, the deputy chairman of the Commission shall preside at all meetings of the Commission, but if both the chairman and the deputy chairman are absent from any meeting, the members present at that meeting shall appoint one of their number to preside at the meeting.

- (4) At any meeting of the Commission —
  - (a) 3 members form a quorum;
  - (b) all questions arising at the meeting shall be decided by a majority of the valid votes of the members present at the meeting;
  - (c) each member, including the person presiding at the meeting, shall be entitled to one vote only on the determination of any question; and
  - (d) in the event of an equality of votes, the question shall be deemed to be determined in the negative.
- (5) Subject to this Act, the Commission may regulate its procedure in such manner as it thinks fit, and shall cause to be kept minutes of its proceedings.

**Division 2 — Powers and functions of the Commission generally**

**11. Commission to implement this Act**

- (1) Subject to the control and direction of the Minister the Commission shall be responsible for the implementation of the provisions of this Act.
- (2) The Minister may from time to time give directions to the Commission with respect to its functions, powers, and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.
- (3) Subsection (2) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Section 11 amended by No. 41 of 1996 s.3.]*

**12. General powers of Commission**

Subject to and for the purposes of this Act the Commission —

- (a) has and may exercise all the powers, privileges, rights and remedies of the Crown;

- (b) has and may exercise all such powers, authorities and discretions, and may do all such acts and things, as a private person in the State has or may exercise or do, and the Commission generally may do whatever it deems necessary in connection with or incidental to the functions conferred upon it;

and in particular, without limiting the generality of the foregoing —

- (c) has power to acquire, hold, maintain, improve, exchange, lease and dispose of real and personal property;
- (d) has power to borrow and lend money; and
- (e) has power to give guarantees, indemnities and undertakings whether in respect of the payment or repayment of moneys, the performance of obligations, or otherwise.

**12A. Joint ventures**

- (1) The Commission shall not enter into or participate in joint venture arrangements (notwithstanding that those arrangements would be in the general furtherance of the objects of this Act) unless —
  - (a) those arrangements are for the carrying out, control, or management, either jointly or by one party on behalf of any other, or otherwise as may be agreed in the common interest, of a project involving —
    - (i) the erection of houses;
    - (ii) the subdivision, or acquisition and subdivision, and development of land for housing and related purposes;
    - (iii) the provision of services in relation to houses or subdivided land;
    - (iv) the marketing of houses or subdivided land; or



- (v) the provision of community facilities and amenities;
  - and
  - (b) the Governor has, on the recommendation of the Minister, approved of the Commission entering into and participating in the arrangements.
- (2) In subsection (1) “**community facilities and amenities**” has the same meaning as it has in section 61(1).
- (3) The Minister shall not recommend that the Governor approve of the Commission entering into and participating in joint venture arrangements relating to a project unless the Commission has submitted to him details that the Minister considers to be adequate of the proposed project and arrangements relating thereto and the Minister approves of the proposals.
- (4) Without limiting the generality of the powers that the Commission may exercise under this Act for the purposes of participating in and giving effect to joint venture arrangements relating to a project, the Commission may —
- (a) seek and maintain appropriate representation on any board or other body having responsibility in the carrying out, management, or control of the project;
  - (b) subject to any contract relating to the project, receive contributions or other moneys relating to the project and disburse or distribute or arrange for the disbursement or distribution of those contributions or other moneys.
- (5) Where the Commission participates in joint venture arrangements relating to a project it shall ensure that adequate accounting records are maintained showing —
- (a) the several sources from which, and purposes for which, contributions relating to the project are received, and the manner in which those contributions are disbursed; and

- (b) the several sources from which other moneys relating to the project are received, and the manner in which those moneys are distributed,

and shall ensure that those records are open to inspection by responsible officers of the Commission, the Treasury of the State, and the Auditor General.

*[Section 12A inserted by No. 62 of 1983 s.3.]*

### **13. Delegation**

- (1) With the consent of the Minister the Commission may by an instrument in writing in relation to such matter or class of matters and to such activity of the Commission as is specified in that instrument and to the extent therein set out, delegate any of its powers or functions under this Act (except this power of delegation) to a member or an officer of the Commission.
- (2) A delegation under subsection (1) may be varied or revoked by notice in writing served on the delegate and no delegation prevents the exercise or performance by the Commission of any of its powers or functions.
- (3) A power or function delegated by the Commission may be exercised or performed by the delegate —
  - (a) subject to and in accordance with the terms of the instrument of delegation; and
  - (b) if the exercise of the power or the performance of the function is dependent upon the opinion, belief, or state of mind of the Commission — upon the opinion, belief, or state of mind of the delegate.

### **14. Advice and investigations**

- (1) The Commission shall —
  - (a) advise the Minister on matters connected with this Act generally;

- (b) make or cause to be made any inquiry, investigation or report required by this Act, or any inquiry, investigation or report which the Minister may think necessary or expedient.
- (2) The Commission may carry out or cause to be carried out all such surveys, investigations and valuations as may be necessary or expedient for the purposes of this Act or incidental to its functions under this Act.
- (3) The Commission shall also have such advisory powers as may from time to time be prescribed, and such other powers as may be imposed by the Minister on the Commission.

**15. Applications**

- (1) The Commission shall deal with applications for housing or financial assistance for housing made under this Act or under any other Act or law in relation to housing that is administered by the Commission.
- (2) For the purpose of performing the duties mentioned in subsection (1) the Commission shall, subject to the Act or law concerned, have power and authority —
  - (a) to inquire into and consider applications;
  - (b) to require any further or other information in respect of any application;
  - (c) to require any information provided in, or in respect of, an application to be verified by statutory declaration;
  - (d) to approve of any application (either wholly or in part);
  - (e) to refuse any application.

**16. Assistance to and collaboration with other bodies**

- (1) Subject to subsection (2) the Commission may give such assistance as it thinks fit to enable or assist —
  - (a) any public authority; or

- (b) any person approved by the Minister,  
to engage in any activity related to the objects of this Act and may seek and maintain appropriate representation on the board or other governing authority of any body corporate to which such assistance is given.
- (2) The Commission shall not give assistance under subsection (1) by way of —
  - (a) granting financial aid or enabling financial aid to be obtained;
  - (b) making available the services of any officer or employee of the Commission; or
  - (c) making available any facilities of the Commission,  
except with the consent of the Minister.
- (3) The Commission may, with the consent of the Minister, in respect of the performance of any of its functions —
  - (a) engage consultants having relevant qualifications or experience;
  - (b) consult or collaborate with other bodies or persons having interests or functions similar or related to those of the Commission.

### **Division 3 — Staff of the Commission**

#### **17. General manager and other officers and employees**

To enable the Commission to exercise and perform the powers, functions and duties conferred on it by or under this Act or any other Act —

- (a) there shall be a general manager of the Commission who shall be appointed, under and subject to Part 3 of the *Public Sector Management Act 1994*;
- (b) there shall be appointed, employed or engaged, under and subject to Part 3 of the *Public Sector Management*

*Act 1994*, such officers, employees and other persons as the Commission considers necessary;

- (c) the Commission may employ such wages staff as it considers necessary.

*[Section 17 amended by No. 32 of 1994 s.19.]*

**18. Terms and conditions of employment of wages staff**

- (1) Subject to any relevant award or industrial agreement the terms and conditions of employment of staff employed pursuant to section 17(c) shall be such terms and conditions as the Commission, after consultation with the Public Service Board <sup>2</sup>, determines.
- (2) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to staff employed under section 17(c).

*[Section 18 amended by No. 32 of 1994 s.19.]*

## **Part III — Acquisition, development and disposal of property**

### **Division 1 — Acquisition and development of property**

#### **19. Acquisition of land**

- (1) The Commission may with the consent of the Minister purchase any land for the purposes of this Act.
- (2) The Commission is not authorized to take or resume land by compulsory acquisition.

#### **20. Gifts**

- (1) For the purposes of this Act the Commission may —
  - (a) accept any absolute donation, gift, devise or bequest of real or personal property; or
  - (b) with the consent of the Minister, accept any donation, gift, devise or bequest of real or personal property subject to any trust the objects of which are not substantially different from those for which the Commission is constituted, and carry out and give effect to the objects of any such trust.
- (2) The Commission may receive any donation, gift, devise or bequest for the purpose of assisting it to provide houses for persons notwithstanding that the donation, gift, devise or bequest is subject to any trust, condition or stipulation which cannot by reason of any other provision of this Act be given effect to, and the Commission may, notwithstanding that provision, give effect to the trust, condition or stipulation, if it is otherwise in accordance with law.
- (3) No stamp duty shall be paid on any property received by the Commission under subsection (1).

**21. Powers of local government**

- (1) Notwithstanding the *Local Government Act 1995* or any other Act relating to local government a local government —
- (a) may sell or otherwise dispose of to the Commission any land vested in the local government (not being land reserved under Part 4 of the *Land Administration Act 1997*);
  - (b) may acquire any land in the manner provided in the *Local Government Act 1995* for the purpose of disposing of the land to the Commission for the purposes of this Act.
- (2) Subsection (1) does not authorize a local government to take or resume land by compulsory acquisition unless the land is to be disposed of to the Commission for the purposes of section 61(1).

*[Section 21 amended by No. 14 of 1996 s.4; No. 31 of 1997 s.35.]*

**22. Powers in relation to development and management of land**

- (1) Subject to this Act the Commission has power —
- (a) with the consent of the Western Australian Planning Commission established under the *Western Australian Planning Commission Act 1985* and any approval required under the *Metropolitan Region Town Planning Scheme Act 1959*, to re-plan and re-subdivide any area in which land held by the Commission is situated, and with the consent of the Minister, to secure the closing of any street or the extinguishment of any easement or restrictive covenant;
  - (b) with the consent of the Minister, to erect houses and other buildings on, or lay out and construct streets on, any land held by the Commission and to expend moneys standing to the credit of the Fund on works and operations for the purpose of making such land suitable for the purposes of this Act;
  - (c) to maintain, repair, and carry out any improvements to and generally to control and manage any houses and

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other buildings that are subject to contracts of sale, mortgages, or leases pursuant to this Act and any land on which such houses and other buildings are erected;

- (d) with the consent of the Minister, to enter into arrangements with a public authority or other body or person with respect to the provision of services to any area in which houses or other buildings acquired, erected, or to be erected, by the Commission are, or are to be, situated including, without limiting the generality of the foregoing, arrangements with respect to —
- (i) the making of streets or other facilities affording access to houses and other buildings and sites for houses and other buildings in the area;
  - (ii) the establishment or extension and, if necessary, operation and maintenance of sewerage, drainage, water, gas, power, lighting and communications systems to serve the area and the connection of those systems to houses and other buildings and sites for houses and other buildings in the area,

and, subject to the provisions of any contract relating to such an arrangement, to allot to each house, building or site having the benefit of the arrangement such proportion of the cost incurred by the Commission under the arrangement as the Commission deems just;

- (e) to purchase building materials, equipment, fittings or appliances, and to supply the same or any of them to any person or body of persons, corporate or unincorporate for the purposes of this Act upon such terms and conditions as the Commission determines;
- (f) to dispose of, set apart, utilize and deal with any land held by the Commission for the purposes of housing projects under or pursuant to an agreement between the Commonwealth and the State entered into pursuant to, or ratified by, an Act;



- (g) with the consent of the Minister to delegate to any local government approved by the Minister all or any of the powers and functions of the Commission (except this power of delegation) upon and subject to such terms and conditions as the Commission thinks fit so that the delegated powers and functions may be exercised and performed by the local government in the same manner and with the same effect as if they had been directly conferred on the local government by this Act and not by delegation;
  - (h) to advance moneys to any local government to which a delegation is made under paragraph (g);
  - (i) to do any thing incidental to a matter mentioned in this subsection.
- (2) A delegation under subsection (1)(g) shall be revocable at will and no delegation shall prevent the exercise of any power or the performance of any function by the Commission.
- (3) The powers conferred by subsection (1) are in addition to any other powers conferred on the Commission by this Act.

*[Section 22 amended by No. 62 of 1983 s.4; No. 84 of 1994 s.46; No. 14 of 1996 s.4; No. 49 of 1996 s.64.]*

**23. Power to take lease**

- (1) For the purposes of this Act the Commission may, with the consent of the Minister, take land on lease for such period and subject to such covenants and conditions as it thinks reasonable.
- (2) The powers conferred on the Commission by this Act in respect of land held by the Commission may, subject to the express or implied covenants and conditions of the lease, be exercised by the Commission in respect of land taken by it on lease.

**24. Payment of rates to local government**

- (1) Notwithstanding any provision to the contrary in any Act, the Commission in respect of vacant rateable land acquired within

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the district of a local government, shall be liable to pay rates thereon out of moneys standing to the credit of the Fund to that local government, and the land shall be deemed to continue to be rateable land; but in the case of vacant land other than subdivided land no such liability shall arise until the land has been held vacant by the Commission for a period of at least 2 years and in the case of vacant subdivided land no such liability shall arise until the land has been held vacant by the Commission for a period of at least one year.

- (2) In this section “**subdivided land**” means an allotment of land, shown on an approved plan or diagram of subdivision deposited under the *Transfer of Land Act 1893* with the Department within the meaning of that Act to be of an area not exceeding 10 000 square metres, or, if no such plan or diagram is so deposited, an allotment of land determined under that Act to be of an area not exceeding 10 000 square metres.

*[Section 24 amended by No. 14 of 1996 s.4; No. 49 of 1996 s.64; No. 81 of 1996 s.153(1).]*

**Division 2 — Dealings with property generally**

**25. Power to lease**

- (1) The Commission may let or lease, or grant a licence to any person to use, any building, building and land or vacant land held by the Commission for such periods and purposes, at such rentals and on such terms, covenants and conditions as the Commission thinks fit.
- (2) Subsection (1) does not apply to the letting or leasing of a house or house and land.

**26. Power to sell**

- (1) The Commission, with the consent of the Minister, may by public auction or private contract sell any building and land or vacant land held by the Commission for cash or on such terms

of payment as the Commission thinks fit and at such price, and subject to such conditions, restrictions, exceptions and reservations (if any) as the Commission thinks fit.

- (2) Subsection (1) does not apply to a sale under Division 4.

**27. Power to grant easement**

The Commission may grant or create an easement over land held by the Commission for such payment (if any) and on such terms and conditions as the Commission thinks fit.

**Division 3 — Letting or leasing of houses**

**28. Power to let or lease houses**

The Commission may let or lease any house or house and land held by the Commission to any eligible person or, with the consent of the Minister —

- (a) to any public authority or body corporate; or
- (b) to any person who, in the opinion of the Commission, is providing an essential community or tradesman service in a locality and is unable to obtain suitable accommodation in that locality from any source other than the Commission.

**29. Terms and conditions**

- (1) A house or house and land may be let under this Division on a weekly or such other periodic tenancy as the Commission thinks fit or may be leased under this Division for such period as the Commission thinks fit.
- (2) The terms, covenants and conditions of a tenancy or lease under this Division shall be such terms, covenants and conditions as the Commission thinks fit and shall be set out in a tenancy agreement in an approved form.

**30. Determination of rent**

- (1) The amounts of rent to be paid by tenants under this Division shall be such amounts as are from time to time determined by the Commission and approved by the Minister.
- (2) A determination under subsection (1) may provide for —
  - (a) the payment of different rents in respect of different houses or different classes of houses;
  - (b) the payment of different rents by tenants of different classes;
  - (c) the allowance of rebates in such circumstances and subject to such conditions as are specified in the determination.

**31. Credit of rents towards purchase price**

- (1) Subject to subsection (2) where —
  - (a) the purchaser of any house and land under Division 4 has been a tenant of the house or the house and the land under this Division; or
  - (b) the spouse, de facto partner or deceased spouse or deceased de facto partner of a purchaser of any house and land under Division 4 has been a tenant of the house or the house and the land under this Division,

the Commission may credit towards the purchase price of the house and land the rents that have been paid by the purchaser or the spouse, de facto partner or deceased spouse or deceased de facto partner of the purchaser in respect of the house, or the house and the land, or such portion (if any) of those rents as the Commission thinks fit.

- (2) Where a person becomes the purchaser of any house and land under Division 4 by exercising an option to purchase contained in a tenancy agreement under this Division the provisions of subsection (1) shall not affect any provision contained in the

tenancy agreement providing for the crediting of rents towards the purchase price of the house and land.

- (3) In this section “**rents**” includes amounts paid by a tenant of a house or house and land for the purpose of the repair, renovation, upkeep or improvement of the house or house and land.

*[Section 31 amended by No. 28 of 2003 s. 85.]*

#### **Division 4 — Sale of houses and housing land**

### **32. Application of this Division**

- (1) This Division applies to the sale by the Commission of a house and land held by the Commission or land held by the Commission on which a house is to be erected.
- (2) A reference in subsection (1) to a house is a reference to a house that is intended to be used by the purchaser as a home for himself and his family (if any).

### **33. Terms and conditions of sale**

- (1) The Commission may by public auction or private contract sell land or a house and land under this Division —
- (a) for cash; or
  - (b) in the case of —
    - (i) the sale of land; or
    - (ii) the sale of a house and land to an eligible person, on such terms of payment as the Commission thinks fit.
- (2) A sale under this Division may be made at such price and subject to such conditions, restrictions, exceptions and reservations as the Commission thinks fit.
- (3) If a sale under this Division is made on terms or subject to conditions, restrictions, exceptions or reservations those terms, conditions, restrictions, exceptions or reservations shall be set out in a contract of sale in an approved form.

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**Division 4** Sale of houses and housing land

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- (4) The Commission may, by determination approved by the Minister and published in the *Government Gazette*, fix a standard rate of interest to apply to contracts of sale in respect of sales on terms under this Division.
- (5) Different standard rates of interest may be fixed under subsection (4) in respect of different classes of contracts of sale.
- (6) The interest rate specified in a contract of sale in respect of a sale on terms under this Division shall be the standard rate of interest most recently published under subsection (4) in respect of contracts of sale of that class but the contract may provide for the interest rate to vary in accordance with determinations published from time to time under that subsection.
- (7) In subsection (6) “**interest rate**” in relation to a contract of sale means the rate of interest payable on the balance of the purchase money for the time being remaining unpaid under that contract of sale.

**34. Limit on amount of unpaid purchase money**

- (1) The balance of the purchase money for the time being remaining unpaid under a contract of sale in respect of a sale under this Division shall not exceed such sum as is determined by the Minister for the purposes of this subsection by notice published in the *Government Gazette*.
- (2) For the purposes of subsection (1) the Minister may determine different sums in respect of land in different areas of the State.

## **Part IV — Provision by the Commission of financial assistance for housing**

### **Division 1 — Loans**

**35. Reference to “house”**

A reference in this Division to a house in relation to the making of a loan is a reference to a house that is, or is intended to be, used by the person to whom the loan is to be made as a home for himself and his family (if any).

**36. Loans to assist eligible persons**

- (1) Subject to this Act the Commission may make a loan to any eligible person in order to assist the eligible person —
- (a) to erect, complete, enlarge or improve a house on land owned by him;
  - (b) to purchase land and erect a house thereon;
  - (c) to purchase a house and the land on which it is erected;
  - (d) to purchase a partially erected house and the land on which it is being erected and complete the house; or
  - (e) to discharge any mortgage or liability already existing on land owned by him and on which a house is erected, or is being erected or is to be erected.
- (2) A reference in subsection (1) to land owned by an eligible person is a reference to land of which the eligible person is the beneficial owner in possession and includes —
- (a) Crown land (including any land held by the Commission) or endowment lands of The University of Western Australia, or of the trustees of the Public Education Endowment or of any local government being land set aside for residential purposes and held by the eligible person for his own benefit under a lease or agreement;

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**Division 1** Loans

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- (b) Residential Leases, Miners' Homestead Leases and Residence Areas.

*[Section 36 amended by No. 14 of 1996 s.4.]*

**37. Loans to persons generally to purchase land from the Commission**

Subject to this Act the Commission may make a loan to any person in order to assist the person to purchase from the Commission land on which to erect a house.

**38. Loans to persons generally to improve houses**

- (1) Subject to this Act the Commission may make a loan to any person to assist the person to make alterations or additions to a house so that the house may be brought into conformity with the building, health or other local laws or standards of a local government or to improve the standard of comfort or convenience of the house.
- (2) For the purpose of this section —
- “**additions**” include the installation or improvement of water supply, sewerage or drainage systems and all necessary fittings;
- “**local government**” includes the Minister within the meaning of the *Water Agencies (Powers) Act 1984* acting under section 34 of that Act, a water board constituted under the *Water Boards Act 1904* and a drainage board constituted under the *Land Drainage Act 1925*.
- (3) No loan shall be made under this section other than to a person who satisfies the Commission that his financial position justifies the assistance applied for.

*[Section 38 amended by No. 73 of 1995 s.188; No. 14 of 1996 s.4.]*

**39. Method of making loan**

A loan under this Division may be made in one sum or in progress payments from time to time at the discretion of the Commission.



**40. Limit on amount to be lent**

- (1) The total amount lent to a person under this Division and for the time being remaining owing shall not exceed such sum as is determined by the Minister for the purposes of this subsection by notice published in the *Government Gazette*.
- (2) For the purposes of subsection (1) the Minister may determine —
  - (a) different sums in respect of land in different areas of the State;
  - (b) different sums in respect of loans for different purposes.

**41. Security for repayment of loan**

- (1) The repayment of every loan made under this Division together with all interest and other money incidental to that loan or properly charged against the borrower in respect thereof shall be secured by —
  - (a) a first or second mortgage in an approved form to the Commission, of the borrower's estate and interest in the land on which the house to which the loan relates is erected, or is being erected or is to be erected and in the improvements (if any) already thereon and the improvements (if any) that are to be made thereon with the aid of the loan; and
  - (b) such additional or collateral security (if any) as to the Commission may seem fit in such form as the Commission may require.
- (2) The borrower may execute a mortgage or other instrument of security securing a loan under this Division notwithstanding anything to the contrary in any enactment or law, or in the lease, agreement or occupation certificate under which he holds the land that is to be the subject of that mortgage or other instrument.

**42. Interest on loans**

- (1) The Commission may, by determination approved by the Minister and published in the *Government Gazette*, fix a standard rate of interest to apply to loans under this Division.
- (2) Different standard rates of interest may be fixed under subsection (1) in respect of different classes of loans.
- (3) The interest rate specified in a mortgage or other instrument of security securing a loan under this Division shall be the standard rate of interest most recently published under subsection (1) in respect of loans of that class but the mortgage or other instrument of security may provide for the interest rate to vary in accordance with determinations published from time to time under that subsection.
- (4) In subsection (3) “**interest rate**” in relation to a loan means the rate of interest payable on the balance of the amount for the time being advanced and remaining owing under the loan.

**43. Normal legal relationships to apply**

The rights, powers and remedies of the Commission in relation to loan transactions under this Division shall be those rights, powers and remedies given by or under the mortgage or other instrument of security together with such rights, powers and remedies as are normally applicable to such transactions at law or in equity.

**44. Protection of Commission’s interest**

The Commission shall, whilst a loan under this Division is secured by a mortgage of any land, be entitled, subject to the rights or any prior mortgagee, to hold the documents of title to that land.

**45. Commission to obtain reports as to expenditure of loans**

The Commission from time to time shall obtain reports from the inspectors and valuers of the Commission as to the manner in

which moneys lent under this Division have been expended and used by the respective borrowers, and as to the state and condition of the improvements for the purpose of which those moneys have respectively been lent, and generally as to the state and condition of the properties in respect of which those moneys have been lent.

### **Division 2 — Guarantees and subsidies**

#### **46. Guarantee by Commission in certain cases**

- (1) Where an eligible person desires to —
- (a) erect a house;
  - (b) complete a partially erected house; or
  - (c) purchase a new house,

and is able without borrowing to pay so much of the cost of erecting the house as the Commission approves but is unable to borrow, without assistance under this section from the Commission, sufficient money in order to enable him to pay the balance of the cost, the Commission may assist him by guarantee in order to enable him to do so.

- (2) In this section —
- (a) a reference to a house or new house is a reference to a house that is or is intended to be used by the person to whom the assistance is to be given as a home for himself and his family (if any) but does not include a reference to a house of which the value (exclusive of the value of the land on which it is or is to be erected) exceeds such sum as is determined by the Minister for the purposes of this paragraph by notice published in the *Government Gazette*;
  - (b) “**new house**” has the meaning given to that term in section 3 of the *Housing Loan Guarantee Act 1957*.

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- (3) For the purposes of subsection (2)(a) the Minister may determine different sums in respect of houses in different areas of the State.

**47. Payment of subsidies on account of loans made to eligible persons**

- (1) For the purpose of assisting eligible persons in obtaining houses and land by subsidising the rate or amounts of interest payable in respect of loans made to them by approved lending institutions, the Commission may, with the approval of the Minister —

- (a) make payments, on such terms and conditions as the Minister approves, to approved lending institutions that make loans to approved persons on the security of freehold or leasehold property by way of mortgage;
- (b) enter into agreements with approved lending institutions in order to facilitate and regulate the making of payments under paragraph (a) and to ensure compliance with the terms and conditions approved by the Minister pursuant to that paragraph.

- (2) In this section —

**“approved lending institution”** means an institution, body or person that is approved in writing by the Minister for the purposes of this section;

**“approved person”** means an eligible person approved in writing by the Commission for the purposes of this section.

## **Part V — Arrangements and agreements as to housing finance**

### **Division 1 — Arrangements with the Commonwealth**

#### **48. Definitions**

In this Division —

**“Commonwealth Housing Act”** means any Act of the Parliament of the Commonwealth relating to financial assistance to the States, or to States including this State, for housing purposes;

**“Housing Agreement”** means any agreement made and entered into between the Commonwealth and this State for housing purposes including an agreement to which the other States, or any of them are parties;

**“housing purposes”** includes —

- (a) assistance to persons to enable them to meet their housing requirements;
- (b) betterment of housing conditions; and
- (c) promotion of social welfare in relation to housing.

#### **49. Financial assistance from the Commonwealth — powers of Minister and Commission**

- (1) The Minister and the Commission subject to the Minister are hereby respectively authorized to do all acts and things necessary or convenient for the purpose of enabling the State to participate in any scheme or arrangement for the granting of financial assistance by the Commonwealth for housing purposes.
- (2) Without limiting the generality of subsection (1) —
  - (a) the Minister and the Commission, on behalf of the State, are hereby respectively invested with such powers,

functions, duties and responsibilities as are necessary or convenient for —

- (i) enabling the State, and the Minister and the Commission on behalf of the State, to obtain such grants, assistance and benefits as are provided or capable of being provided under a Commonwealth Housing Act or a Housing Agreement; and
  - (ii) enabling the State, and the Minister and the Commission, to fulfil such conditions and comply with such other requirements as are necessary for obtaining the grants, assistance and benefits referred to in subparagraph (i);
- (b) the Commission, on behalf of the State, shall maintain any account necessary to comply with conditions imposed by, and fulfil objects and purposes set out in, a Commonwealth Housing Act or in a Housing Agreement and may pay moneys into, expend and advance moneys from, and generally operate any such account so as to comply with those conditions and fulfil those objects and purposes.

**50. Housing assistance under agreements**

- (1) Without limiting the generality of section 49 the Minister and the Commission, subject to the Minister, are hereby respectively authorized to administer any Housing Agreement for and on behalf of the State.
- (2) The authority conferred by subsection (1) extends to the doing of any Act or thing before the coming into operation of a Housing Agreement but in anticipation of and for the eventual purposes of that agreement.
- (3) Subject to section 51, for the purposes of the administration of any Housing Agreement all the powers, functions, duties, authorities and responsibilities of the Commission as provided

in this Act shall apply and extend to the Commission, and all the provisions of this Act, so far as they are applicable or can with necessary adaptations and modifications be made applicable, shall apply in all respects and for all purposes in relation to projects for housing purposes provided for and mentioned in that agreement and undertaken by the State pursuant to that agreement.

**51. Regulations as to administration of agreements**

- (1) Where any act, matter or thing required or authorized by any provision of a Housing Agreement to be done by or on behalf of the State for housing purposes cannot conveniently be done under the provisions of this Act, the Governor may make regulations for authorizing the doing of such act, matter or thing.
- (2) Regulations made under subsection (1) shall be valid and have effect notwithstanding that they are inconsistent with or repugnant to a provision contained elsewhere in this Act.

**Division 2 — Agreements with lending institutions**

**52. Definitions and effect**

- (1) In this Division —  
“**home finance moneys**” means —
  - (a) any moneys made available to the State by the Commonwealth pursuant to a Commonwealth Housing Act or a Housing Agreement for the purpose of providing finance to assist persons to erect or purchase homes for themselves and their families (if any); or
  - (b) any moneys set aside by the Commission, out of any funds available to it, for the purpose of providing finance to assist persons to erect or purchase homes for themselves and their families (if any);

**“instrument of constitution”** means the Act or other instrument by which, a lending institution is constituted and by authority of, or subject to, which, the institution carries on its business, and includes rules, local laws, by-laws, regulations, and other subordinate authorizations effective under the Act or other instrument;

**“lending institution”** means —

- (a) a society registered under the *Housing Societies Act 1976*;
- (b) a lending authority of the State; or
- (c) a body approved by the Minister as a body to which loans may be made under this Division;

**“loan agreement”** means an agreement between the State and a lending institution in relation to a loan from home finance moneys for on-lending by the institution to assist borrowers to erect or purchase homes for themselves and their families (if any), and the terms **“Commonwealth Housing Act”** and **“Housing Agreement”** have the meanings respectively given to them in Division 1.

- (2) Nothing in this Division authorizes the making of a loan from home finance moneys referred to in paragraph (a) of the definition of that term in subsection (1) other than to an institution to which such a loan may be made under the terms of the relevant Commonwealth Housing Act or Housing Agreement.

*[Section 52 amended by No. 14 of 1996 s.4; No. 10 of 1998 s.9(2); No. 26 of 1999 s.87; No. 12 of 2001 s.51.]*

### **53. Power to make loan agreements**

Power to enter into and to carry out loan agreements with the State is conferred by this Act on a lending institution, notwithstanding that the power is not conferred by the instrument of constitution of the lending institution, and notwithstanding any provision of the instrument of constitution to the contrary.



**54. Terms and conditions of agreement**

- (1) The State and a lending institution may agree to the inclusion in a loan agreement of such terms and conditions as they think fit, but the provisions of section 55 apply to, and are included by virtue of this section in, every loan agreement entered into before or after the coming into operation of this Act, whether those provisions are or are not expressly included by the agreement in it, or are expressly excluded by the agreement from it.
- (2) Without limiting the generality of subsection (1), the conditions which may be included in a loan agreement include conditions —
  - (a) fixing or limiting the rate of interest payable by borrowers in respect of moneys advanced to them by the lending institution;
  - (b) fixing or limiting the term or period of years for which any advance may be made to a borrower by the lending institution;
  - (c) prohibiting the lending institution from making any advance to a borrower where the value of the house, or of the house and land, in respect of which the advance is sought, exceeds the amounts respectively determined from time to time by the Minister; and
  - (d) prohibiting the lending institution from making any advance to a borrower whose income exceeds the amount determined from time to time by the Minister.

**55. Floating security and charge**

- (1) Subject to sections 56 and 57 where a lending institution makes a loan agreement the State has, by virtue of this Act and notwithstanding the provisions of any other Act or delegated legislation, or of the instrument of constitution of the lending institution, as floating security for the due observance by the lending institution of the terms and conditions of the loan

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agreement, a floating charge on the whole of the undertaking and other property and assets, present and future, of the lending institution.

- (2) A floating charge created by this section has priority to all other charges, whether they arose or were created before, or arise or are created after the coming into operation of this Act.
- (3) Any amount owing under a loan agreement by a lending institution to the State is a debt owing to the Crown.
- (4) The floating security and charge and the debt owing to the Crown are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 5 of that Act, to the extent to which subsections (1), (2) and (3) of this section provide for them in a way that would be inconsistent with that Chapter but for this declaration and section 5F of that Act.
- (5) Unless and until proceedings are commenced for winding up of the lending institution,  
whether under Chapter 5 of the *Corporations Act 2001* of the Commonwealth; or on termination of the lending institution in the case of a housing society; or by such other procedure as is provided for the winding up of the lending institution; or

unless and until the State,

pursuant to the provisions, if any, of the loan agreement in respect of which the security and charge exist, directs otherwise,

the floating security and charge created by this section do not in any way preclude the lending institution from, or limit the lending institution in, carrying on business in the ordinary course as if the security did not exist and the charge had not been created.

*[Section 55 amended by No. 10 of 1982 s.28; No. 12 of 2001 s.49; No. 20 of 2003 s. 30.]*

**56. Lending institution may give securities**

- (1) Where a lending institution makes or has made a loan agreement, it may, with the consent of the Treasurer and the Minister, execute such securities over so much of its property and assets both real and personal as create a charge thereon and which in the opinion of the Treasurer secure the due observance by the lending institution of the terms and conditions of the loan agreement.
- (2) Where a lending institution makes or has made a loan agreement and, pursuant to subsection (1), executes in relation to that agreement such securities as are referred to in that subsection —
  - (a) the provisions of section 55 do not have effect or cease to have effect, as the case requires, so as to create any floating charge or security by virtue of the making of that agreement; and
  - (b) the Treasurer may, on the recommendation of the Minister, from time to time release from the charge such securities as are, in his opinion, no longer necessary to secure the due observance by the lending institution of the terms and conditions of the loan agreement.
- (3) Any securities referred to in subsection (1) shall be, notwithstanding the provisions of any other Act and notwithstanding the existence on the property and assets of any other charge or encumbrance, by virtue of this subsection, a first charge on so much of the property and assets of the lending institution as is from time to time the subject of those securities.

**57. Property and assets of lending institution may be released**

Where —

- (a) a lending institution has, at any time before or after the coming into operation of this Act, made a loan agreement; and
- (b) the lending institution has not, in relation to that loan agreement, executed securities of the kind described in section 56(1),

the Treasurer may, at the request of the lending institution and on the recommendation of the Minister, release from the floating charge and security created by section 55 on the making of the loan agreement, such of the property and assets of the lending institution as are, in his opinion, no longer necessary to secure the due observance by the lending institution of the terms and conditions of the loan agreement.

**58. Power of inspection of affairs of lending institution**

- (1) Where a lending institution is a party to a loan agreement the appropriate Minister of the State may, whenever he thinks fit, appoint a person to examine the affairs of the lending institution and to report to the Minister on the result of the examination.
- (2) For the purpose of enabling him to make the examination, a person so appointed has, and if necessary may exercise, the powers conferred on a Royal Commission by the *Royal Commissions Act 1968*.
- (3) An appointment in writing purporting to have been made under this section and purporting to have been signed by a Minister is sufficient authority for a person so appointed to exercise the functions and powers of examination.

**59. Special powers of lending institutions to make advances of moneys, other than by way of mortgage**

Notwithstanding anything to the contrary contained in any Act or delegated legislation or the instrument of constitution of a lending institution, the lending institution may make advances to a borrower other than upon security of freehold or leasehold property by way of mortgage where —

- (a) the moneys being advanced to the borrower have been loaned to the lending institution under a loan agreement; and
- (b) the moneys being advanced to the borrower will be used by him to purchase a house erected upon, or to erect a house upon, land which at the time the advance is made is held by the Commission.

## **Part VI — Specialized housing and community facilities**

### **60. Commission may provide specialized housing**

- (1) For the purposes of this Act the Commission may —
  - (a) erect, acquire or take leases of, and furnish and equip specialized housing for the purpose of housing persons, including students and aged and infirm persons, whose housing requirements are not, in the opinion of the Commission, otherwise adequately provided for under the provisions of this Act;
  - (b) let or lease residential units in specialized housing to persons at such rentals, on such terms for such periods and subject to such covenants and conditions as the Commission considers fit and proper;
  - (c) provide, in relation to specialized housing, such amenities and facilities, separate or communal as, in the opinion of the Commission, are necessary or desirable for the comfort, health and convenience, or will serve a beneficial purpose in connection with the requirements of the persons to whom residential units in specialized housing are let or leased;
  - (d) provide for the proper conduct, management, control and supervision of specialized housing, including the provision of canteens and dining rooms and the employment of caretakers, supervisors and other persons necessary for the proper conduct, management, control and supervision of specialized housing;
  - (e) enter into arrangements with a local government or with any person approved by the Minister under which the local government or person shall undertake the conduct, management, control and supervision of specialized housing.

- (2) In subsection (1) “**specialized housing**” means a building or group of buildings which contains a number of separate residential units suitable for the housing of persons including students and aged and infirm persons and which is designed so as to provide living amenities and facilities available for use in common by persons residing in those residential units.

*[Section 60 amended by No. 14 of 1996 s.4.]*

**61. Community facilities**

- (1) In order to promote the establishment and growth of a community in any area and to meet health, social, educational, and recreational needs of the members of that community the Commission may, with the consent of the Minister, acquire land, or set aside land held by the Commission, for the purpose of providing, or providing sites for, community facilities and amenities and may, with the consent of the Minister —
- (a) erect on the land, and furnish and equip, any buildings that the Commission considers necessary or desirable having regard to the purpose for which the land was acquired or set aside or enter into arrangements with a public authority, or approved person for the erection, furnishing and equipping of such a building;
  - (b) enter into arrangements with a public authority or approved person for the conduct, management, control, maintenance and supervision of the land and any building erected on the land and health, social, educational and recreational activities to be carried on on the land or in a building erected on the land;
  - (c) sell, let or lease any of the land, or let or lease any building erected on the land, for the purpose for which the land was acquired or set aside;
  - (d) surrender any of the land to Her Majesty for the purpose for which it was acquired or set aside.

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- (2) In subsection (1) —
- “approved person”** means a person approved by the Minister;
- “community facilities and amenities”** includes gardens, parks, public open spaces, places of recreation, shops, offices, theatres, religious buildings, infant health centres, pre-school centres and care centres for children, meeting halls, schools, kindergartens, club and meeting rooms, libraries, swimming and bathing facilities, health centres, hospitals and other public utilities, and business or social facilities.
- (3) The Minister shall not give his consent to the exercise by the Commission of its powers under subsection (1) to erect, furnish and equip any building unless he is satisfied that an opportunity has been given to the private sector to erect, furnish and equip the building and that that sector is not willing to erect, furnish and equip the building or is not willing to do so otherwise than on terms that are unsuitable.



## Part VII — Finance

### 62. Funds

- (1) The funds necessary for the effectual execution of this Act shall be such moneys as are from time to time appropriated by Parliament for that purpose and such moneys as the Commission may borrow or lawfully receive under and subject to the provisions of this Act.
- (2) All such moneys shall be credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called The State Housing Commission Fund and applied to the purposes of this Act.
- (3) Subsection (2) does not affect the operation of any provision of a Commonwealth Housing Act or a Housing Agreement, within the meaning of Part V of this Act, requiring separate accounts to be kept in respect of moneys received and transactions entered into in accordance with that Act or Agreement.
- (4) The interest on and contributions, at a rate to be fixed by the Treasurer, to the sinking fund for the redemption of moneys appropriated by Parliament to the purposes of this Act from the Consolidated Fund shall be paid by the Commission to the Treasurer from The State Housing Commission Fund half-yearly and shall be applied by the Treasurer to recoup the Consolidated Fund in respect of such interest and contributions.
- (5) Where a sinking fund is created for the redemption of moneys borrowed by the Commission under section 63, the Commission shall, from moneys standing to the credit of The State Housing Commission Fund —
  - (a) pay the interest on those moneys; and
  - (b) set aside contributions to that sinking fund at a rate to be fixed by the Treasurer.

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- (6) Where moneys borrowed by the Commission under section 63 are repayable by instalments, periodical instalments of principal and interest shall be paid by the Commission from moneys standing to the credit of The State Housing Commission Fund.
- (7) Moneys to the credit of a sinking fund created for the purpose of the redemption of moneys borrowed by the Commission under section 63 shall, until such time as they are required for that purpose, be invested by the Treasurer in such securities as he may think fit.
- (8) Moneys to the credit of The State Housing Commission Fund not immediately required for the purposes of this Act may be invested by the Treasurer on behalf of the Commission in such securities as he may think fit.

*[Section 62 amended by No. 6 of 1993 ss.11 and 14(3); No. 49 of 1996 s.64.]*

**63. Power to raise money**

- (1) The Commission may from time to time, with the approval of the Governor, given on the recommendation of the Minister and the Treasurer —
  - (a) borrow and reborrow moneys by the creation and issue and sale of debentures and of inscribed stock for the purpose of raising the funds of the Commission for the effectual execution of this Act;
  - (b) create and issue debentures and inscribed stock in exchange for the debentures issued in respect of moneys previously borrowed by the Commission and not repaid;
  - (c) create and issue and sell any debentures and inscribed stock for the purpose of raising money for redeeming any outstanding loans and paying any expenses incurred in the creation and issue of debentures and inscribed stock and otherwise carrying out the provisions of this Act;

- (d) effect any conversion authorized by this section either by arrangement with the holders of existing debentures or registered owners of inscribed stock, or by the purchase of the debentures or inscribed stock out of moneys raised by the sale of debentures and inscribed stock, or partly in one way and partly in the other.
- (2) The Minister and the Treasurer shall not make a recommendation under subsection (1) unless a proposal showing the term and particulars of the proposed loan, the rate of interest to be paid thereon, the manner in which the loan is to be repaid and the purposes to which the moneys borrowed are to be applied has been submitted to them by the Commission and approved by them.
- (3) Any moneys borrowed by the Commission under this section —
  - (a) may be raised as one loan or as several loans; and
  - (b) may be raised —
    - (i) by the creation and issue of debentures;
    - (ii) by the creation and issue of inscribed stock; or
    - (iii) partly as provided by subparagraph (i) and partly as provided by subparagraph (ii).
- (4) For the purpose of making provision to repay either the whole or any part of any loan raised by the Commission under this section the Commission may, under and subject to this section, borrow the moneys necessary for that purpose before the loan or part of it becomes repayable.
- (5) The due repayment of all moneys borrowed by the Commission under this section and the payment of all interest thereon are hereby guaranteed by the Government of the State.
- (6) Any sums required by the Treasurer for fulfilling any guarantee given by this Act shall be charged to the Consolidated Fund which is hereby to the necessary extent appropriated accordingly, and any sums received or recovered by the Treasurer from the Commission

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or otherwise in respect of a sum so charged by the Treasurer shall be credited to the Consolidated Fund.

*[Section 63 amended by No. 98 of 1985 s.3; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

**64. Provisions as to debentures and inscribed stock**

- (1) Debentures or inscribed stock shall not be issued by the Commission otherwise than —
  - (a) in a form authorized by the Treasurer; or
  - (b) as may be prescribed.
- (2) Interest secured by any debenture is payable half yearly or on such other dates as are specified in the debenture at the rate and in the manner therein specified.
- (3) No notice of any trust, express, implied or constructive, shall be received by the Commission or by an officer of the Commission in relation to a debenture or any inscribed stock issued pursuant to this Act, and the Commission or the officer is not bound to see to the execution of any trust to which a debenture or inscribed stock may be subject.
- (4) A person advancing money to the Commission and receiving in consideration of the advance a debenture or inscribed stock issued under this Act is not bound to inquire into the application of the money advanced and is not in any way responsible for the non-application or misapplication thereof.
- (5) The Commission may pay brokerage in relation to any loan in respect of which a debenture or inscribed stock is issued.
- (6) The Commission shall cause a register of debentures to be kept and within a reasonable time after the issue of a debenture shall cause to be made an entry in the register specifying the date, terms and amount of the debenture and, in the case of a debenture other than a bearer debenture, the holder of the debenture.

- (7) Regulations made under this Act may make provision for the creation and issue of inscribed stock and in relation to the transfer or transmission of, and dealings in, inscribed stock.

*[Section 64 inserted by No. 62 of 1983 s.5.]*

**65.    Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 65 inserted by No. 98 of 1985 s.3.]*

**[66-67.    Repealed by No. 98 of 1985 s.3.]**

## **Part VIII — Miscellaneous**

### **68. Power to extend time**

The Commission may, in cases of hardship, extend the due date for the payment of any moneys payable to the Commission by a purchaser, tenant, mortgagor or other debtor, for such time, and upon such terms and conditions, as the Commission with the approval of the Minister may determine.

### **69. Protection from personal liability**

- (1) No matter or thing done or omitted to be done and no agreement entered into by the Commission or any member thereof, and no matter or thing done or omitted to be done by any officer or other person acting under the authority or direction of the Commission in good faith under or for the purposes of this Act, or purportedly under or for the purposes of this Act, shall subject any member of the Commission, or any such officer or person, to any personal liability in respect thereof.

- (2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Section 69 amended by No. 41 of 1996 s.3.]*

### **70. Regulations generally**

- (1) The Governor may make such regulations, not inconsistent with this Act, as he considers necessary or convenient for giving effect to the objects and purposes of this Act or for facilitating the operation of this Act and of the Commission under this Act.
- (2) A regulation may be made under this Act —
  - (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times;
  - (b) so as to require a matter affected by it to be in accordance with a specified requirement, or as approved

by, or to the satisfaction of, the Commission or a specified person or body, or class of person or body, and so as to delegate to or confer upon the Commission or a specified person or body, or class of person or body, a discretionary authority;

- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from any provisions of the regulations either wholly or to such extent as is specified;
- (d) so as to impose a penalty not exceeding \$100 for a breach of any regulation.

**71. Regulations as to fees**

Without limiting the generality of section 70 the Governor may make regulations prescribing the fees to be paid —

- (a) in respect of applications made under this Act;
- (b) for any valuation, inspection, report, plan or specification prepared or made for the purposes of this Act;
- (c) for the preparation by the Commission of tenancy agreements, contracts of sale, transfers, mortgages, discharges, releases and other instruments for the purposes of this Act;
- (d) for the production by the Commission of documents of title to property and other instruments;
- (e) for or with respect to the management, use, control, regulation and inspection of houses and other buildings and land maintained or caused to be maintained by the Commission,

and providing for the payment and recovery of such fees.

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**72.      Payment of fees and duties**

The Commission may pay registration fees and stamp duties in relation to a sale made under Division 4 of Part III or a loan made under Division 1 of Part IV on behalf of the person to whom the sale or loan is made and may recover the amount so paid from him.

**73.      Addition of certain amounts to balance of contract price or loan**

- (1) The Commission may add to the balance owing under a contract of sale under Division 4 of Part III or under a loan under Division 1 of Part IV —
  - (a) any amount payable to the Commission by the person to whom the sale or loan was made in respect of application, valuation, document preparation and other fees and expenses in connection with the sale or loan;
  - (b) any amount paid by the Commission pursuant to section 72 in relation to the sale or loan.
- (2) An amount may be added pursuant to subsection (1) to the balance owing under a contract of sale or loan notwithstanding that the total amount so owing will thereby exceed the sum determined pursuant to section 34 or 40, whichever is applicable, in respect of a contract of sale or loan of that kind.



## **Part IX — Saving and transitional provisions**

### **74. Continuity of status and operation**

Unless the contrary intention appears in this Act —

- (a) all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under the repealed Act immediately before the coming into operation of this Act shall under and subject to this Act continue to have the same status, operation and effect as they would have had if that Act had not been repealed;
- (b) in particular and without affecting the generality of paragraph (a), the repeal effected by section 3 shall not disturb the continuity of status, operation or effect of any appointment, notice, certificate, contract, agreement, debenture, charge, security, tenancy agreement, authorization, consent, approval, refusal, declaration, determination, recommendation, request, appeal, register, guarantee, deposit, insurance policy, appraisal, re-appraisal, valuation, delegation, estate, interest, notification, confirmation, validation, extension of time, proceeding, liability or right made, given, entered into, issued, granted, effected, maintained, lodged, incurred or acquired or existing or continuing by or under the repealed Act before the coming into operation of this Act.

### **75. Membership of Commission**

Notwithstanding section 74 a person holding office as a member of the Commission under section 9(1)(b) of the repealed Act immediately before the coming into operation of this Act shall, by virtue of the coming into operation of this Act, vacate that office but, subject to this Act, such a person shall be eligible for reappointment as a member of the Commission as constituted under this Act.

**76. Continuation of provisions relating to earlier Acts and bodies**

Without limiting the generality of section 74 and notwithstanding section 3 —

- (a) the provisions of subsections (3) and (4) of section 16 of the repealed Act shall continue to apply to and in respect of advances referred to in subsection (3) of that section;
- (b) the Commission shall continue to have the powers, functions and duties conferred or imposed on it by subsections (1) and (2) of section 21A of the repealed Act and the provisions of subsection (3) of that section continue to apply to the exercise of those powers and functions and the carrying out of those duties.

**77. Contracts of sale, mortgages and tenancies**

Contracts of sale, mortgages and tenancy agreements entered into under the repealed Act and subsisting at the coming into operation of this Act shall be deemed to be contracts of sale, mortgages and tenancy agreements, respectively, pursuant to this Act but —

- (a) the amount of the moneys, including interest (if any), owing under such a contract of sale or mortgage and the times at which and amounts in which those moneys shall be paid or repaid;
- (b) the rents and other amounts (if any) payable under such a tenancy agreement; and
- (c) the proceedings that may be taken by, and the other rights, remedies and obligations of, the Commission and the other party or parties to such a contract of sale, mortgage or tenancy agreement,

shall be determined in accordance with the provisions of the contract of sale, mortgage or tenancy agreement and of the repealed Act and the regulations thereunder.

**78. Perpetual leases**

Notwithstanding section 3 the provisions of the repealed Act and the regulations thereunder shall continue to apply to and in relation to perpetual leases granted under Part V of the repealed Act and subsisting at the coming into operation of this Act.

**79. References**

Where in any Act, regulation, rule, local law, by-law, proclamation, Order in Council or other document or instrument there is —

- (a) a reference to the Commission constituted under the repealed Act;
- (b) a reference that, before the coming into operation of this Act, was deemed to be a reference to the Commission constituted under the repealed Act,

that reference shall, unless because of the context or of the provisions of this Part it would be incorrect so to do, be read and construed as reference to the Commission as preserved and continued under this Act.

*[Section 79 amended by No. 14 of 1996 s.4.]*

**80. Construction**

This Part shall be construed as being in addition to the provisions of the *Interpretation Act 1918*<sup>4</sup>, and unless the contrary intention appears, shall not be construed as limiting or otherwise affecting the operation of those provisions to and in relation to the repeal effected by section 3.

*[Schedule. Repealed by No. 62 of 1983 s.6.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Housing Act 1980* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Housing Act 1980</i>	58 of 1980	24 Nov 1980	1 Jan 1981 (see section 2 and <i>Gazette</i> 24 Dec 1980 p.4349)
<i>Companies (Consequential Amendments) Act 1982</i> , section 28	10 of 1982	14 May 1982	1 Jul 1982 (see section 2)
<i>Housing Amendment Act 1983</i> <sup>5</sup>	62 of 1983	13 Dec 1983	Section 4 operative 1 Jan 1984 Balance operative 13 Dec 1983
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> , section 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see section 2 and <i>Gazette</i> 30 Jun 1986 p.2255)
<i>Financial Administration Legislation Amendment Act 1993</i> , Part 4	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Acts Amendment (Public Sector Management) Act 1994</i> , section 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see section 2 and <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Planning Legislation Amendment Act (No. 2) 1994</i> , section 46	84 of 1994	13 Jan 1995	1 Mar 1995 (see section 2 and <i>Gazette</i> 21 Feb 1995 p.567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> , Part 13	73 of 1995	27 Dec 1995	Part 13 operative 1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 Jun 1996	1 July 1996 (see section 2)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Statutory Corporations (Liability of Directors) Act 1996, section 3</i>	41 of 1996	10 Oct 1996	1 Dec 1996 (see section 2 and <i>Gazette</i> 12 Nov 1996 p.6301)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2(1))
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see section 2(1))
<i>Acts Amendment (Land Administration) Act 1997, Part 33</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see section 2 and <i>Gazette</i> 27 Mar 1998 p.1765)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 9(2)</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see section 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 87</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see section 2(1) and <i>Gazette</i> 30 Jun 1999 p.2905)
<i>Building Societies Amendment Act 2001 sections 49 and 51</i>	12 of 2001	13 Jul 2001	13 Jul 2001 (see section 2)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003 Pt. 10</i>	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 29</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Housing Societies Repeal Act 2005</i> s. 28 <sup>6</sup>	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 <sup>7</sup>	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

<sup>2</sup> May be read as a reference to the Minister for Public Sector Management. (See the *Public Sector Management Act 1994* (Act No. 31 of 1994) section 112(2)).

<sup>3</sup> Footnote no longer applicable.

<sup>4</sup> Repealed by the *Interpretation Act 1984* (Act No. 12 of 1984) section 77(1).

<sup>5</sup> Section 4(2) of the *Housing Amendment Act 1983* (Act No. 62 of 1983) reads as follows —

“

- (2) The power of the Commission to receive management fees properly incurred before the time of the coming into operation of this section but not received by the Commission before that time is not affected by subsection (1) of this section and nothing in this section shall be taken as limiting the application of section 16 or 17 of the *Interpretation Act 1918*.

”

<sup>6</sup> On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 28 had not come into operation. It reads as follows:

“

**28. Housing Act 1980 amended**

- (1) The amendments in this section are to the *Housing Act 1980*.  
(2) Section 52(1) is amended in the definition of “lending institution” by deleting paragraph (a).  
(3) Section 55(5) is amended by deleting “or on termination of the lending institution in the case of a housing society;”.

”

<sup>7</sup> On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

**15. Acts in Schedule 2 amended**

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

”.

Schedule 2, cl. 31 reads as follows:

“

**Schedule 2 — Consequential amendments**

[s. 15]

**31. *Housing Act 1980***

Section 22(1)(a) is deleted and the following paragraph is inserted instead —

“

- (a) with the consent of the Western Australian Planning Commission as defined in the *Planning and Development Act 2005* and any approval required under that Act, to re-plan and re-subdivide any area in which land held by the Commission is situated, and with the consent of the Minister, to secure the closing of any street or the extinguishment of any easement or restrictive covenant;

”.

”.