

Western Australia

## **Country Housing Act 1998**

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## Country Housing Act 1998

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## Country Housing Act 1998

**An Act for the establishment of an authority to facilitate the provision of —**

- **housing in rural areas for farmers, their employees and retired farmers;**
- **adequate and suitable housing in rural areas for persons engaged in certain businesses and occupations;**

**to repeal —**

- **the *Rural Housing (Assistance) Act 1976*; and**
- **the *Industrial and Commercial Employees' Housing Act 1973*;**

**to make consequential amendments to certain other Acts, and to make related provisions.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Country Housing Act 1998*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

**“appointed member”** means a member referred to in section 5(1)(a) or (b);

**“approved lender”** means a body or person approved by the Minister under section 30;

**“Authority”** means the Country Housing Authority established by section 4;

**“committee”** means a committee established under clause 9 of Schedule 1;

**“family member”** in relation to a person means —

(a) a child, step-child or remoter lineal descendant of the person; or

(b) the spouse or de facto partner of that person or of a person referred to in paragraph (a),

or more than one of them;

**“farmer”** means a person whose sole or principal activity is the carrying on of primary production on his, her or its holding;

**“farming company”** means a corporation —

(a) the shares in which are not quoted on a financial market; and

(b) which has assets which include —

(i) farming property; or



- (ii) a share in a corporation —
  - (I) the shares in which are not quoted on a financial market; and
  - (II) the assets of which include farming property;

**“farming partnership”** means a partnership, the assets of which include farming property;

**“farming property”** means —

- (a) land which is used solely or principally for the purpose of primary production; or
- (b) personal property which is used solely or principally in connection with the business of primary production;

**“financial market”** has the same meaning as in Chapter 7 of the *Corporations Act 2001* of the Commonwealth;

**“Fund”** means the Country Housing Fund referred to in section 15(2);

**“holding”** means land —

- (a) held in fee simple;
- (b) held on lease or otherwise under the *Land Administration Act 1997*;
- (c) held under a perpetual lease granted for the purposes of the scheme as defined in section 4 of the *War Service Land Settlement Scheme Act 1954*; or
- (d) in relation to which an application to purchase the fee simple has been granted under section 89 of the *Land Administration Act 1997*;

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

**“metropolitan region”** has the same meaning as in section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;

**“primary production”** means agriculture, pastoral pursuits, grazing, dairy farming, bee-keeping, orcharding, viticulture, silviculture or other similar farming activities;

**“retired farmer”** means a natural person who has retired from his or her occupation as a farmer and transferred his or her —

- (a) total interest in farming property;
- (b) total interest in farming partnerships; or
- (c) total shares in farming companies,  
to a family member of that person;

**“rural employer”** means an employer who provides employment for any person (including the employer him or herself), outside the metropolitan region;

**“town”** means land that is a townsite within the meaning of the *Land Administration Act 1997*.

*[Section 3 amended by No. 24 of 2000 s. 11; No. 21 of 2003 s. 9; No. 28 of 2003 s. 29.]*

## **Part 2 — Country Housing Authority**

### **Division 1 — Establishment and staff**

#### **4. Country Housing Authority**

- (1) There is established an authority called the Country Housing Authority.
- (2) The Authority is a body corporate with perpetual succession and a common seal.
- (3) Proceedings may be taken by or against the Authority in its corporate name.
- (4) The Authority is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

#### **5. Membership of Authority**

- (1) The Authority consists of —
  - (a) 3 persons appointed by the Minister each of whom has, in the opinion of the Minister, knowledge of and experience in any of the fields of planning, housing, finance, farming, industry, commerce or in another field relevant to the functions of the Authority;
  - (b) a person appointed by the Minister from a list of 3 nominees submitted by the Western Australian Local Government Association referred to in section 9.58 of the *Local Government Act 1995* (“**WALGA**”);
  - (c) an officer in the Treasury Department<sup>2</sup> of the Public Service of the State, from time to time nominated by the Treasurer; and
  - (d) an officer of the Department principally assisting the Minister to whom the administration of the *Technology and Industry Development Act 1983* is committed in the administration of that Act, from time to time nominated by the Minister responsible for that department.

- (2) When the submission of a list of nominees is required for the purposes of subsection (1)(b), that submission is to be made to the Minister in writing within such reasonable time after the receipt by WALGA of a notice from the Minister stating that the submission is required as is specified in that notice.
- (3) If a submission is not made under subsection (2) within the time specified in the notice the Minister may appoint such person as the Minister thinks fit to be a member of the Authority in place of the person referred to in subsection (1)(b).
- (4) The Minister is to appoint one of the appointed members to be chairperson and another of the appointed members to be deputy chairperson of the Authority.
- (5) Schedule 1 has effect.

*[Section 5 amended by No. 49 of 2004 s. 13.]*

**6. Remuneration**

An appointed member is entitled to such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

**7. Staff and facilities**

- (1) The Authority may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
- (2) The Authority may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,

make use of any facilities of the department, agency or instrumentality.

- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

**8. Protection of members and staff**

- (1) An action in tort does not lie against a person other than the Authority for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Authority of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.
- (5) This section has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

**9. Confidentiality**

A person who is or has been a member or a person referred to in section 7 must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or

(d) in prescribed circumstances.

Penalty: \$2 500.

## **Division 2 — Functions**

### **10. Objective of the Authority**

The Authority is to ensure that the resources of the Authority are managed to assist those persons for whom it considers housing finance options are otherwise limited.

### **11. Functions and powers of the Authority**

- (1) The functions of the Authority are —
  - (a) in accordance with Parts 3 and 4, to facilitate the provision of housing outside the metropolitan region —
    - (i) for farmers and their employees;
    - (ii) for retired farmers; and
    - (iii) in connection with certain businesses and services;
  - (b) to assess the eligibility of persons to be assisted under this Act;
  - (c) to advance moneys for the purposes of and in accordance with this Act; and
  - (d) to advise the Treasurer on the provision of indemnities by the Treasurer under Part 4.
- (2) The Authority may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting subsection (2) or the other powers conferred on the Authority by this Act or any other written law, the Authority may for the purpose of performing any function —
  - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;

- (b) with the approval of the Minister, buy, sell or otherwise deal in mortgages or other instruments evidencing indebtedness that are secured against land;
- (c) with the approval of the Minister, enter into any contract or arrangement with an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth or other person whose ordinary business includes the provision of finance;
- (d) appoint agents or engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as it considers necessary to enable the Authority to perform its functions; and
- (e) accept any gift, devise or bequest if it is absolute, or subject to conditions which are within the functions of the Authority.

*[Section 11 amended by No. 26 of 1999 s. 69(2).]*

**12. Delegation**

The Authority may, by instrument in writing, delegate to —

- (a) a member or members of the Authority;
- (b) a person referred to in section 7; or
- (c) a committee,

any of its functions, except this power of delegation.

**Division 3 — Relationship with the Minister**

**13. Authority subject to directions of Minister**

- (1) The Minister may give directions in writing to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be —

- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
- (b) included in the annual report submitted by the accountable authority of the Authority under section 66 of the *Financial Administration and Audit Act 1985*.

**14. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Authority; and
  - (b) where the information is in or on a document, to have, and make and retain copies of that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Authority to furnish information to the Minister;
  - (b) request the Authority to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of a person referred to in section 7 to obtain the information and furnish it to the Minister.
- (3) The Authority is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
  - “document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
  - “information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Authority.



### **Division 4 — Financial provisions**

#### **15. Funds of the Authority**

- (1) The funds available for the purpose of enabling the Authority to perform its functions consist of —
  - (a) moneys from time to time appropriated by Parliament;
  - (b) moneys received by way of repayment of, or interest paid on, moneys advanced by the Authority under this Act;
  - (c) moneys borrowed by the Authority under section 16 or 17;
  - (d) the proceeds of the disposition of land by the Authority;
  - (e) rents and other payments derived from land leased by the Authority to others;
  - (f) gifts and bequests;
  - (g) moneys from sinking fund investments made by the Authority; and
  - (h) any other moneys lawfully received by, made available to or payable to the Authority.
- (2) The funds referred to in subsection (1) are to be paid into and placed to the credit of an account at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985* called the “Country Housing Fund”.
- (3) The Fund is to be charged with —
  - (a) the costs of the administration of this Act, including the establishment and administration of the Authority and any expense incidental to the administration of the Fund;
  - (b) the payment of remuneration and allowances to appointed members;
  - (c) the payment of any moneys required to be paid under an agreement referred to in section 7(3);

- (d) interest on, and repayments of, moneys borrowed by the Authority under section 16 or 17 and any fees payable in connection with any such borrowing;
- (e) the payment of all moneys advanced under Part 3;
- (f) the payment of all moneys necessary to meet the obligations of the Authority in respect of moneys borrowed by it; and
- (g) all other expenditure lawfully incurred under and for the purposes of this Act.

**16. Borrowing from Treasurer**

The Authority may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

**17. Other borrowing**

- (1) In addition to its powers under section 16, the Authority may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow money for the purpose of performing its functions.
- (2) Any moneys borrowed by the Authority under subsection (1) may be raised —
  - (a) as one loan or as several loans; and
  - (b) in such manner as the Treasurer approves.

**18. Borrowing limits**

- (1) The Treasurer may, by notice in writing to the Authority —
  - (a) impose limits on the exercise of the power conferred by section 17(1); and
  - (b) from time to time vary the limit in force.
- (2) The Authority is to comply with any limit for the time being in force but a liability of the Authority is not unenforceable or in any way affected by a failure of the Authority to do so.

- (3) A person dealing with the Authority is not bound or concerned to enquire whether the Authority has complied or is complying with this section.

**19. Guarantee by Treasurer**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Authority in respect of moneys borrowed by it under section 17.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given, the Authority is to —
- (a) give to the Treasurer such security as the Treasurer requires; and
  - (b) execute all instruments that are necessary for the purpose.

**20. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 19 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 19.

**21. Distribution of surplus**

- (1) The Authority, as soon as is practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the surplus (if any) that it recommends as

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**Part 2** Country Housing Authority

**Division 4** Financial provisions

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being appropriate to be paid by the Authority to the Treasurer for that financial year.

- (2) The Minister, with the concurrence of the Treasurer, may fix the amount of any surplus to be paid by —
  - (a) agreeing to an amount (if any) recommended under subsection (1); or
  - (b) determining the amount that is to be paid.
- (3) The Authority is to pay any surplus so fixed to the Treasurer at such time or times as the Treasurer specifies.

**22. 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 Authority and its operations.

## **Part 3 — Assistance by the Authority**

### **Division 1 — Assistance to farmers**

#### **23. Applications for assistance by farmers**

A farmer who wishes to —

- (a) on the farmer's holding —
  - (i) place or erect a dwelling; or
  - (ii) effect additions or alterations to, or modernize, an existing dwelling,for use as a home by the farmer and the farmer's dependants (if any) or by an employee of the farmer and the employee's dependants (if any); or
- (b) in a town in the vicinity of the holding —
  - (i) purchase land upon which a dwelling is erected;
  - (ii) purchase land and place or erect a dwelling on it; or
  - (iii) place or erect a dwelling on land owned by the farmer,for use as a home by an employee of the farmer and the employee's dependants (if any),

may apply to the Authority for financial assistance for that purpose.

#### **24. Approval of applications**

- (1) The Authority may approve an application under section 23 on such terms and conditions as it thinks fit or may refuse the application.
- (2) The Authority is not to approve an application under section 23 where the applicant is a body corporate, unless the Authority is satisfied that —
  - (a) the shares in the body corporate are not quoted on a financial market;

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**Part 3** Assistance by the Authority

**Division 2** Assistance to retired farmers

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- (b) the farming operations carried on by the applicant on the holding concerned are solely or principally performed for or on behalf of the applicant by one or more natural persons holding shares in the share capital of the applicant; and
- (c) where the application is made under section 23(a), the dwelling in respect of which the financial assistance is required is intended to be used as a home by the person or persons referred to in paragraph (b) and their dependants (if any).

*[Section 24 amended by No. 21 of 2003 s. 10.]*

**25. Authority may assist successor in title**

- (1) This section applies where a farmer to whom financial assistance is being provided under this Act transfers or otherwise disposes of his or her holding to another person, or proposes to do so.
- (2) The Authority may approve of an application for financial assistance by a person who becomes or proposes to become the successor in title of the farmer in respect of any moneys that then remain owing by the farmer under a security taken or effected for the purposes of this Act.
- (3) Sections 23, 24 and 32, with such modifications as are necessary, apply to and in relation to an application under subsection (1).

**Division 2 — Assistance to retired farmers**

**26. Applications for assistance by retired farmers**

- (1) A retired farmer who wishes to, in a town outside the metropolitan region —
  - (a) purchase land upon which a dwelling is erected;
  - (b) purchase land and place or erect a dwelling on it; or

- (c) place or erect a dwelling on land owned by the retired farmer,

may apply to the Authority for financial assistance for that purpose.

- (2) An application for financial assistance under this section cannot be made more than 12 months after the applicant became a retired farmer.

**27. Financial assistance to retired farmers**

- (1) The Authority may approve an application under section 26 on such terms and conditions as it thinks fit or may refuse the application.
- (2) The Authority is not to approve an application under section 26 for financial assistance by a retired farmer unless it is satisfied that the dwelling in respect of which the financial assistance is required is intended to be used as a home for the retired farmer and his or her dependants (if any).

**Division 3 — Assistance to rural business and services**

**Subdivision 1 — Assistance to rural employers**

**28. Applications for assistance by rural employers**

- (1) A rural employer who wishes to —
  - (a) purchase land upon which a dwelling is erected;
  - (b) purchase land and erect a dwelling; or
  - (c) place or erect a dwelling on land owned by the rural employer,

outside the metropolitan region may apply to the Authority for financial assistance for that purpose.

- (2) The Authority may approve an application under this section on such terms and conditions as it thinks fit or may refuse the application.

**Subdivision 2 — Assistance to rural local governments**

**29. Applications for assistance by local governments**

- (1) A local government of a district that is outside the metropolitan region which wishes to erect a dwelling or dwellings within its district —
- (a) to assist a business carried on or proposed to be carried on within its district; or
  - (b) to provide housing for Government employees, local government employees, or other persons providing services within its district,

may apply to the Authority for financial assistance for that purpose.

- (2) The Authority may, with the approval of the Minister, approve an application under this section on such terms and conditions as it thinks fit or may refuse the application.



## **Part 4 — Assistance by way of indemnity**

### **30. Approval of lenders**

- (1) Any body corporate or natural person may apply in writing to the Minister to be an approved lender.
- (2) The Minister may approve the application on such terms and conditions as the Minister thinks fit or may refuse the application.

### **31. Cancellation of approval**

- (1) If it appears to the Minister that an approved lender has ceased to be suitable to continue to be an approved lender, the Minister may, by notice in writing served on the approved lender, cancel the approval.
- (2) Where a notice is served under subsection (1) —
  - (a) any indemnity given under section 32(3) to the lender does not apply to or in respect of the repayment of any advance made by the lender after service of the notice or interest on any such advance; and
  - (b) the lender is not to, because of the service of the notice of cancellation, call up or take any action to enforce repayment or accelerated repayment of any advance to which section 32 applies or interest on the advance made by the lender before the notice was served, other than in accordance with the terms of a loan agreement as in force immediately before service of the notice.
- (3) Subsection (2) does not affect the operation of any indemnity given under section 34(1) by the Treasurer to the approved lender before the service of the notice.

### **32. Advances by approved lenders may be indemnified**

- (1) An approved lender may inform the Authority that the lender is prepared to make an advance to a farmer, retired farmer or rural

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employer on condition that the advance will be indemnified by the State.

- (2) Where it is so informed the Authority may, with the approval of the Treasurer, authorise the approved lender to make the advance.
- (3) If the advance is made the approved lender is to be indemnified, in accordance with section 34, against any loss incurred by the approved lender in respect of the advance.

**33. Security for advance**

Where an approved lender makes an advance under section 32 —

- (a) the approved lender is to secure the due repayment of the moneys so advanced, together with interest due on the moneys, by taking or effecting such security as is agreed by the Authority and the approved lender to be the most appropriate in the circumstances; and
- (b) the farmer, retired farmer or rural employer is to execute all such instruments as are necessary for the purpose.

**34. Treasurer empowered to give indemnity to approved lender**

- (1) The Treasurer may on behalf of the Crown in right of the State execute an instrument indemnifying an approved lender against any loss incurred by the lender in respect of any advance made in accordance with section 32.
- (2) The instrument is to contain such terms and conditions as, subject to this section, are agreed between the Authority and the approved lender and approved by the Treasurer.
- (3) The Treasurer may from time to time by order published in the *Gazette* fix —
  - (a) the maximum amount of an advance which may be indemnified by the Treasurer under this section; and

- (b) the maximum amount in respect of which the Treasurer may give an indemnity under this section during any period specified in the order.

**35. Effect of indemnity**

- (1) The due payment of moneys payable by the Treasurer under an indemnity given or entered into under section 34 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee under this section.

**36. Treasurer may delegate**

- (1) The Treasurer may, either generally or as otherwise provided in the instrument of delegation, by instrument signed by him, delegate to the Minister —
  - (a) the power of approval conferred on the Treasurer by section 32(2); and
  - (b) the power to execute an instrument indemnifying an approved lender under section 34.
- (2) Where the Treasurer delegates under subsection (1) —
  - (a) the Minister may exercise the powers in the same manner and to the same effect as if the powers were directly conferred on the Minister and not by the instrument of delegation; and
  - (b) anything done by the Minister under the instrument of delegation is presumed to be in accordance with the terms of the delegation in the absence of proof to the contrary.

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**37. Indemnified loans may be re-financed**

- (1) Where —
- (a) under section 34 the Treasurer has indemnified an approved lender against any loss incurred in respect of an advance made by the lender to a farmer, a retired farmer or a rural employer; and
  - (b) the Treasurer may be required to pay any money under the indemnity,

the Authority may repay to the approved lender the amount of the advance and any interest due.

- (2) The amount so paid by the Authority is to be treated as financial assistance by the Authority to the farmer under section 24, the retired farmer under section 27 or the rural employer under section 28, as the case requires.
- (3) Before making a payment to an approved lender under subsection (1) the Authority is to enter into an agreement with the farmer, the retired farmer or the rural employer, as the case requires, securing the due repayment to it of the amount to be so paid by the Authority together with interest by taking or effecting such security as in the opinion of the Authority is most appropriate in the circumstances.

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## Part 5 — General

### 38. Applications for assistance generally

- (1) An application for financial assistance under this Act is to be made in writing in a form approved by the Authority.
- (2) The Authority may require a person making an application for financial assistance to furnish to it such accounts, documents or other information as it thinks fit.
- (3) A person must not in an application for financial assistance under this Act give information that the person knows to be false or misleading in a material particular.

Penalty: \$10 000.

### 39. Terms of provision of assistance by the Authority

- (1) In this section —  
“**assisted person**” means a person or body to whom financial assistance is provided under this Act.
- (2) Subject to this Act, any financial assistance provided by the Authority under this Act is to be provided on such terms and conditions as are agreed between the Authority and the assisted person.
- (3) The Authority is to publish in the *Gazette* the criteria, as amended from time to time, that assisted persons must satisfy in order to secure financial assistance.
- (4) The Authority is to secure the due repayment to it of any moneys advanced together with interest due on those moneys by taking or effecting such security as in the opinion of the Authority is the most appropriate in the circumstances.
- (5) The assisted person is to execute all such instruments as are necessary for the purposes of this section.

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**40.        Determination of standard rate of interest**

The Minister is to, from time to time, by order published in the *Gazette* fix a standard rate of interest to apply to financial assistance provided under this Act.

**41.        Guidelines by Minister for assistance**

The Minister may, from time to time, issue to the Authority guidelines as to the terms upon which financial assistance may be provided by the Authority under this Act.

**42.        Ministerial approval for non-commercial assistance**

- (1) The Authority is not to provide financial assistance —
- (a) at a rate of interest lower than the current rate determined by the Minister under section 40; or
  - (b) on terms which are outside guidelines issued by the Minister under section 41,

without the prior approval of the Minister.

- (2) The Minister, in considering the grant or refusal of an approval under subsection (1), is to have regard to whether the grant of that approval would provide economic or social benefit to a rural town or region.
- (3) Where the Minister has granted approval under subsection (1) the text of that approval is to be laid before each House of Parliament within 14 sitting days of that House after the approval is granted.

**43.        Additional powers of building societies to make advances under this Act**

- (1) A society registered under the *Housing Societies Act 1976* is by force of this section lawfully entitled to make an advance to a farmer, retired farmer or rural employer where the society is indemnified under this Act against any loss incurred in respect of the advance.

- (2) Subsection (1) operates despite any provision in the Act referred to or in the rules, articles or constitution of the society by which such an advance would, for any reason or reasons, be unlawful or *ultra vires* the powers of the society.

*[Section 43 amended by No. 26 of 1999 s. 69(3) and (4); No. 12 of 2001 s. 51.]*

**44. Authority to have access to certain documents, etc.**

An approved lender, or any bank or financial institution at which any account, record or document of an approved lender is kept, whenever requested by the Authority to do so —

- (a) is to make available to the Authority, or a person appointed in writing by the Authority, all documents and records, including records of accounts, which —
- (i) relate to or are connected with any advance, the subject of an indemnity given under this Act; and
  - (ii) are in the custody or under the control of the person, bank or institution so requested;

and

- (b) is to permit the Authority or person so appointed to examine and take copies or extracts from them.

Penalty: \$10 000.

**45. Regulations**

The Governor may make regulations not inconsistent with this Act prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

**46. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement and in the course of that review the Minister is to consider and have regard to —
- (a) the effectiveness of the operations of the Authority;

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- (b) the need for the continuation of the functions of the Authority; and
  - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the expiration of the 5 year period referred to in subsection (1)), is to cause the report to be laid before each House of Parliament.

**47. Repeal, savings and transitional provisions**

Schedule 2 has effect.

[48. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]



## Schedule 1

[Section 5(5)]

### Provisions applicable to the members of the Authority

#### Division 1 — Provisions as to constitution and proceedings of Authority

##### 1. Term of office

- (1) An appointed member holds office for such term not exceeding 3 years as is specified in the instrument appointing the appointed member, but may from time to time be reappointed.
- (2) An appointed member whose term of office expires due to the effluxion of time continues in office until he or she is reappointed or a successor comes into office (as the case may be).

##### 2. Termination of appointment

- (1) An appointed member may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may terminate the appointment of an appointed member —
  - (a) if, in the opinion of the Minister, the appointed member is unable, through illness or absence from the State, to perform the functions of the office;
  - (b) if, in the opinion of the Minister, the member misbehaves, neglects his or her duties or is incompetent;
  - (c) if the member is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
  - (d) if the member is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Authority of which the member has had notice; or
  - (e) for any other act or omission that in the opinion of the Minister may adversely affect the functioning of the Authority.

**Schedule 1 Provisions applicable to the members of the Authority**

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**3. Temporary members**

(1) If an appointed member other than the chairperson is unable to act by reason of sickness, absence or other cause the Minister may appoint —

- (a) in the case of a member appointed under section 5(1)(a), another person who has, in the opinion of the Minister, knowledge of and experience in any of the fields referred to in that paragraph; or
- (b) in the case of a member appointed under section 5(1)(b), another person whom the Minister considers to be suitable to represent the interests of local governments,

to act temporarily in the place of that appointed member, and while so acting according to the tenor of that appointment the person is to be taken to be a member.

(2) If a member holding office under section 5(1)(c) or (d) is unable to act by reason of sickness, absence or other cause the Treasurer or the relevant Minister, as the case may require, may, in writing delivered to the Authority, nominate another officer to act temporarily in the place of that member, and while so acting according to the tenor of that nomination the officer is to be taken to be a member.

(3) If a member is the deputy chairperson and is performing the functions of the chairperson the Minister may, under subclause (1) appoint another person to act in his or her place as member.

(4) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

(5) The appointment of a person as a temporary member may be terminated at any time by the Minister.

**4. Meetings**

(1) The Authority, subject to this Schedule, is to determine the procedure for convening and conducting its meetings.

(2) The Authority is to conduct not less than 4 meetings in any year.

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**Provisions applicable to the members of the Authority**      **Schedule 1**

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- (3) At a meeting of the Authority —
  - (a) the chairperson, or in his or her absence the deputy chairperson, is to preside; and
  - (b) in the absence of both those members, a member elected by the members present is to preside.
- (4) The Authority must keep minutes of its meetings.

**5. Quorum**

A quorum for a meeting of the Authority is 4 members.

**6. Voting**

- (1) At any meeting of the Authority each member present has a deliberative vote.
- (2) Subject to subclause (3), if the votes cast on a question are equally divided the question remains unresolved until a subsequent meeting of the Authority.
- (3) If the votes cast on a question at a meeting of the Authority were equally divided and the votes cast on the question at a subsequent meeting of the Authority are again equally divided, the question is to be taken to have been resolved in the negative.

**7. Resolution without meeting**

A resolution in writing signed or assented to by each member by letter, telegram or facsimile is as effectual as if it had been passed at a meeting of the Authority.

**8. Telephone or video meetings**

A communication between not less than 4 members by telephone or audio-visual means is a valid meeting of the Authority if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

**Schedule 1 Provisions applicable to the members of the Authority**

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**9. Committees**

- (1) The Authority may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) Subject to the directions of the Authority and to the terms of any delegation under section 12, a committee may determine its own procedures.

**Division 2 — Disclosure of interests etc.**

**10. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Authority must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.  
Penalty: \$5 000.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**11. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the Authority —

- (a) must not vote whether at a meeting or otherwise —
  - (i) on the matter; or
  - (ii) on a proposed resolution under clause 12 in respect of the matter, whether relating to that member or a different member;
- and
- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered by the Authority.

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**Provisions applicable to the members of the Authority**      **Schedule 1**

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**12. Clause 11 may be declared inapplicable**

Clause 11 does not apply if the Authority has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**13. Quorum where clause 11 applies**

- (1) Despite clause 5, if a member of the Authority is disqualified under clause 11 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the Authority cannot deal with it because of subclause (1).

**14. Minister may declare clauses 11 and 13 inapplicable**

- (1) The Minister may by writing declare that clause 11 or 13 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.

*[Schedule 1 amended by No. 10 of 2001 s. 220.]*

**Schedule 2 — Repeal, savings and transitional provisions**

[Section 47]

**1. Repeal of *Rural Housing (Assistance) Act 1976***

The *Rural Housing (Assistance) Act 1976* is repealed.

**2. Repeal of *Industrial and Commercial Employees' Housing Act 1973***

The *Industrial and Commercial Employees' Housing Act 1973* is repealed.

**3. Interpretation**

In this Schedule, unless the contrary intention appears —

“**commencement day**” means the day on which the *Country Housing Act 1998* comes into operation;

“**former authority**” means the Rural Housing Authority established by section 5 of the repealed Act;

“**industrial housing authority**” means the Industrial and Commercial Employees' Housing Authority established by section 8 of the Industrial Housing Act;

“**Industrial Housing Act**” means the Act repealed by clause 2;

“**liability**” includes any obligation, claim or demand, present or future, certain or contingent, ascertained or sounding only in damages;

“**property**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action and a power of disposition over property;

“**repealed Act**” means the Act repealed by clause 1;

“**State Housing Commission**” means the State Housing Commission preserved and continued by the *Housing Act 1980*.

**4. Assets, liabilities etc., to vest in Authority**

(1) Subject to clause 5, on the commencement day —

(a) any property, whether within or outside the State, which was vested in the former authority or, to which the former

- authority was entitled immediately before that day vests in the Authority together with all claims, rights and remedies that the former authority then had in respect of the property;
- (b) any property, whether within or outside the State, which was vested in the industrial housing authority or, to which the industrial housing authority was entitled immediately before that day vests in the Authority together with all claims, rights and remedies that the industrial housing authority then had in respect of the property;
  - (c) the Authority becomes liable to pay, bear or discharge all the liabilities of the former authority and the industrial housing authority that are properly payable; and
  - (d) the Authority is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the former authority and the industrial housing authority.
- (2) Anything commenced by the former authority or the industrial housing authority before the commencement day may be continued by the Authority, so far as it is authorised by this Act.

**5. Beneficial interest in Keystart Trust**

- (1) On the commencement day —
- (a) the beneficial interest of the industrial housing authority as capital beneficiary under the Trust Deed for the Keystart Housing Scheme Trust vests in the State Housing Commission together with all claims, rights, remedies and liabilities that the industrial housing authority then had in respect of that interest; and
  - (b) the State Housing Commission is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) of the industrial housing authority so far as the records relate to that beneficial interest.

**Schedule 2 Repeal, savings and transitional provisions**

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- (2) In this clause —  
“**Keystart Housing Scheme Trust**” means the trust created by a deed of trust known as the “Keystart Trust Deed” dated 5 April 1989 as amended.

**6. Management and disposal of industrial housing houses**

- (1) Despite the repeal of the Industrial Housing Act, for a period of 5 years from the commencement day the Authority may, in respect of industrial housing houses (in addition to its powers under this Act) exercise the powers of the industrial housing authority as set out in section 18 of the Industrial Housing Act.
- (2) At the expiration of 5 years from the commencement day the Ministers shall by order published in the *Gazette* allocate to the State Housing Commission any industrial housing house properties held by the Authority and the liabilities of the Authority relating to those properties.
- (3) An order under subclause (2) is to include a sufficient description to enable the property and liabilities to be identified.
- (4) On the publication of an order under subclause (2) —
- (a) the property to which the order relates vests in the State Housing Commission together with all claims, rights and remedies that the Authority had in respect of the property;
  - (b) the State Housing Commission becomes liable to pay, bear or discharge all the liabilities that are allocated under the order; and
  - (c) the State Housing Commission is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Authority so far as the records relate to property or liabilities under the order.
- (5) The price of the property is to be the agreed value of the property.
- (6) Any amount owing by the State Housing Commission to the Authority by operation of this clause is payable by the State Housing Commission on demand by the Authority.



(7) In this clause —

“**agreed value**” means an amount agreed by the Authority and the State Housing Commission and in default of such agreement an amount determined by the Ministers;

“**industrial housing house**” means a dwelling-house situated on land which vests in the Authority under clause 4(1)(b);

“**Ministers**” means the Ministers to whom the administration of this Act and the *Housing Act 1980* are respectively committed by the Governor, acting jointly.

**7. Agreements and instruments**

Subject to clause 5, any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the former authority or the industrial housing authority was a party; or
- (b) which contains a reference to the former authority or to the industrial housing authority,

has effect after that day as if —

- (c) the Authority were substituted for the former authority or the industrial housing authority, as the case requires, as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former authority or to the industrial housing authority were (unless the context otherwise requires) a reference to the Authority.

**8. Registration of documents**

- (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933*<sup>3</sup> and the *Mining Act 1978*, and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take note of the provisions of this Schedule and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Schedule.

**Schedule 2    Repeal, savings and transitional provisions**

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- (2) Without limiting subclause (1) a statement in an instrument executed by the Authority that any estate or interest in land or other property has become vested in it under this Schedule is evidence of that fact.

**9.        Funds**

- (1) On the commencement day the Fund under section 10 of the repealed Act is to be closed and the moneys placed to the credit of the Fund.
- (2) On the commencement day the Fund under section 24 of the Industrial Housing Act is to be closed and the moneys placed to the credit of the Fund.

**10.       Saving status of certain institutions**

An institution or body appointed to be an approved lending institution under the repealed Act is to be taken to be an approved lender for the purposes of this Act as if the institution or body were approved by the Minister under section 30.

**11.       Validation of certain acts**

No act or proceeding of the industrial housing authority before the commencement day is invalidated or prejudiced by reason only that at any time the industrial housing authority was not properly constituted, and effect is to be given to any such act or proceeding as if the industrial housing authority had been properly constituted.

**12.       Guarantees and indemnities under repealed Act**

- (1) The repeal of the repealed Act does not affect any guarantee or indemnity under section 12 of that Act as in force immediately before the commencement day.
- (2) Section 35 applies to a guarantee or indemnity referred to in subclause (1) as if it were an indemnity under section 34.

**13.       Reference to “guarantee”**

A reference in any other written law or a document executed before the commencement day to a guarantee by the Treasurer under section 12 of the repealed Act as in force before the commencement day is to be construed, unless the context otherwise requires, as if that

reference were a reference to an indemnity by the Treasurer under section 34(1) of this Act.

**14. Annual report for part of a year**

- (1) The “accountable authority”, within the meaning in the *Financial Administration and Audit Act 1985*, of each of the former authority and the industrial housing authority is to report as required by section 66 of that Act, but limited to the period from 1 July preceding the commencement day to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.
- (2) The former authority and the industrial housing authority and each of their accountable authorities as constituted immediately before the commencement day continue in existence for the purpose of subclause (1) and for that purpose only.
- (3) The Authority is to arrange for the provision of such clerical and other assistance as is reasonably required for the purpose of subclause (1).
- (4) For the purposes of Division 14 of Part II of the *Financial Administration and Audit Act 1985* the period from the commencement day to the succeeding 30 June is to be regarded as a full financial year of the Authority.

**15. Powers in relation to transitional provisions**

- (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the repealed Act and the Industrial Housing Act to this Act the Governor may make that provision by order published in the *Gazette*.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of the provisions of this Schedule the Governor may, by order published in the *Gazette* —
  - (a) modify those provisions to remove the anomaly; and
  - (b) make such provision as is necessary or expedient to carry out the intention of those provisions.
- (3) An order under this section may be made so as to have effect from the commencement day.

**Schedule 2    Repeal, savings and transitional provisions**

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- (4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the - the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State) the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.

**16.    Exemption from State tax**

- (1) In this clause —
- “**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
- (a) anything that occurs by operation of this Schedule; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of, giving effect to this Schedule.

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Notes

- <sup>1</sup> This is a compilation of the *Country Housing Act 1998* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Country Housing Act 1998</i>	4 of 1998	14 Apr 1998	1 Jul 1998 (see s. 2 and <i>Gazette</i> 30 Jun 1998 p. 3557)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 69	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 11	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001</i> s. 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<b>Reprint of the <i>Country Housing Act 1998</i> as at 13 Dec 2002</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 2 <sup>4</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 (No. GN42))
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 10	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Local Government Amendment Act 2004</i> s. 13	49 of 2004	12 Nov 2004	1 Apr 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029)

- <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

Short title	Number and Year	Assent	Commencement
<i>Housing Societies Repeal</i>	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3))

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Act 2005 s. 22<sup>5</sup>

and (4))

*Planning and Development* 38 of 2005 12 Dec 2005 To be proclaimed (see s. 2)  
(Consequential and  
Transitional Provisions)

Act 2005 s. 15<sup>6</sup>

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<sup>2</sup> Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in any law to the Treasury Department is read and construed as a reference to the Department of Treasury and Finance.

<sup>3</sup> Under the *Land Administration Act 1997* s. 281(3) a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the *Land Administration Act 1997*.

<sup>4</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

**2. Commencement**

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

**3. Interpretation**

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be

as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.

- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
  - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
  - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”.

<sup>5</sup> On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 22 had not come into operation. It reads as follows:

“

**22. Country Housing Act 1998 amended**

- (1) The amendment in this section is to the *Country Housing Act 1998*.
- (2) Section 43 is repealed.

”.

<sup>6</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. 15 reads as follows:

“

**Schedule 2 — Consequential amendments**

[s. 15]

**15. Country Housing Act 1998**

Section 3 is amended by deleting the definition of “metropolitan region” and inserting instead —

“

“**metropolitan region**” has the meaning given to that term in the  
*Planning and Development Act 2005* section 4;

”.

”.