

HOUSING AGREEMENT (COMMONWEALTH AND STATE).

No. 89 of 1973.

**AN ACT relating to Financial Assistance from the
Commonwealth for the purposes of Housing.**

[Assented to 21st December, 1973.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Housing Agreement (Commonwealth and State) Act, 1973.* Short title.

2. In this Act unless the contrary intention appears— Interpre-
tation.

“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 lending institution carries on its business, and includes rules, by-laws, regulations, and other subordinate authorizations effective under the Act or other instrument;

“lending institution” means any building society or lending authority of the State to which loans may be made under subclause (4) of clause 23 of the scheduled agreement of moneys standing to the credit of the Home Builders’ Account;

“loan agreement” means an agreement between the State and a lending institution in relation to a loan under subclause (4) of clause 23 of the scheduled agreement to enable the lending institution to make loans to borrowers to assist such borrowers to build or purchase homes for themselves and their families;

“scheduled agreement” means the agreement a copy of which is set forth in the Schedule to this Act.

Authoriza-
tion or
confirmation
of execution
of scheduled
agreement.

3. In order that the agreement may, as between the Commonwealth and the State, come into force as provided by Part I of the scheduled agreement—

- (a) the execution by or on behalf of the State of an agreement substantially in accordance with the form of the scheduled agreement, if not already executed prior to the coming into operation of this Act, is hereby authorized; or
- (b) if already executed by or on behalf of the State prior to the coming into operation of this Act, the execution of the agreement by or on behalf of the State is approved.

1973.]

Housing Agreement
(*Commonwealth and State*).

[No. 89.

4. 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.

Power to
make loan
agreements.

5. 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 6 of this Act apply to, and are included by virtue of this section in, every loan agreement, whether those provisions are or are not expressly included by the agreement in it, or are expressly excluded by the agreement from it.

Terms and
conditions of
agreement.

6. (1) Subject to sections 7 and 8 of this Act, 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 agreement, a floating charge on the whole of the undertaking and other property and assets, present and future, of the lending institution.

Floating
security
and charge.

(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) If and when applicable, the provisions of section 291 and Division 5 of Part X of the Companies Act, 1961 apply in respect of the debt, but this subsection does not derogate from the generality of the operation of the provisions of subsections (1), (2) and (3) of this section.

(5) Unless and until proceedings are commenced for winding up of the lending institution,

whether under Division 5 of Part X of the Companies Act, 1961; or on termination of the lending institution as mentioned in paragraph (a) of subsection (1) of section 29 of the Building Societies Act, 1920; 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.

Lending
institution
may give
securities.

7. (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 creates a charge thereon and which in the opinion of the Treasurer secures 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) of this section, executes in relation to that agreement such securities as are referred to in that subsection—

(a) the provisions of section 6 of this Act 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) of this section 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.

8. Where—

- (a) a lending institution has, at any time 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 pursuant to subsection (1) of section 7 of this Act,

Property and assets of lending institution may be released.

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 6 of this Act 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.

9. (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.

Power of inspection of affairs of approved institution.

NOW it is hereby agreed as follows—

PART I.—PRELIMINARY.

1. This Agreement shall come into force in respect of the Commonwealth and of a State when it has been signed on behalf of the Commonwealth and has been signed on behalf of the State with the authority of the Parliament of the State or, having been signed on behalf of the State without that authority, is approved by the Parliament of the State.

Commencement of Agreement.

2. Notwithstanding that in this Agreement all the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania are named as parties, this Agreement shall operate as an agreement between the Commonwealth and the State or States in respect of which it comes into force as fully and effectually as if the State or States in respect of which it comes into force were the only State or States named as parties.

Operation in respect of States.

3. The Commonwealth shall provide for or secure the performance by it and its authorities of the obligations of the Commonwealth under this Agreement and each of the States shall provide for or secure the performance by that State and its authorities of the obligations of that State under this Agreement.

Performance of Agreement.

PART II.—INTERPRETATION.

4. In this Agreement each State named as a party in respect of which the Agreement comes into force is referred to as a "State" and, except where the context otherwise indicates, the expression "the States" means all of those States.

Reference to States.

5. Where in this Agreement a Minister of State of the Commonwealth or of a State is referred to, the reference shall include a Minister or other member of the Federal Executive Council or Minister of the relevant State, as the case may require, acting on behalf of the Minister referred to.

References to Ministers.

6. In this Agreement, unless the contrary intention appears or the context otherwise requires—

Definitions.

"aged person" means a person who has reached the age that is determined by the Commonwealth as pensionable for aged persons;

"dwelling" means a dwelling-house or flat and includes such fences, outbuildings and other improvements and such connexions for sewerage, drainage, water, electricity, gas and other services as are provided or are reasonably required to be provided for the dwelling-house or flat;

“family dwelling” means a dwelling constructed or purchased by a State Housing Authority as being suitable for allocation to a family unit consisting of a couple, with or without children, or of a parent or guardian with one or more children;

“financial year” means a period of twelve months commencing on the first day of July;

“Housing Authority” in relation to a State, means—

- (a) in the case of New South Wales—The Housing Commission of New South Wales;
- (b) in the case of Victoria—the Housing Commission constituted under the Housing Act, 1958 of that State as amended and in force for the time being;
- (c) in the case of Queensland—The Queensland Housing Commission;
- (d) in the case of South Australia—the South Australian Housing Trust;
- (e) in the case of Western Australia—the State Housing Commission constituted under the State Housing Act 1946 of that State as amended and in force for the time being; and
- (f) in the case of Tasmania—the Director of Housing holding office under the Homes Act 1935 of that State as amended and in force for the time being;

“the Home Builders’ Account” means the account of a State referred to in clause 23 and, if that account is incorporated into another account or consolidated with other accounts as mentioned in subclause (2) of that clause, means the account resulting from the incorporation or consolidation;

“the Minister” means the Minister for Housing of the Commonwealth or other Minister of State of the Commonwealth for the time being responsible for the administration of this Agreement for the Commonwealth;

“the State Minister” means the Minister of State of the State for the time being responsible for the administration of this Agreement for the relevant State.

Construc-
tion of
Agreement.

7. In this Agreement, unless the contrary intention appears—

- (a) a reference to a Part or to a clause is to a Part or a clause of this Agreement, as the case may be;
- (b) words importing the masculine gender also import the feminine and, where appropriate, the neuter; and
- (c) words in the singular number include the plural and *vice versa*.

PART III.—FINANCIAL ASSISTANCE.

8. (1) During the financial years of this Agreement the Commonwealth will provide financial assistance to the States for welfare housing purposes by way of advances upon and subject to the terms of this Agreement. Financial Assistance.

(2) The financial years of this Agreement shall be the five financial years commencing on the first day of July in the years 1973, 1974, 1975, 1976 and 1977.

9. (1) Of the total amount of the advances by the Commonwealth to the State under this Agreement in respect of a financial year, portion (in this Agreement referred to as Housing Authority advances) shall be for allotment by the State to the Housing Authority of the State for the provision of housing in accordance with Part IV and the other portion (in this Agreement referred to as Home Builders' Account advances) shall be for payment into the Home Builders' Account of the State for application in accordance with Part V. Allocation of Assistance.

(2) Subject to subclause (3) of this clause, the amount of the Home Builders' Account advances to be made to a State in respect of a financial year shall be not less than 20 per centum nor more than 30 per centum of the total amount of the advances to be made by the Commonwealth to the State under this Agreement in respect of the financial year.

(3) Where a State has in each of the two financial years immediately preceding the first day of July, 1973, allocated to its Home Builders' Account from the amount set aside for housing within the meaning of subsection (2) of section 3 of the States Grants (Housing) Act 1971 in excess of 30 per centum of that amount, the State may, if at the request of the State Minister the Minister so approves, allocate as Home Builders' Account advances in respect of a financial year of this Agreement more than 30 per centum of the total amount of the advances under this Agreement in respect of that financial year.

10. (1) Each State shall, not later than the fifteenth day of May preceding the beginning of a financial year of this Agreement, inform the Minister of the amounts that the State wishes the Commonwealth to advance to it under this Agreement in respect of the financial year for— Amount of Advances.

- (a) the provision of welfare housing by the Housing Authority of the State; and
- (b) payment to the Home Builders' Account of the State.

(2) After consultation with the State Minister on the requirements of the State for welfare housing, during which regard shall be taken, among other relevant matters of the numbers seeking assistance, the cost of land and of dwelling construction and the capacity of the State to use advances, the Minister shall determine the amounts to be advanced to the State in respect of the financial year as Housing Authority advances and as Home Builders' Account advances in accordance with clause 9.

**Instalments
of Advances.**

11. The advances to be made by the Commonwealth to a State under this Agreement in respect of a financial year shall be made available by the Commonwealth during that financial year by equal monthly instalments unless otherwise agreed between the Treasurer of the Commonwealth and the Treasurer of the State.

Interest.

12. (1) Each advance made by the Commonwealth to a State under this Agreement or so much of each advance as for the time being remains unrepaid by the State shall until repayment as provided in clause 13 bear interest computed from the date upon which the advance is made.

(2) The rate of interest shall be—

(a) in respect of Housing Authority advances—4 per centum per annum; and

(b) in respect of Home Builders' Account advances—4½ per centum per annum.

(3) A State will on the thirty-first day of December and the thirtieth day of June of a financial year during which advances are made to the State by the Commonwealth under this Agreement pay to the Commonwealth the interest that has accrued on those advances up to the date of the payment of the interest.

**Repayment
of Advances.**

13. (1) Each State will repay to the Commonwealth the amount of each advance made to the State under this Agreement, and will pay the interest thereon as provided in clause 12 other than that payable under subclause (3) of that clause, by equal annual instalments of principal and interest so that the amount of the advance, together with the interest, will be repaid in 53 years from the beginning of the financial year next succeeding the financial year in respect of which the advance was made, the first such instalment being payable on or before the end of the financial year next succeeding the financial year in respect of which the advance was made.

(2) Accounting procedures in respect of the repayment of advances will be as agreed upon between the Treasurer of the Commonwealth and the Treasurer of each State or, in default of agreement, as determined by the Treasurer of the Commonwealth, but nothing in this subclause shall affect the other provisions of this Agreement.

PART IV.—HOUSING AUTHORITY ADVANCES.

14. Housing Authority advances shall be used by the State for the provision through its Housing Authority of welfare housing in accordance with this Agreement and, without prejudice to the generality of the foregoing, may be used by the Housing Authority for the following purposes—

Use of
Advances.

- (a) to meet the costs of acquisition and development of land primarily for residential purposes;
- (b) to meet the cost of construction of dwellings;
- (c) to meet the cost of purchase and upgrading and renovation of dwellings, and of substantial improvements to its existing dwellings but not so as to include the cost of maintenance of any dwellings; and
- (d) subject to the approval of the Minister, to provide bridging finance for community amenities that are not the responsibility of the Housing Authority.

15. (1) Dwellings for the provision of which Housing Authority advances have been used and which become available for allocation during the period of five years commencing on the first day of January, 1974, shall be allocated by the Housing Authority of the State for rental or for purchase by applicants for housing assistance in accordance with this clause and the other provisions of this Part.

Allocation
of Dwellings.

(2) The dwellings shall be allocated so that—

- (a) not less than 85 per centum of the family dwellings that are allocated for the first time;
- (b) all of the dwellings built for couples, without dependants, of which the main breadwinner is an aged person or an invalid; and
- (c) all of the dwellings built for single aged persons and for invalids,

are allocated to families and other persons who respectively satisfy the needs tests set out in clause 16.

(3) Subject to the granting of priorities in cases of urgent need, dwellings shall be allocated to persons in order of lodgement or of acceptance by the Housing Authority of applications for housing assistance.

(4) A Housing Authority shall not be required by the provisions of this clause to allocate a dwelling to a family or other person where the circumstances are such that in

the opinion of the Housing Authority, the family or other person does not require housing assistance of the nature that is provided for by this Part.

**Needs
Tests.**

16. (1) The needs tests referred to in subclause (2) of clause 15 for the purpose of the allocation of dwellings are—

- (a) for a family, which shall consist of not less than a couple, with or without children, or of a parent or guardian with one or more children—that the average gross weekly income of the main breadwinner (exclusive of any overtime and child endowment payments) during the six months immediately prior to the allocation of the dwelling does not exceed—
 - (i) where the family does not include more than two children—85 per centum of average weekly earnings;
 - (ii) where the family includes more than two children—85 per centum of average weekly earnings plus two dollars for each child beyond the second;
- (b) for a couple, without dependants, of which the main breadwinner is an aged person or an invalid—that the gross weekly income of the main breadwinner (exclusive of any overtime) does not at the time of allocation of the dwelling exceed 60 per centum of average weekly earnings;
- (c) for a single aged person or an invalid—that the gross weekly income of that person at the time of allocation of the dwelling does not exceed 40 per centum of average weekly earnings.

(2) For the purposes of subclause (1) of this clause “average weekly earnings” means the average weekly earnings per employed male unit in the State or in Australia (as to which the State may elect) during the December quarter in respect of which statistics were last published by the Commonwealth Statistician prior to the date of allocation of the relevant dwelling.

**Variation
of Needs
Test.**

17. (1) At the initiative of the Minister and with the concurrence of the State Minister or Ministers concerned or at the request of the State Minister or Ministers concerned, the Minister may at any time vary all or any of the needs tests provided for by clause 16 either generally in respect of a State or States or specifically in relation to specified categories of persons or to localities or locations.

(2) A variation under subclause (1) of this clause shall be in writing under the hand of the Minister and as soon as practicable after a variation is made a copy shall be forwarded to the Minister for Housing of each State.

18. Each State will ensure that the number of family dwellings allocated by the Housing Authority of the State during each of the five calendar years commencing on the first day of January, 1974, to persons eligible as families under this Agreement shall be at least the equivalent of the sum of—

Total
Allocation
of Family
Dwellings.

- (a) the total number of the family dwellings for the provision of which Housing Authority advances have been used and which become available during the relevant calendar year for allocation for the first time; and
- (b) 25 per centum of the number of the family dwellings for the provision of which advances by the Commonwealth under this Agreement and under previous Commonwealth-State Housing Agreements have been used and which become available during the year for re-allocation by the Housing Authority by way of rental vacancies and of reversion or reversion of dwellings that had been sold.

19. (1) Subject to subclause (2) of this clause, the Housing Authority of a State shall not sell more than 30 per centum of the family dwellings for the provision of which Housing Authority advances have been used and which are completed or purchased during the period of five years commencing on the first day of January, 1974.

Limitations
and
Restrictions
on Sales of
Family
Dwellings.

(2) In the case of the State of Tasmania the percentage of family dwellings referred to in subclause (1) of this clause that may be sold shall not exceed—

- (a) during the year commencing on the first day of January, 1974—50 per centum; and
- (b) during the year commencing on the first day of January, 1975—40 per centum.

(3) A dwelling that may be sold under subclause (1) or (2) of this clause shall be sold only to a purchaser who represents a family the income of whose main breadwinner at the time of sale does not exceed the relevant income limit referred to in paragraph (a) of subclause (1) of clause 16 (as at any time varied in accordance with clause 17) except that a dwelling may be sold to the Director of Defence Service Homes to enable such a purchaser to purchase the dwelling from the Director in order to obtain assistance under the Defence Service Homes Act 1918-1973 as amended from time to time.

(4) Except with the approval of the Minister, sales of family dwellings in conformity with this clause shall be made on terms under contracts of sale.

(5) The State shall ensure that a purchaser of a family dwelling will not be entitled to dispose of the dwelling (except by release or resale to the Housing Authority of his interest in the dwelling) during the period of not less than five years after the date of sale and that after the expiration of that period a purchaser who proposes to sell a family dwelling may be required by the Housing Authority to offer to the Housing Authority the release or resale of his interest in the dwelling on the basis of the fair market value of the dwelling and the land on which it is built at the time of the offer.

(6) Nothing in this clause shall preclude the sale or other disposal by the Housing Authority of the State, subject to the approval of the Minister, of land on which a dwelling is erected where the land is required for public purposes not of a residential character or in other circumstances which the State establishes to the satisfaction of the Minister justify the sale or disposal.

Sale Price
and Interest.

20. (1) Dwellings built with Housing Authority advances and completed after the thirty-first day of December, 1973, shall not be sold for a price that is less than one-half of the sum of the cost to the Housing Authority of the dwelling and the land on which it is built and the fair market value of the dwelling and the land on which it is built at the date of sale.

(2) The interest charge, which shall include an element for the costs of administration by the Housing Authority of the contract of sale, to purchasers of dwellings shall not be less than 5 per centum per annum nor more than 5¼ per centum per annum.

Review of
Rentals.

21. A State shall arrange for the financial position in regard to the rental activities of its Housing Authority to be reviewed at least once in each financial year and shall ensure that rents are adjusted whenever an increase would appear to be justified.

Distribution
of Dwellings.

22. To the maximum extent reasonably practicable—

- (a) dwellings built with Housing Authority advances shall be intermingled with dwellings privately constructed; and
- (b) a State Housing Authority will acquire some blocks in areas developed or to be developed privately and will construct and let dwellings on those blocks.

PART V.—HOME BUILDERS' ACCOUNT ADVANCES.

Home
Builders'
Account.

23. (1) Each State shall pay the Home Builders' Account advances made to the State to an account in the public accounts of the State to be known for the purposes of this Agreement as "the Home Builders' Account".

1973.]

Housing Agreement
(*Commonwealth and State*).

[No. 89.]

(2) A State may arrange for the Home Builders' Account to be incorporated into the account established and operated under that name for the purposes of the 1956-1966 Housing Agreement or into the account opened and maintained in accordance with section 7 of the States Grants (Housing) Act 1971 or for all three of those accounts to be consolidated but any such incorporation or consolidation shall not affect the operation of this Part with respect to loans from Home Builders' Account advances under this Agreement.

(3) The Home Builders' Account shall be credited also with the moneys received by the State from building societies and approved lending authorities in repayment of principal and interest in respect of loans made by the State to those societies and authorities under this Agreement and shall be debited with the repayments of principal and the payments of interest payable by the State to the Commonwealth under clause 13 in respect of Home Builders' Account advances to the State under this Agreement and with any expenses incurred by the State in providing finance for prospective home owners in accordance with this Agreement.

(4) The moneys standing to the credit of the Home Builders' Account (after allowing for amounts with which the Account is to be debited under the last preceding subclause) shall be used by the State for the purpose of the provision of finance for prospective home owners in the State by way of loans to terminating building or co-operative housing societies (in this Part referred to individually as a "society") or to a lending authority of the State approved by the Minister so that the societies or the authority may make loans (in this Part referred to individually as "a loan to a home owner") to assist the borrowers to build or purchase homes for themselves and their families.

24. (1) To be eligible to obtain a loan to a home owner the borrower will be required to represent a family which consists or will consist of not less than a couple, with or without children, or of a parent or guardian with one or more children, of which the average gross weekly income of the main breadwinner (inclusive of overtime and exclusive of child endowment payments) during the six months immediately prior to application for the loan does not exceed—

Eligibility of
Borrowers.

(a) where the family does not include more than two children—95 per centum of average weekly earnings;

(b) where the family includes more than two children—95 per centum of average weekly earnings plus two dollars for each child beyond the second.

(2) For the purposes of subclause (1) of this clause "average weekly earnings" has the meaning attributed to that expression in subclause (2) of clause 16.

(3) At the initiative of the Minister and with the concurrence of the State Minister or Ministers concerned or at the request of the State Minister or Ministers concerned, the Minister may at any time vary the needs test provided for by subclause (1) of this clause either generally in respect of a State or States or specifically in relation to specified categories of persons or to localities or locations.

(4) A variation under subclause (3) of this clause shall be in writing under the hand of the Minister and as soon as practicable after a variation is made a copy shall be forwarded to the Minister of Housing of each State.

(5) Where a society or lending authority has entered into an obligation before the first day of July, 1973 to make a loan to a borrower of moneys to be provided from any of the accounts mentioned in subclause (2) of clause 23 and the whole or a part of that loan was not made by the thirtieth day of June, 1973, the loan or the balance of the loan, as the case may be, may be made from moneys standing to the credit of the Home Builders' Account notwithstanding that the average gross weekly income of the main breadwinner in the family exceeds the relevant limitation in subclause (1) of this clause.

Minimum equity.

25. A loan to a home owner shall not be made except on the condition that the borrower shall be bound to provide an equity of not less than 3 per centum of the valuation by the society or lending authority of the property in respect of which the loan is made.

Charges for Loans.

26. The amount that is charged by the society or lending authority in respect of a loan to a home owner by way of interest and management fee shall not exceed the equivalent, calculated with annual rests, of 5½ per centum per annum of the amount of the loan that for the time being remains to be repaid.

Homes for Purchase.

27. A loan to a home owner may be made for the purpose of the purchase of a new or previously occupied dwelling and may be made in respect of a dwelling to be purchased from a State Housing Authority where the dwelling has not been built with Housing Authority advances under this Agreement.

PART VI.—MISCELLANEOUS.

Supply of Information.

28. A State Minister will, upon request by the Minister, supply to the Minister such information relevant to the operation of this Agreement in respect of the State as is reasonably so requested.

Title of Agreement.

29. This Agreement shall be known and may be referred to as "the 1973 Housing Agreement".

In witness whereof, etc.