

Western Australia

Housing Act 1980

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Housing Act 1980

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Western Australia

Housing Act 1980

An Act relating to housing, to make better provision for housing and improving housing standards and conditions in the State, to encourage the use, development and redevelopment of land for housing and related purposes, to enable the carrying out of agreements and arrangements with respect to housing, to provide for the Housing Authority by merging the Government Employees' Housing Authority into The State Housing Commission and for other purposes.

[Long title amended by No. 28 of 2006 s. 310.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Housing Act 1980*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Repeal

The *State Housing Act 1946* is hereby repealed.

4. Objects

The objects of this Act are —

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

5. Interpretation

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

- (a) **“approved form”** means a form approved by the Minister;
- “Authority”** means the Housing Authority referred to in section 6(4);
- “house”** means any building (including any single, attached or multi-storey dwelling unit, tent,

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

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

“loan” includes a part of a loan;

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

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

“officer of the Authority” means —

- (a) the chief executive officer of the Authority;
- (b) an officer referred to in section 17(b); and
- (c) an officer or employee referred to in section 18A(1) whose services the Authority is making use of;

“owner” in relation to land means the person for the time being entitled to receive the rent of the land or premises in connection with which the word is used (whether on his own account or as the agent of or trustee for any other person) or who would be

entitled to receive the rent if the land or premises were let at a rent and includes the person who is purchasing land on terms or deferred payments;

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

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

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

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

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

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

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

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

“**the Fund**” means the Housing Authority Fund referred to in section 62;

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

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

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

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

[Section 5 amended by No. 14 of 1996 s. 4; No. 28 of 2003 s. 84; No. 28 of 2006 s. 311 and 332.]

Part II — The State Housing Authority

[Heading amended by No. 28 of 2006 s. 312.]

Division 1 — The Housing Authority

[Heading inserted by No. 28 of 2006 s. 313.]

6. The Housing Authority

- (1) The body corporate constituted under the repealed Act by the name “The State Housing Authority” is preserved and continues in existence for the purposes of this Act as a body corporate retaining the same corporate name and corporate identity.
- (2) At the merger time the former body merges into The State Housing Commission.
- (3) The State Housing Commission, as renamed by subsection (4), is a continuation of the former body.
- (4) Immediately after the merger time The State Housing Commission is renamed as the Housing Authority.
- (5) In this section —

“**former body**” means the Government Employees’ Housing Authority established by section 8 of the *Government Employees’ Housing Act 1964* as in force before the merger time;

“**merger time**” means the time at which section 314 of the *Machinery of Government (Miscellaneous Amendments) Act 2005* comes into operation.

[Section 6 amended by No. 28 of 2006 s. 314 and 332.]

7. Authority a body corporate and Crown agency

- (1) The Authority —
 - (a) is a body corporate with perpetual succession and a common seal; and

(b) is capable in law in its corporate name of suing and being sued.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority or the former body (within the meaning of section 6) affixed to any document and shall presume that it was duly affixed.

(3) The Authority is an agent of the Crown in right of the State.
[Section 7 amended by No. 28 of 2006 s. 315 and 332.]

8. Authority to be an SES organisation

The Authority is to be an SES organisation under the *Public Sector Management Act 1994*.

[Section 8 inserted by No. 28 of 2006 s. 316.]

9. Management

(1) The Authority is to be governed by its chief executive officer.

(2) The chief executive officer, in the name of the Authority, is to perform the functions of the Authority under this Act or any other written law.

[Section 9 inserted by No. 28 of 2006 s. 316.]

[10. Repealed by No. 28 of 2006 s. 316.]

Division 2 — Powers and functions of the Authority generally

[Heading amended by No. 28 of 2006 s. 317.]

11. Authority to implement housing Acts

(1) Subject to the control and direction of the Minister the Authority shall be responsible for the implementation of the provisions of this Act and the *Government Employees' Housing Act 1964*.

[(2), (3) repealed]

[Section 11 amended by No. 41 of 1996 s. 3; No. 28 of 2006 s. 318 and 332.]

11A. Minister may give directions

- (1) The Minister may give written directions to the Authority with respect to the performance of its functions under this or any other Act, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.
- (2) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (3), within 14 days after the direction is given.
- (3) If—
 - (a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,the Minister is to transmit a copy of the direction to the Clerk of that House.
- (4) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (5) The laying of a copy of a direction that is regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (6) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Authority under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 11A inserted by No. 28 of 2006 s. 319.]

11B. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Authority;
and
 - (b) if 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;
 - (c) for the purposes of paragraph (b) make use of the staff of the Authority to obtain the information and furnish it to the Minister.
- (3) The Authority has to comply with a request under subsection (2) and make staff and facilities available to the Minister for obtaining information under subsection (2)(c).
- (4) In this section —

“document” includes any tape, disk 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 under this or any other Act.

[Section 11B inserted by No. 28 of 2006 s. 319.]

12. General powers of Authority

Subject to and for the purposes of this Act and the *Government Employees' Housing Act 1964* the Authority —

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

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

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

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

[Section 12 amended by No. 28 of 2006 s. 320 and 332.]

12A. Joint ventures

- (1) The Authority shall not enter into or participate in joint venture arrangements (notwithstanding that those arrangements would be in the general furtherance of the objects of this Act or the *Government Employees' Housing Act 1964*) unless —
 - (a) those arrangements are for the carrying out, control, or management, either jointly or by one party on behalf of any other, or otherwise as may be agreed in the common interest, of a project involving —
 - (i) the erection of houses;
 - (ii) the subdivision, or acquisition and subdivision, and development of land for housing and related purposes;
 - (iii) the provision of services in relation to houses or subdivided land;

- (iv) the marketing of houses or subdivided land; or
 - (v) the provision of community facilities and amenities;
 - and
 - (b) the Governor has, on the recommendation of the Minister, approved of the Authority entering into and participating in the arrangements.
- (2) In subsection (1) “**community facilities and amenities**” has the same meaning as it has in section 61(1).
- (3) The Minister shall not recommend that the Governor approve of the Authority entering into and participating in joint venture arrangements relating to a project unless the Authority has submitted to him details that the Minister considers to be adequate of the proposed project and arrangements relating thereto and the Minister approves of the proposals.
- (4) Without limiting the generality of the powers that the Authority may exercise under this Act or the *Government Employees’ Housing Act 1964* for the purposes of participating in and giving effect to joint venture arrangements relating to a project, the Authority may —
- (a) seek and maintain appropriate representation on any board or other body having responsibility in the carrying out, management, or control of the project;
 - (b) subject to any contract relating to the project, receive contributions or other moneys relating to the project and disburse or distribute or arrange for the disbursement or distribution of those contributions or other moneys.
- (5) Where the Authority participates in joint venture arrangements relating to a project it shall ensure that adequate accounting records are maintained showing —
- (a) the several sources from which, and purposes for which, contributions relating to the project are received, and the manner in which those contributions are disbursed; and

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

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

[Section 12A inserted by No. 62 of 1983 s. 3; amended by No. 28 of 2006 s. 321 and 332.]

13. Delegation

- (1) With the consent of the Minister the Authority may by an instrument in writing in relation to such matter or class of matters and to such activity of the Authority as is specified in that instrument and to the extent therein set out, delegate any of its powers or functions under this Act or the *Government Employees' Housing Act 1964* (except this power of delegation) to an officer of the Authority.
- (2) A delegation under subsection (1) may be varied or revoked by notice in writing served on the delegate and no delegation prevents the exercise or performance by the Authority of any of its powers or functions.
- (3) A power or function delegated by the Authority may be exercised or performed by the delegate —
- (a) subject to and in accordance with the terms of the instrument of delegation; and
 - (b) if the exercise of the power or the performance of the function is dependent upon the opinion, belief, or state of mind of the Authority — upon the opinion, belief, or state of mind of the delegate.

[Section 13 amended by No. 28 of 2006 s. 322 and 332.]

14. Advice and investigations

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

[Section 14 amended by No. 28 of 2006 s. 332.]

15. Applications

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

- (e) to refuse any application.

[Section 15 amended by No. 28 of 2006 s. 332.]

16. Assistance to and collaboration with other bodies

- (1) Subject to subsection (2) the Authority may give such assistance as it thinks fit to enable or assist —

- (a) any public authority; or
(b) any person approved by the Minister,

to engage in any activity related to the objects of this Act or the *Government Employees' Housing Act 1964* and may seek and maintain appropriate representation on the board or other governing authority of any body corporate to which such assistance is given.

- (2) The Authority shall not give assistance under subsection (1) by way of —

- (a) granting financial aid or enabling financial aid to be obtained;
(b) making available the services of any officer or employee of the Authority; or
(c) making available any facilities of the Authority,

except with the consent of the Minister.

- (3) The Authority may, with the consent of the Minister, in respect of the performance of any of its functions —

- (a) engage consultants having relevant qualifications or experience;
(b) consult or collaborate with other bodies or persons having interests or functions similar or related to those of the Authority.

[Section 16 amended by No. 28 of 2006 s. 323 and 332.]

Division 3 — Staff of the Authority

[Heading amended by No. 28 of 2006 s. 324.]

17. Chief executive officer of the Authority and other officers and employees

- (1) To enable the Authority to exercise and perform the powers, functions and duties conferred on it by or under this Act or any other Act —
 - (a) there shall be a chief executive officer of the Authority who shall be appointed, under and subject to Part 3 of the *Public Sector Management Act 1994*;
 - (b) there shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers as the Authority considers necessary;
 - (c) the Authority may employ such wages staff as it considers necessary.
- (2) The chief executive officer of the Authority cannot be excluded from the Senior Executive Service under section 43(3) of the *Public Sector Management Act 1994*.
- (3) The chief executive officer is responsible for, and has the necessary powers to administer, the day to day operations of the Authority.

[Section 17 amended by No. 32 of 1994 s. 19; No. 28 of 2006 s. 325 and 332.]

18. Terms and conditions of employment of wages staff

- (1) Subject to any relevant award or industrial agreement the terms and conditions of employment of staff employed pursuant to section 17(c) shall be such terms and conditions as the Authority, after consultation with the Minister for Public Sector Management², determines.

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Part II The State Housing Authority

Division 3 Staff of the Authority

s. 18A

- (2) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to staff employed under section 17(c).
[Section 18 amended by No. 32 of 1994 s. 19; No. 28 of 2006 s. 332.]

18A. Use of other staff and facilities

- (1) The Authority may by arrangement with the relevant employing authority 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 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.
- (4) In this section, “**employing authority**”, “**Public Service**” and other expressions used in the *Public Sector Management Act 1994* have the same respective meanings as they have in that Act.
[Section 18A inserted by No. 28 of 2006 s. 326.]

Part III — Acquisition, development and disposal of property

Division 1 — Acquisition and development of property

19. Acquisition of land

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

[Section 19 inserted by No. 28 of 2006 s. 332.]

20. Gifts

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

[Section 20 amended by No. 28 of 2006 s. 332.]

21. Powers of local government

- (1) Notwithstanding the *Local Government Act 1995* or any other Act relating to local government a local government —
- (a) may sell or otherwise dispose of to the Authority any land vested in the local government (not being land reserved under Part 4 of the *Land Administration Act 1997*);
 - (b) may acquire any land in the manner provided in the *Local Government Act 1995* for the purpose of disposing of the land to the Authority for the purposes of this Act.
- (2) Subsection (1) does not authorise a local government to take or resume land by compulsory acquisition unless the land is to be disposed of to the Authority for the purposes of section 61(1).
- [Section 21 amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 35; No. 28 of 2006 s. 332.]*

22. Powers in relation to development and management of land

- (1) Subject to this Act the Authority has power —
- (a) with the consent of the Western Australian Planning Commission as defined in the *Planning and Development Act 2005* and any approval required under that Act, to re-plan and re-subdivide any area in which land held by the Authority is situated, and with the consent of the Minister, to secure the closing of any street or the extinguishment of any easement or restrictive covenant;
 - (b) with the consent of the Minister, to erect houses and other buildings on, or lay out and construct streets on, any land held by the Authority and to expend moneys standing to the credit of the Fund on works and operations for the purpose of making such land suitable for the purposes of this Act;
 - (c) to maintain, repair, and carry out any improvements to and generally to control and manage any houses and

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

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

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

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

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Part III Acquisition, development and disposal of property

Division 1 Acquisition and development of property

s. 23

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

[Section 22 amended by No. 62 of 1983 s. 4; No. 84 of 1994 s. 46; No. 14 of 1996 s. 4; No. 49 of 1996 s. 64; No. 38 of 2005 s. 15; No. 28 of 2006 s. 327 and 332.]

23. Power to take lease

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

[Section 23 amended No. 28 of 2006 s. 332.]

24. Payment of rates to local government

- (1) Notwithstanding any provision to the contrary in any Act, the Authority in respect of vacant rateable land acquired within the district of a local government, shall be liable to pay rates thereon out of moneys standing to the credit of the Fund to that local government, and the land shall be deemed to continue to be rateable land; but in the case of vacant land other than subdivided land no such liability shall arise until the land has been held vacant by the Authority for a period of at least 2 years and in the case of vacant subdivided land no such liability shall arise until the land has been held vacant by the Authority for a period of at least one year.
- (2) In this section “**subdivided land**” means an allotment of land, shown on an approved plan or diagram of subdivision deposited under the *Transfer of Land Act 1893* with the Department within the meaning of that Act to be of an area not exceeding 10 000 square metres, or, if no such plan or diagram is so deposited, an allotment of land determined under that Act to be of an area not exceeding 10 000 square metres.

[Section 24 amended by No. 14 of 1996 s. 4; No. 49 of 1996 s. 64; No. 81 of 1996 s. 153(1); No. 28 of 2006 s. 332.]

Division 2 — Dealings with property generally

25. Power to lease

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

[Section 25 amended by No. 28 of 2006 s. 332.]

26. Power to sell

(1) The Authority, with the consent of the Minister, may by public auction or private contract sell any building and land or vacant land held by the Authority for cash or on such terms of payment as the Authority thinks fit and at such price, and subject to such conditions, restrictions, exceptions and reservations (if any) as the Authority thinks fit.

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

[Section 26 amended by No. 28 of 2006 s. 332.]

27. Power to grant easement

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

[Section 27 amended by No. 28 of 2006 s. 332.]

Division 3 — Letting or leasing of houses

28. Power to let or lease houses

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

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

[Section 28 amended by No. 28 of 2006 s. 332.]

29. Terms and conditions

(1) A house or house and land may be let under this Division on a weekly or such other periodic tenancy as the Authority thinks fit

or may be leased under this Division for such period as the Authority thinks fit.

- (2) The terms, covenants and conditions of a tenancy or lease under this Division shall be such terms, covenants and conditions as the Authority thinks fit and shall be set out in a tenancy agreement in an approved form.

[Section 29 amended by No. 28 of 2006 s. 332.]

30. Determination of rent

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

[Section 30 amended by No. 28 of 2006 s. 332.]

31. Credit of rents towards purchase price

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

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

- (2) Where a person becomes the purchaser of any house and land under Division 4 by exercising an option to purchase contained in a tenancy agreement under this Division the provisions of subsection (1) shall not affect any provision contained in the tenancy agreement providing for the crediting of rents towards the purchase price of the house and land.
- (3) In this section “**rents**” includes amounts paid by a tenant of a house or house and land for the purpose of the repair, renovation, upkeep or improvement of the house or house and land.

[Section 31 amended by No. 28 of 2003 s. 85; No. 28 of 2006 s. 332.]

Division 4 — Sale of houses and housing land

32. Application of this Division

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

[Section 32 amended by No. 28 of 2006 s. 332.]

33. Terms and conditions of sale

- (1) The Authority may by public auction or private contract sell land or a house and land under this Division —
 - (a) for cash; or

- (b) in the case of —
 - (i) the sale of land; or
 - (ii) the sale of a house and land to an eligible person,
on such terms of payment as the Authority thinks fit.
- (2) A sale under this Division may be made at such price and subject to such conditions, restrictions, exceptions and reservations as the Authority thinks fit.
- (3) If a sale under this Division is made on terms or subject to conditions, restrictions, exceptions or reservations those terms, conditions, restrictions, exceptions or reservations shall be set out in a contract of sale in an approved form.
- (4) The Authority may, by determination approved by the Minister and published in the *Government Gazette*, fix a standard rate of interest to apply to contracts of sale in respect of sales on terms under this Division.
- (5) Different standard rates of interest may be fixed under subsection (4) in respect of different classes of contracts of sale.
- (6) The interest rate specified in a contract of sale in respect of a sale on terms under this Division shall be the standard rate of interest most recently published under subsection (4) in respect of contracts of sale of that class but the contract may provide for the interest rate to vary in accordance with determinations published from time to time under that subsection.
- (7) In subsection (6) “**interest rate**” in relation to a contract of sale means the rate of interest payable on the balance of the purchase money for the time being remaining unpaid under that contract of sale.

[Section 33 amended by No. 28 of 2006 s. 332.]

34. Limit on amount of unpaid purchase money

- (1) The balance of the purchase money for the time being remaining unpaid under a contract of sale in respect of a sale under this

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Division shall not exceed such sum as is determined by the Minister for the purposes of this subsection by notice published in the *Government Gazette*.

- (2) For the purposes of subsection (1) the Minister may determine different sums in respect of land in different areas of the State.

Part IV — Provision by the Authority of financial assistance for housing

[Heading amended by No. 28 of 2006 s. 328.]

Division 1 — Loans

35. Reference to “house”

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

36. Loans to assist eligible persons

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

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

[Section 36 amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 332.]

37. Loans to persons generally to purchase land from the Authority

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

[Section 37 amended by No. 28 of 2006 s. 332.]

38. Loans to persons generally to improve houses

- (1) Subject to this Act the Authority may make a loan to any person to assist the person to make alterations or additions to a house so that the house may be brought into conformity with the building, health or other local laws or standards of a local government or to improve the standard of comfort or convenience of the house.

- (2) For the purpose of this section —

“additions” include the installation or improvement of water supply, sewerage or drainage systems and all necessary fittings;

“local government” includes the Minister within the meaning of the *Water Agencies (Powers) Act 1984* acting under section 34 of that Act, a water board constituted under the *Water Boards Act 1904* and a drainage board constituted under the *Land Drainage Act 1925*.

- (3) No loan shall be made under this section other than to a person who satisfies the Authority that his financial position justifies the assistance applied for.

[Section 38 amended by No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 28 of 2006 s. 332.]

39. Method of making loan

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

[Section 39 amended by No. 28 of 2006 s. 332.]

40. Limit on amount to be lent

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

41. Security for repayment of loan

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

- (2) The borrower may execute a mortgage or other instrument of security securing a loan under this Division notwithstanding anything to the contrary in any enactment or law, or in the lease, agreement or occupation certificate under which he holds the land that is to be the subject of that mortgage or other instrument.

[Section 41 amended by No. 28 of 2006 s. 332.]

42. Interest on loans

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

[Section 42 amended by No. 28 of 2006 s. 332.]

43. Normal legal relationships to apply

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

[Section 43 amended by No. 28 of 2006 s. 332.]

44. Protection of Authority's interest

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

[Section 44 amended by No. 28 of 2006 s. 332.]

45. Authority to obtain reports as to expenditure of loans

The Authority from time to time shall obtain reports from the inspectors and valuers of the Authority as to the manner in which moneys lent under this Division have been expended and used by the respective borrowers, and as to the state and condition of the improvements for the purpose of which those moneys have respectively been lent, and generally as to the state and condition of the properties in respect of which those moneys have been lent.

[Section 45 amended by No. 28 of 2006 s. 332.]

Division 2 — Guarantees and subsidies

46. Guarantee by Authority in certain cases

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

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

- (2) In this section —
- (a) a reference to a house or new house is a reference to a house that is or is intended to be used by the person to

whom the assistance is to be given as a home for himself and his family (if any) but does not include a reference to a house of which the value (exclusive of the value of the land on which it is or is to be erected) exceeds such sum as is determined by the Minister for the purposes of this paragraph by notice published in the *Government Gazette*;

(b) “**new house**” has the meaning given to that term in section 3 of the *Housing Loan Guarantee Act 1957*.

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

[Section 46 amended by No. 28 of 2006 s. 332.]

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

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

(a) make payments, on such terms and conditions as the Minister approves, to approved lending institutions that make loans to approved persons on the security of freehold or leasehold property by way of mortgage;

(b) enter into agreements with approved lending institutions in order to facilitate and regulate the making of payments under paragraph (a) and to ensure compliance with the terms and conditions approved by the Minister pursuant to that paragraph.

(2) In this section —

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

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

[Section 47 amended by No. 28 of 2006 s. 332.]

Part V — Arrangements and agreements as to housing finance

Division 1 — Arrangements with the Commonwealth

48. Definitions

In this Division —

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

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

“housing purposes” includes —

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

49. Financial assistance from the Commonwealth — powers of Minister and Authority

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

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

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

[Section 49 inserted by No. 28 of 2006 s. 332.]

50. Housing assistance under agreements

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

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authorities and responsibilities of the Authority as provided in this Act or the *Government Employees' Housing Act 1964* shall apply and extend to the Authority, and all the provisions of those Acts, so far as they are applicable or can with necessary adaptations and modifications be made applicable, shall apply in all respects and for all purposes in relation to projects for housing purposes provided for and mentioned in that agreement and undertaken by the State pursuant to that agreement.

[Section 50 amended by No. 28 of 2006 s. 329 and 332.]

51. Regulations as to administration of agreements

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

Division 2 — Agreements with lending institutions

52. Definitions and effect

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

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

“lending institution” means —

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

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

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

[Section 52 amended by No. 14 of 1996 s. 4; No. 10 of 1998 s. 9(2); No. 26 of 1999 s. 87; No. 12 of 2001 s. 51; No. 28 of 2006 s. 332.]

53. Power to make loan agreements

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

54. Terms and conditions of agreement

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

55. Floating security and charge

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

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

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

whether under Chapter 5 of the *Corporations Act 2001* of the Commonwealth; or on termination of the lending institution in the case of a housing society; or by such other procedure as is provided for the winding up of the lending institution; or

unless and until the State,

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

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

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

56. Lending institution may give securities

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

57. Property and assets of lending institution may be released

Where —

- (a) a lending institution has, at any time before or after the coming into operation of this Act, made a loan agreement; and

- (b) the lending institution has not, in relation to that loan agreement, executed securities of the kind described in section 56(1),

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

58. Power of inspection of affairs of lending institution

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

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

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

- (a) the moneys being advanced to the borrower have been loaned to the lending institution under a loan agreement; and

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- (b) the moneys being advanced to the borrower will be used by him to purchase a house erected upon, or to erect a house upon, land which at the time the advance is made is held by the Authority.

[Section 59 amended by No. 28 of 2006 s. 332.]

Part VI — Specialized housing and community facilities

60. Authority may provide specialized housing

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

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

[Section 60 amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 332.]

61. Community facilities

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

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

[Section 61 amended by No. 28 of 2006 s. 332.]

Part VII — Finance

62. Funds

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

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

[Section 62 amended by No. 6 of 1993 s. 11 and 14(3); No. 49 of 1996 s. 64; No. 28 of 2006 s. 330 and 332.]

63. Power to raise money

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

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

charged by the Treasurer shall be credited to the Consolidated Fund.

[Section 63 amended by No. 98 of 1985 s. 3; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 28 of 2006 s. 332.]

64. Provisions as to debentures and inscribed stock

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

s. 65

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

[Section 64 inserted by No. 62 of 1983 s. 5; amended by No. 28 of 2006 s. 332.]

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

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

[Section 65 inserted by No. 98 of 1985 s. 3; amended by No. 28 of 2006 s. 332.]

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

Part VIII — Miscellaneous

68. Power to extend time

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

[Section 68 amended by No. 28 of 2006 s. 332.]

69. Protection from personal liability

- (1) An action in tort does not lie against a person other than the Authority for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Authority nor the Crown is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 69 inserted by No. 28 of 2006 s. 331.]

70. Regulations generally

- (1) The Governor may make such regulations, not inconsistent with this Act, as he considers necessary or convenient for giving effect to the objects and purposes of this Act or for facilitating the operation of this Act and of the Authority under this Act.

s. 71

- (2) A regulation may be made under this Act —
- (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times;
 - (b) so as to require a matter affected by it to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, the Authority or a specified person or body, or class of person or body, and so as to delegate to or confer upon the Authority or a specified person or body, or class of person or body, a discretionary authority;
 - (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from any provisions of the regulations either wholly or to such extent as is specified;
 - (d) so as to impose a penalty not exceeding \$100 for a breach of any regulation.

[Section 70 amended by No. 28 of 2006 s. 332.]

71. Regulations as to fees

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

- (a) in respect of applications made under this Act;
- (b) for any valuation, inspection, report, plan or specification prepared or made for the purposes of this Act;
- (c) for the preparation by the Authority of tenancy agreements, contracts of sale, transfers, mortgages, discharges, releases and other instruments for the purposes of this Act;
- (d) for the production by the Authority of documents of title to property and other instruments;

- (e) for or with respect to the management, use, control, regulation and inspection of houses and other buildings and land maintained or caused to be maintained by the Authority,

and providing for the payment and recovery of such fees.

[Section 71 amended by No. 28 of 2006 s. 332.]

72. Payment of fees and duties

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

[Section 72 amended by No. 28 of 2006 s. 332.]

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

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

[Section 73 amended by No. 28 of 2006 s. 332.]

Part IX — Saving and transitional provisions

74. Continuity of status and operation

Unless the contrary intention appears in this Act —

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

75. Membership of Commission

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

76. Continuation of provisions relating to earlier Acts and bodies

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

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

77. Contracts of sale, mortgages and tenancies

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

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

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

s. 78

78. Perpetual leases

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

79. References

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

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

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

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

80. Construction

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

[Schedule repealed by No. 62 of 1983 s. 6.]

Notes

¹ This is a compilation of the *Housing Act 1980* and includes the amendments made by the other written laws referred to in the following table^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Housing Act 1980</i>	58 of 1980	24 Nov 1980	1 Jan 1981 (see s. 2 and <i>Gazette</i> 24 Dec 1980 p. 4349)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Housing Amendment Act 1983</i> ⁴	62 of 1983	13 Dec 1983	Act other than s. 4: 13 Dec 1983 (see s. 2(1)); s. 4: 1 Jan 1984 (see s. 2(2))
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11 and 14(3)	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Planning Legislation Amendment Act (No. 2) 1994</i> s. 46(7)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> s. 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)

Housing Act 1980

Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 33	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 9(2)	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the <i>Housing Act 1980</i> as at 27 May 1999 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 87	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Building Societies Amendment Act 2001</i> s. 49 and 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 10	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 29	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 10 Div. 4 ⁵	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
Reprint 2: The <i>Housing Act 1980</i> as at 18 Aug 2006 (includes amendments listed above)			

^{1a} 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 Act 2005</i> s. 28 ⁶	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))
<i>Land Information Authority Act 2006</i> s. 137 ⁷	60 of 2006	16 Nov 2006	To be proclaimed (see s. 2(1))

² Under the *Public Sector Management Act 1994* s. 112(2), a reference to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

³ Repealed by the *Interpretation Act 1984* s. 77(1).

⁴ The *Housing Amendment Act 1983* s. 4(2) is a transitional provision that is of no further effect.

⁵ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 10 Div. 6 reads as follows:

“

Division 6 — Transitional matters

336. Financial reporting

- (1) Despite the continuation of the former bodies as part of the Housing Authority, section 65A of the *Financial Administration and Audit Act 1985* applies in relation to the preparation and submission of a final report in respect of the former body as if —
 - (a) at commencement, it were abolished;
 - (b) references in that section to a department were references to the former body; and
 - (c) references in that section to provisions of sections 62 to 65 of the *Financial Administration and Audit Act 1985* were references to the equivalent provisions of sections 66 to 70 of that Act,

except that —

- (d) the period to which the final report is to relate is the final period; and
 - (e) the references in sections 66(1), 68 and 70(1) to the end of the financial year are to be read as references to the end of the final period.
- (2) If at commencement, any duty imposed by Part II Division 14 of the *Financial Administration and Audit Act 1985* on the accountable authority of the former body has not been complied with in relation to the former body for any financial year that expired before commencement, that duty subsists and is to be performed by the reporting officer as if the reporting officer were the accountable authority.
- (3) The time within which the reporting officer is to perform a duty referred to in subsection (2) is extended until the end of the day that is 2 months after the day on which the reporting officer is appointed, but this subsection does not prevent the time from being extended again under section 70 of the *Financial Administration and Audit Act 1985*.
- (4) The Housing Authority is to give the reporting officer access to all records necessary for the purposes of this section.
- (5) In this section —
- “**final period**” means the period starting at the beginning of the 1 July immediately before commencement and ending immediately before commencement;
 - “**reporting officer**” means the person appointed under section 65A(2) of the *Financial Administration and Audit Act 1985* as applied because of subsection (1).

337. References to former bodies

After commencement, a reference to the former body in an instrument or other document is to be taken to be a reference to the Housing Authority unless the contrary intention appears or the context otherwise requires.

338. Government Employees’ Housing Act 1964

- (1) The Government Employees’ Housing Fund referred to in section 24(1) of the *Government Employees’ Housing Act 1964* as in force after commencement is a continuation of the Government Employees’ Housing Authority Fund referred to in that section as in force before commencement.
- (2) After commencement, a reference to the Government Employees’ Authority Housing Fund in an instrument or other document is to be taken to be a reference to the Government Employees’ Housing

Fund referred to in section 24(1) of the *Government Employees' Housing Act 1964* as in force after commencement unless the contrary intention appears or the context otherwise requires.

339. Housing Act 1980

- (1) After commencement, a reference to The State Housing Commission in an instrument or other document is to be taken to be a reference to the Housing Authority unless the contrary intention appears or the context otherwise requires.
- (2) The office of chief executive officer of the Housing Authority is a continuation of the office of general manager of The State Housing Commission referred to in the *Housing Act 1980* as in force before commencement.
- (3) The Housing Authority Fund referred to in section 62(2) of the *Housing Act 1980* as in force after commencement is a continuation of The State Housing Commission Fund referred to in that subsection as in force before commencement.
- (4) After commencement, a reference to The State Housing Commission Fund in an instrument or other document is to be taken to be a reference to the Housing Authority Fund referred to in section 62(2) of the *Housing Act 1980* as in force after commencement unless the contrary intention appears or the context otherwise requires.
- (5) Section 69 of the *Housing Act 1980*, as in force before commencement, continues to apply in relation to things done or omitted to be done and agreements entered into before commencement.

340. Interpretation

In this Division —

“**commencement**” means the time at which section 314 comes into operation;

“**former body**” means —

- (a) the Country Housing Authority established by section 4 of the *Country Housing Act 1998* as in force before commencement;
- (b) the Government Employees' Housing Authority established by section 8 of the *Government Employees' Housing Act 1964* as in force before commencement;

“**Housing Authority**” means the Housing Authority referred to in section 6(4) of the *Housing Act 1980* as in force after commencement.

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

“

28. Housing Act 1980 amended

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

”.

”.

7 On the date as at which this compilation was prepared, the *Land Information Authority Act 2006* s. 137 had not come into operation. It reads as follows:

“

137. Housing Act 1980 amended

- (1) The amendments in this section are to the *Housing Act 1980*.
- (2) Section 24(2) is amended by deleting “Department within the meaning” and inserting instead —
“ Authority as defined in section 4(1) ”.

”.