

Western Australia

**Industrial and Commercial Employees'
Housing Act 1973**

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Industrial and Commercial Employees' Housing Act 1973

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NOTES

Western Australia

Industrial and Commercial Employees' Housing Act 1973

**An Act to make provision for adequate and suitable Housing
Accommodation for certain industrial or commercial employees, and
for incidental purposes.**

[Assented to 28 November 1973.]

BE it enacted —

Part I — Preliminary

1. Short title

This Act may be cited as the *Industrial and Commercial Employees' Housing Act 1973*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.¹

3. Arrangement

The arrangement of this Act is as follows —

PART I — PRELIMINARY

PART II — INDUSTRIAL AND COMMERCIAL
EMPLOYEES' HOUSING AUTHORITY

PART III — ADMINISTRATION

PART IV — FINANCE

PART V — MISCELLANEOUS.

4. Object

The object of this Act is to make provision for adequate and suitable housing for essential industrial or commercial employees in employment outside the metropolitan region —

- (a) who are within the appropriate levels of eligibility for housing under the *State Housing Act 1946*; or
- (b) who are in employment the continuance of which, in the opinion of the Authority, will be of significant benefit to the State or any part of it, or to the community or any Part of it.

5. Interpretation

In this Act unless the context requires otherwise —

“Authority” means the Industrial and Commercial Employees’ Housing Authority established under this Act;

“chairman” means the chairman of the Authority;

“employee” means an industrial or commercial employee;

“employer” means a participating employer;

“essential”, in relation to an employee, means essential to the enterprise or activity of, or the provision of services by, his employer;

“Fund” means the Industrial and Commercial Employees’ Housing Authority Fund established under this Act;

“house” means any building, including any single, attached or multi-storey dwelling unit, edifice, structure or erection, 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 out-buildings, fences, walls and permanent provision for lighting, heating, water supply, drainage and sewerage and other appurtenances of a house;

“industrial or commercial employee” means a person who is employed by a participating employer in employment outside the metropolitan region and —

- (a) who is within the appropriate level of eligibility for housing under the *State Housing Act 1946*; or
- (b) who is in employment the continuance of which, in the opinion of the Authority, will be of significant benefit to the State or any part of it, or to the community or any part of it;

“member” means a person occupying any of the offices of the Authority, including that of chairman;

“metropolitan region” means the metropolitan region as defined by section 2 of the *Town Planning and Development Act 1928*;

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“officer” means any officer of the Authority, or of the agent of the Authority, authorized by the Authority or the agent, in respect of or whose duty it is to deal with or to act in regard to any acts, matters, or things in connection with which the term is used;

“participating employer” means an employer or one of a class of employers specified as such in a notice in force pursuant to subsection (2) of section 7;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein the term is used; and

“tenant” includes any person deriving title under the original tenant.

6. Administration

Subject to the Minister and the provisions of this Act, the Authority is responsible for the administration of this Act.

7. Statutory notice of participating employers

(1) Employers and classes of employers, other than Departments within the meaning of the *Government Employees' Housing Act 1964* or local governments —

- (a) who, in the opinion of the Authority, are carrying out such enterprises or activities, or are providing such services, as are likely to be of significant benefit to the State or any part of it, or to the community or any part of it; and
- (b) who, pursuant thereto, provide for any person employment outside the metropolitan region,

may, pursuant to subsection (2), become participating employers for the purposes of this Act.

(2) Subject to subsection (1), the Minister may, from time to time by notice published in the *Government Gazette*—

- (a) specify employers and classes of employers who are participating employers for the purposes of this Act; and
 - (b) vary or revoke any notice previously so published,
- and any such notice shall have effect according to its tenor.
- [Section 7 amended by No. 14 of 1996 s.4.]*

Part II — Industrial and Commercial Employees' Housing Authority

8. Establishment of Authority

- (1) For the purposes of this Act an Authority having the name of the Industrial and Commercial Employees' Housing Authority is hereby established in accordance with the provisions of this Act.
- (2) The Authority shall consist of five members appointed by the Governor and such members shall be —
 - (a) the chairman, who shall be a person having a statewide and comprehensive experience in the planning, provision, and management of housing;
 - (b) the person for the time being the Permanent Head of the Department of Industrial Development and Commerce of the Public Service of the State, or an officer of that Department nominated in writing by that Permanent Head;
 - (c) three persons nominated by the Minister and being —
 - (i) one person from a panel of at least three submitted in writing to the Minister by The Western Australian Chamber of Manufactures (Incorporated);
 - (ii) one person from a panel of at least three submitted in writing to the Minister by the Perth Chamber of Commerce (Inc.); and
 - (iii) one person from a panel of at least three submitted in writing to the Minister by the body known as The Trades and Labor Council of Western Australia.
- (3) The chairman, and each member appointed pursuant to the provisions of paragraph (c) of subsection (2), shall hold office for such period not exceeding three years as is specified in the

instrument of his appointment, and is eligible for re-appointment, unless at any time his appointment is sooner determined by the Governor on the recommendation of the Minister.

[Section 8 amended by No. 21 of 1977 s.2; No. 63 of 1981 Schedule.]

9. Deputies of members

- (1) The Minister may, in respect of any member of the Authority, appoint a person to be the deputy of that member to act in his office during his absence.
- (2) Any person so appointed is entitled, in the absence from a meeting of the Authority of the member for whom he is the deputy, to attend that meeting, and while so attending shall be deemed to be a member and is authorized to carry out any function that the member of whom he is the deputy could, if present, perform under this Act.
- (3) The appointment of a deputy member may be terminated at any time by the Minister.

10. Allowances to members

- (1) Each member of the Authority, and each deputy while acting in the place of a member, shall be paid such travelling allowances while engaged on official business of the Authority at the rates and in accordance with the scale and conditions applicable from time to time in respect of senior executive officers within the meaning of the *Public Sector Management Act 1994*.
- (2) The members of the Authority, other than members who are officers in the Public Service, may be paid and receive such fees and allowances in respect of their services as such members as may be prescribed by regulation.

[Section 10 amended by No. 32 of 1994 s.19.]

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11. Leave of absence, etc., of members

- (1) The Governor may grant leave of absence to a member upon such terms, and conditions as the Minister determines.
- (2) A member may resign his office of member by writing under his hand addressed to the Minister.
- (3) The Governor may terminate the appointment of a member if through mental or physical infirmity he is unable satisfactorily to carry out the duties of his office.

12. Meetings of Authority

- (1) The Authority shall hold such meetings as are necessary for the performance of its functions under this Act.
- (2) The chairman may at any time convene a meeting of the Authority, and shall convene the first meeting thereof as soon as practicable after the commencement of this Act.
- (3) The chairman, or in his absence the person appointed to be his deputy, shall preside at all meetings of the Authority, but if both the chairman and his deputy are absent from any meeting, the members present at that meeting shall appoint one of their number to preside thereat.
- (4) At any meeting of the Authority —
 - (a) three members form a quorum;
 - (b) all questions arising at the meeting shall be decided by a majority of the valid votes of the members present at the meeting;
 - (c) each member, including the chairman, shall be entitled to one vote only on the determination of any question; and
 - (d) in the event of an equality of votes, the question shall be deemed to be determined in the negative.

- (5) Subject to this Act, the Authority may regulate its procedure in such manner as it thinks fit, and shall cause to be kept minutes of its proceedings.

13. Authority a body corporate

- (1) When established 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, and of acquiring, holding, maintaining, improving, exchanging, leasing and disposing of real and personal property, and of doing and suffering all things that bodies corporate may do and suffer.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority affixed to any document and shall presume that it was duly affixed.

14. Delegation by Authority of its powers

- (1) The Authority may, in relation to any particular matter or class of matters, or to any particular place, delegate to any person all or any of its powers under this Act (except this power of delegation), so that the delegated powers may be exercised by the delegate with respect to the matter or class of matters, or the place, specified in the delegation, and in the same manner and with the same effect as if they had been directly conferred on the delegate by this Act and not by delegation.
- (2) Any delegation pursuant to this section may at any time be revoked by the Authority, in whole or in part, but such revocation shall not affect in any way anything lawfully done under the delegated authority.
- (3) A delegation under this section does not prevent the exercise by the Authority itself of any of the powers and functions conferred on it by or under this Act.

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15. Appointment of officers, etc.

- (1) For the purposes of enabling the Authority to carry out its powers, functions, duties and liabilities under this Act, there may be appointed from time to time in accordance with the provisions of the Part 3 of the *Public Sector Management Act 1994*, a person to be secretary of the Authority and such other officers as may be necessary for those purposes.
- (2) Subject to the provisions of any current relevant industrial award or agreement made under the *Industrial Arbitration Act 1912*, the Authority may from time to time appoint and dismiss such temporary and casual employees as it thinks fit on such terms and conditions as it may determine.
- (3) By agreement with the employing authority, within the meaning of the *Public Sector Management Act 1994*, of the public service officer, the Authority may for the purposes of this Act co-opt the services of any public service officer as secretary or as an officer of the Authority.
- (4) The appointment under section 8 or subsection (1), of a person who is a public service officer within the meaning of the *Public Sector Management Act 1994*, or the co-opting under subsection (3) of the services of such a person —
 - (a) is without prejudice to the provisions of that Act and all other Acts applying to that person as such an officer; and
 - (b) does not prejudice his existing and accruing rights as such under any of those Acts,

and for the purposes of determining those rights, the service of that person with the Authority under this Act shall be taken into account as if it were service in the Public Service or the State.

[Section 15 amended by No. 32 of 1994 s.19.]

Part III — Administration

16. Function of Authority

Subject to the provisions of this Act, the function of the Authority is to provide adequate and suitable housing accommodation for essential industrial or commercial employees in employment outside the metropolitan region, and for the purpose of carrying out that function, the powers of the Authority include —

- (a) purchasing, contracting for the use of, or otherwise acquiring (other than by compulsory acquisition) any land or houses;
- (b) the erection of houses on land acquired by the Authority;
- (c) letting or disposing of houses or land owned by or under the control of the Authority; and
- (d) doing such other things as under this Act are required or permitted to be done by the Authority.

17. Applications for houses for employees

- (1) A participating employer may, in any case where he is of the opinion that a house is required for any one of his essential employees, apply to the Authority for the allocation to him of a house owned or controlled by the Authority.
- (2) The Authority shall have regard to the submissions of the employer set forth in his application under this section and if satisfied that he requires a house for an essential employee may allocate such a house as it thinks fit for occupation by the employee.
- (3) The Authority is not required to provide a house for occupation by any essential employee and may allocate any house for occupation by a person other than such an employee upon such terms and conditions as it thinks fit.

18. Powers of Authority

Subject to this Act, the Authority has and may exercise the following powers, in addition to any other powers conferred on the Authority by this Act —

- (a) subject to the provisions of the *Town Planning and Development Act 1928*, to plan and subdivide any land acquired by the Authority under this Act;
- (b) to lay out and construct as streets any land so acquired by the Authority or any part of that land, and to expend moneys on works and operations necessary or deemed necessary for the purpose of rendering that land suitable for housing;
- (c) to let or lease or dispose of any land, whether improved or unimproved, for any one or more of the purposes of this Act, or if satisfied that any land vested in it under this Act is not immediately required for the purposes of this Act, to lease or dispose of that land at such price and on such terms and conditions as the Authority thinks fit;
- (d) to erect, or cause to be erected, on lands vested in the Authority houses for occupation by industrial or commercial employees in accordance with the provisions of this Act, or to convert any buildings or erections into houses;
- (e) to maintain, alter, enlarge, repair and carry out any improvements to, and generally to control and manage, houses and other buildings and the land upon which they are situated;
- (f) to exchange, upon such terms and conditions and subject to such restrictions, exceptions and reservations as the Authority thinks fit, any unimproved land of the Authority for any other land, and to give or receive consideration for equality of exchange;

- (g) to enter into arrangements and agreements with any Department or any Crown instrumentality in regard to the building, maintenance, management, letting or renting of houses; or to any service or thing available from any Department and make such recoup of cost of services as may be arranged;
- (h) to determine and fix, upon such basis or formula as may be prescribed, rents payable and conditions of tenancy in respect houses let to tenants pursuant to this Act, and to assess and re assess such rents at periods not exceeding three years or whenever any house becomes vacant, regard being had to the age, type of construction design, condition and available amenities, or any other matter that the Authority may deem relevant;
- (i) to accept from any employer a guarantee for the payment of rent, and the due performance of all covenants, by his employee pursuant to any tenancy agreement between the Authority and the employee;
- (j) to make or cause to be made any inquiry, investigation or report required by this Act or that the Authority thinks necessary or expedient to make; and
- (k) to undertake and carry out all other matters connected with this Act generally.

19. Power to accept gifts

- (1) For the purposes of this Act, the Authority may —
 - (a) accept any absolute gift, devise or bequest of real or personal property; or
 - (b) with the consent of the Minister, accept any 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 established, and carry out and give effect to the objects of any such trust.

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- (2) If the Authority receives any gift, devise or bequest for the purpose of assisting it to provide houses for industrial or commercial employees and that 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, 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, probate or estate or succession duty shall be payable on any property given, devised or bequeathed to the Authority.

20. Power to appoint agent

The Authority is empowered to enter into an arrangement or agreement with the State Housing Commission constituted by the *State Housing Act 1946*, whereby that Commission shall be and act as the agent of the Authority for the purposes of this Act upon such terms and subject to such conditions as may be mutually agreed upon by the Authority and the State Housing Commission.

Part IV — Finance

21. Power to borrow money

- (1) The Authority has power to borrow money upon the guarantee of the Treasurer of the State for the purposes of carrying out its functions and powers under this Act.
- (2) The Authority is authorized with the prior approval in writing of the Treasurer to borrow money upon such terms and conditions only as the Treasurer approves.
- (3) The Treasurer is hereby authorized to so approve and to give the guarantee referred to in subsection (1), including the guarantee of interest, for and on behalf of the Crown in right of the State.
- (4) Before a guarantee is given by the Treasurer under this section, the Authority shall give to the Treasurer such security as the Treasurer may require, and shall execute all such instruments as may be necessary for that purpose.
- (5) The Authority shall apply and use all moneys borrowed under the power conferred by this section for the purposes of carrying this Act into effect.

22. Guarantee of loans to employers

- (1) The Treasurer is hereby authorized to give, on the recommendation of the Authority, guarantees, including guarantees of interest, for and on behalf of the State, for the borrowing of money by employers from non-Government sources —
 - (a) to acquire or improve, or both acquire and improve, land for the erection thereon of houses for occupation by essential industrial or commercial employees of the employer; and
 - (b) to effect the erection on the land of such houses.

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- (2) Before a guarantee is given by the Treasurer under this section, the employer shall give to the Treasurer such security as the Treasurer may require, and shall execute all such instruments as may be necessary for the purpose.
- (3) The Treasurer shall cause any money required for fulfilling any guarantee given by him pursuant to this section to be charged to the Consolidated Fund, which is hereby to the necessary extent appropriated accordingly, and the Treasurer shall cause any sums received or recovered by him from the employer concerned or otherwise in respect of a sum so charged by the Treasurer to be credited to the Consolidated Fund.

[Section 22 amended by No. 54 of 1976 s.2; No. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

23. Funds of Authority

The funds available for the purpose of enabling the Authority to carry out its functions and powers under this Act consist of —

- (a) moneys from time to time appropriated by Parliament for the purposes of this Act;
- (b) moneys borrowed by the Authority under the powers conferred by this Act;
- (c) moneys from time to time received by the Authority from rents derived from letting houses and from the disposal of houses and land pursuant to the provisions of this Act;
- (d) moneys received by way of gifts or legacies for the general purposes of this Act; and
- (e) moneys received by the Authority in any manner and from any source as part of its general revenue, including short term borrowings and temporary advances.

24. Establishment of Industrial and Commercial Employees' Housing Authority Fund

- (1) For the purposes of administering this Act there shall be established and kept at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, an account to be called the "Industrial and Commercial Employees' Housing Authority Fund" to which shall be credited all moneys received by or for the Authority and to which shall be charged all costs of operation and administration of this Act.
- (2) The Fund shall be controlled by the Authority and may be operated upon for the purposes in such manner as the Treasurer approves from time to time.
- (3) The expenses incurred by the Authority in carrying out its functions and exercising its powers under this Act and generally in administering this Act shall be charged to the Fund, and such expenses shall include interest on and contributions to the sinking fund for the redemption of moneys appropriated by Parliament to the purposes of this Act and moneys borrowed by the Authority under the provisions of this Act.
- [(4) repealed.]*
- (5) Any moneys standing to the credit of the Fund may, until required for the purposes of this Act, be temporarily invested at the request of the Authority by the Treasurer in any securities approved by the Treasurer, and all interest derived from the investment shall be credited to the Fund.

[Section 24 amended by No. 98 of 1995 Sch.1; No. 49 of 1996 s.64.]

Part V — Miscellaneous

25. 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 25 substituted by No. 98 of 1985 Schedule 1.]

[26. Repealed by No. 98 of 1985 Schedule 1.]

27. Exemption from personal liability

A person who is or has been a member of the Authority, or an officer or agent of the Authority, or who otherwise carries out or exercises or has carried out or exercised any function or power conferred or any duty imposed by this Act, is not personally liable for anything done or omitted in good faith in or in connection with the exercise or purported exercise of any function or power conferred or the carrying out of any duty imposed, by this Act.

28. Determination of tenancy

- (1) The Authority may determine the tenancy of any premises let pursuant to the provisions of this Act in any case where the tenant —
 - (a) makes default in payment of any instalment of rent for fourteen days after the day upon which that instalment became due; or
 - (b) fails or neglects to comply with any of his covenants or conditions under the tenancy agreement and such default continues for fourteen days.
- (2) Where the Authority determines a tenancy pursuant to this section, it may give notice in writing to the tenant requiring him to vacate the premises on or before a date specified in the

notice, and if the tenant fails to vacate the premises on or before the date so specified, any court of summary jurisdiction may upon application made by the Authority or its agent issue a warrant in the prescribed form directed to such person as the court thinks fit requiring that person, within a period to be specified in the warrant, to enter (if need be by force) upon the premises the subject of the tenancy and give possession thereof to the Authority.

- (3) A warrant to a person to give possession of premises under this section shall justify the person named in the warrant in entering upon the premises with such assistance as he thinks necessary, and in giving possession accordingly.

29. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are contemplated, required or permitted to be prescribed or that may in his opinion be necessary or expedient to be prescribed for enabling the functions of the Authority to be carried out, or for carrying out or giving effect to the objects and purposes of this Act.
- (2) Regulations made under this Act may impose a fine of forty dollars for the breach of any regulation.

Notes

- ^{1.} This is a compilation of the *Industrial and Commercial Employees' Housing Act 1973* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Industrial and Commercial Employees' Housing Act 1973</i>	63 of 1973	28 Nov 1973	20 Sep 1974 (see <i>Gazette</i> 20 Sep 1974 p.3485)
	54 of 1976	10 Sep 1976	10 Sep 1976
	21 of 1977	27 Oct 1977	27 Oct 1977
	63 of 1981	13 Oct 1981	13 Oct 1981
	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2255)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 July 1993
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Financial Legislation Amendment Act 1996, Section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))