

## COMMONWEALTH AND STATE HOUSING AGREEMENT.

5° Elizabeth II., No. VI.

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No. 6 of 1956.

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**AN ACT** Relating to Financial Assistance from the Commonwealth to the State for the purpose of Housing.

[Assented to 5th October, 1956.]

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

1. This Act may be cited as the *Commonwealth and State Housing Agreement Act, 1956.*

Short title  
and citation.

2. In this Act unless the context requires otherwise—

Interpre-  
tations.

“approved institutions” means building societies and other institutions approved as required by subclause (3) of clause sixteen of the scheduled agreement;

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

“loan agreement” means an agreement between the State and an approved institution in relation to a loan under subclause (3) of clause sixteen of the scheduled agreement for the provision of finance for home builders;

Schedule.

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

Authorisa-  
tion or  
confirmation  
of execution  
of scheduled  
agreement.

3. In order that the agreement may, as between the Commonwealth and the State, come into force as provided by subclause (2) of clause one of the scheduled agreement,

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

Power to  
make loan  
agreements.

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

5. (1) The State and an approved institution may agree to the inclusion in a loan agreement of such terms and conditions as they think fit, but the provisions of section six of this Act apply to, and are included by virtue of this section in, every loan agreement, whether those provisions are or are not expressly included by the agreement in it, or are expressly excluded by the agreement from it.

Terms and conditions of agreement.

6. (1) Where an approved 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 approved institution, as floating security for the due observance by the approved 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 approved institution.

Floating security and charge.

(2) A floating charge created by this section has priority to all other charges, whether they arose or were created before, or arise or are created after the coming into operation of this Act.

(3) Any amount owing under a loan agreement by an approved institution to the State is a debt owing to the Crown.

(4) If and when applicable, the provisions of sections two hundred and seventy, and two hundred and seventy-one, and Part VIII., of the Companies Act, 1943, apply in respect of the debt, but this subsection does not derogate from the generality of the operation of the provisions of subsections (1), (2) and (3) of this section.

Cf. No. 36 of 1943, ss. 270 and 271, and Part VIII.

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

whether under Part VIII. of the Companies Act, 1943; or on termination of the approved institution as mentioned in paragraph (a) of subsection (1) of section twenty-nine of the Building

Societies Act, 1920; or by such other procedure as is provided for the winding up of the approved 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 approved institution from, or limit the approved institution in, carrying on business in the ordinary course as if the security did not exist and the charge had not been created.

Power of inspection of affairs of approved institution.

7. (1) Where an approved 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 approved 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 Commissioners' Powers Act, 1902.

(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.

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#### THE SCHEDULE.

AN AGREEMENT made the \_\_\_\_\_ day  
of \_\_\_\_\_ One thousand nine hundred and  
fifty-six, BETWEEN THE COMMONWEALTH OF AUSTRALIA  
(in this agreement called "the Commonwealth") of the first  
part, THE STATE OF NEW SOUTH WALES of the second  
part, THE STATE OF VICTORIA of the third part, THE

THE SCHEDULE—*continued.*

STATE OF QUEENSLAND of the fourth part, THE STATE of SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE STATE OF TASMANIA of the seventh part.

WHEREAS by an agreement made the nineteenth day of November, 1945, between the Commonwealth and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania and, pursuant to the terms of that agreement, varied as between the Commonwealth and certain of the States parties thereto by agreements dated respectively the twenty-sixth day of November, 1948, the thirtieth day of December, 1949, the twenty-fourth day of November, 1952, and the fifth day of March, 1954, entered into between the Treasurer of the Commonwealth and the Treasurers of certain States, and by an agreement dated the sixteenth day of April, 1955, between the Commonwealth and the States of New South Wales, Victoria, Queensland, South Australia and Western Australia further amended as between the Commonwealth and those States (which agreement, as varied from time to time, is in this agreement called "the 1945 agreement") provision was made for the carrying out by the said States with the assistance of the Commonwealth of rental housing projects:

AND WHEREAS the 1945 Agreement was authorised or approved by the Parliaments of the Commonwealth and of the said States:

AND WHEREAS in or about the month of August, 1950, the State of Tasmania withdrew from the rental housing scheme the subject of the 1945 Agreement and is no longer regarded as a party to the 1945 Agreement:

AND WHEREAS, by reason of subclause (1) of clause 16 of the 1945 Agreement, the 1945 Agreement does not apply to housing projects commenced by the following States after the respective dates specified below, namely:—

- The State of New South Wales—the first day of April, 1956;
- the State of Victoria—the thirtieth day of April, 1956;
- the State of Queensland—the thirtieth day of December, 1955;
- the State of South Australia—the third day of January, 1956;
- the State of Western Australia—the fifteenth day of January, 1956:

THE SCHEDULE—*continued.*

AND WHEREAS the Commonwealth has proposed to the States that the Commonwealth will grant further financial assistance under section 96 of the Commonwealth of Australia Constitution to the States for housing upon the terms and conditions set out in this agreement:

AND WHEREAS the Parliament of the Commonwealth has authorised the execution by and on behalf of the Commonwealth of this agreement:

NOW IT IS HEREBY AGREED as follows:—

Approval of  
Parliaments.

1. (1) Notwithstanding that all the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania are named as parties to this agreement, this agreement shall operate as an agreement between the Commonwealth and each State, the Parliament of which authorises or approves the agreement as fully and effectually as if the State or States the Parliament or Parliaments of which so authorises or authorise or approves or approve the agreement were the only State or States named as a party or parties to the agreement.

(2) This agreement shall, as between the Commonwealth and a State, come into force upon being authorised or approved by the Parliament of that State.

(3) In this agreement, each State which is named as a party to this agreement and the Parliament of which authorises or approves this agreement is referred to as a "State," and the expression "the States" means, where the context so permits or requires, all of those States so authorising or approving this agreement.

Performance  
of agreement.

2. The Commonwealth shall provide for or secure the performance by it and its instrumentalities of the obligations of the Commonwealth under this agreement and each of the States shall provide for or secure the performance by that State and its instrumentalities of the obligations of that State under this agreement.

Interpre-  
tation.

3. (1) In this agreement, unless the contrary intention appears—

"building society" means a society registered under the laws of a State as a building or housing society, whether terminating or permanent and whether or not a co-operative society;

"dependant" means a person who is wholly or partly dependent for his support upon the pay, earnings and income of, or upon a pension or compensation payable in consequence of the incapacity or death of, a person who is, or was, a member of the Forces;

THE SCHEDULE—*continued.*

- “dwelling” means a detached or semi-detached dwelling-house or a flat erected or to be erected by the State under this agreement and, subject to clause 11 of this agreement, includes such fences, out-buildings and other improvements and such connections for sewerage, water, electricity and other services, as have been constructed for or are reasonably required to be constructed for that dwelling-house or flat;
- “eligible person” means an eligible person within the meaning of the War Service Homes Act, 1918-1955, as amended from time to time and includes the wife of such an eligible person who is temporarily or permanently insane;
- “financial year” means a period of twelve months commencing on the first day of July;
- “home builder” means a person who requires finance for the erection or purchase of a home for himself;
- “member of the Forces” means a person who—
- (a) is, or during the war was, a member of the Active Permanent Forces, other than the Australian Imperial Force;
  - (b) during the war was a member of the Australian Imperial Force;
  - (c) was a member of the Citizen Forces enlisted, appointed or called up for continuous service for the duration of, and directly in connection with, the war;
  - (d) served during the war in the Merchant Navy;
  - (e) is, or during the war was, engaged on continuous full-time service as a member of any Nursing or Women’s Service or Corps forming part of the Naval, Military or Air Forces of the Commonwealth;
  - (f) during the war was engaged on continuous full-time paid duty with any part of the Defence Force as a member of a Voluntary Aid Detachment;
  - (g) during the war was engaged on service as a member of the Naval, Military or Air Forces of any part of the dominions of His Late Majesty King George the

THE SCHEDULE—*continued.*

Sixth other than Australia, and who was born in Australia or was, immediately prior to his becoming a member of any of those Forces, domiciled in Australia;

(h) during the war was engaged on continuous full-time service with any Nursing Service or other Women's Service auxiliary to the Naval, Military or Air Forces of any part of the dominions of His Late Majesty King George the Sixth other than Australia, and who was born in Australia or was, immediately prior to her becoming a member of that Service, domiciled in Australia;

(i) being at the time of allotment—

(i) a member of the Naval, Military or Air Forces of the Commonwealth, including a member of any Nursing or Women's Service or Corps forming part of those Forces;

(ii) a member of the Naval, Military or Air Forces of any part of the Queen's Dominions other than Australia who was born in Australia or was, immediately prior to his becoming a member of any of those Forces, domiciled in Australia; or

(iii) a person engaged on continuous full-time service with any Nursing Service or other Women's Service auxiliary to the Naval, Military or Air Forces of any part of the Queen's Dominions other than Australia and who was born in Australia or was, immediately prior to her becoming a member of that Service, domiciled in Australia,

was allotted for duty outside Australia in or in connection with the warlike operations in Korea after the twenty-sixth day of June, 1950, or in or in connection with the warlike operations in Malaya after the twenty-eighth day of June, 1950, and, if he was so allotted



THE SCHEDULE—*continued.*

while in Australia, or in a part of the Queen's Dominions other than the Commonwealth, left the last port of call in Australia or in that other part of the Queen's Dominions, as the case may be, for the purpose of serving in connection with those operations; or

- (j) is or was included in a class of members or former members of the Naval, Military or Air Forces of the Commonwealth which the Prime Minister and the Premier of a State may at any time agree shall comprise members of the Forces for the purposes of this agreement in respect of that State;

“the Director” means the Director of War Service Homes appointed for the purposes of the War Service Homes Act, 1918-1955, and includes any person for the time being performing the duties of the office of the Director of War Service Homes;

“the Loan Council” means the Australian Loan Council constituted under the Financial Agreement a copy of which is set forth in the Schedule to the Financial Agreement Act, 1928, of the Commonwealth, as varied from time to time;

“the Minister” means the Minister of State of the Commonwealth for the time being administering the Commonwealth Act authorising this agreement or a member of the Executive Council of the Commonwealth acting for the time being for and on behalf of that Minister;

“the war” means the war which commenced on the third day of September, 1939, and includes any other war in which His Late Majesty King George the Sixth became engaged after that date and before the date of this agreement.

(2) In this agreement, unless the contrary intention appears, words in the singular number include the plural and words in the masculine gender include the feminine.

4. (1) Subject to this clause, the operation of the 1945 Agreement shall be deemed to have been, as between the Commonwealth and each of the States other than the State of Tasmania, extended to the thirtieth day of June, 1956.

1945 Agree-  
ment  
extended to  
30th June,  
1956.

THE SCHEDULE—*continued.*

(2) The 1945 Agreement shall continue, and be deemed to have continued, to apply after the thirtieth day of June, 1956, to and in respect of the dwellings completed and advances made under that agreement on or before the thirtieth day of June, 1956.

(3) A dwelling commenced under the 1945 Agreement but not completed on or before the thirtieth day of June, 1956, shall be deemed to be erected under this agreement.

(4) Moneys advanced by the Commonwealth in accordance with the 1945 Agreement and expended by a State for purposes other than the erection of dwellings completed on or before the thirtieth day of June, 1956, shall be deemed not to be an advance under the 1945 Agreement for the purpose of the calculation of a loss under subclause (1) of clause 15 of the 1945 Agreement.

(5) Moneys advanced by the Commonwealth in accordance with this agreement and expended by a State on, and included in the capital cost of, dwellings completed on or before the thirtieth day of June, 1956, under the 1945 Agreement shall be deemed to be an advance under the 1945 Agreement for the purpose of the calculation of a loss under subclause (1) of clause 15 of the 1945 Agreement.

(6) For the purposes of this clause, a dwelling shall be deemed to have been completed if it was occupied or ready for immediate occupation.

Advances to  
States.

5. (1) During the financial years commencing on the first day of July in the years 1956, 1957, 1958, 1959 and 1960, respectively, the Commonwealth will make advances to the States, subject to the terms of this agreement, for the purposes of the erection of dwellings and of the provision of finance to home builders.

(2) Each State will, prior to the meeting of the Loan Council called to consider the borrowing programme to be approved by the Loan Council under the Financial Agreement for a financial year referred to in the last preceding subclause, notify the Commonwealth of the amount of the advances which the State requires under this agreement in that financial year.

(3) The amount to be advanced to a State under this clause in respect of a financial year referred to in subclause (1) of this clause shall be such amount as may be agreed upon between the Commonwealth and that State, or, failing agreement, as may be allocated by the Commonwealth from the loan funds made available to the Commonwealth by the Loan Council in the approved borrowing programme in respect of that financial year.

THE SCHEDULE—*continued.*

6. (1) The total advances made available to a State under clause 5 of this agreement in a financial year referred to in subclause (1) of clause 5 of this agreement shall be divided into two parts, one part of which shall be used for the erection of dwellings by the State, and the other part of which shall be used to provide finance for home builders in accordance with this agreement by means of loans by the State to building societies and other institutions approved by the Minister.

Advances to  
be allocated  
by States.

(2) During each of the financial years commencing on the first day of July, 1956, and the first day of July, 1957, respectively, each State shall allocate for the provision of finance for home builders not less than twenty per centum of the total advances made to that State under clause 5 of this agreement in that financial year.

(3) During each of the financial years commencing on the first day of July in the years 1958, 1959 and 1960, respectively, each State shall allocate for the provision of finance for home builders not less than thirty per centum of the total advances made to that State under clause 5 of this agreement in that financial year.

7. (1) Of the advances made to a State which pursuant to clause 6 of this agreement are to be used for the erection of dwellings by the State, the State shall set aside such portion as may be specified by the Minister from time to time, but not exceeding in a financial year five per centum of the amount of those advances in that financial year, for the purposes of clause 13 of this agreement.

Funds for  
Service  
Dwellings.

(2) During each of the financial years referred to in clause 5 of this agreement the Commonwealth will, in addition to the advances made under clause 5 of this agreement, advance to the State an amount equal to the amount set aside in that financial year by the State under the last preceding subclause.

8. The amounts to be advanced in a financial year to a State pursuant to clause 5 and to subclause (2) of clause 7 of this agreement shall be made available by the Commonwealth in that financial year by equal monthly instalments unless otherwise agreed between the Treasurer of the Commonwealth and the Treasurer of the State.

Advances  
to be made by  
instalments.

9. (1) Each advance made by the Commonwealth to a State under this agreement shall bear interest computed from the date upon which the advance is made at a rate per centum per annum ascertained in accordance with subclauses (2), (3) and (4) of this clause.

Interest.

THE SCHEDULE—*continued.*

(2) In respect of advances made during the financial years commencing on the first day of July, 1956, and the first day of July, 1957, respectively, the rate shall be the long term bond rate less—

- (a) three-quarters of one per centum per annum if the long term bond rate does not exceed four and one-half per centum per annum; or
- (b) one per centum per annum, if the long term bond rate exceeds four and one-half per centum per annum.

(3) In respect of advances made during the financial years commencing on the first day of July in the years 1958, 1959 and 1960, respectively, the rate shall be as agreed between the Commonwealth and the States, or, in default of agreement, as determined by the Treasurer of the Commonwealth, but not exceeding the long term bond rate less three-quarters of one per centum per annum.

(4) For the purposes of subclauses (2) and (3) of this clause, the long term bond rate shall be the interest rate payable in respect of a Commonwealth Public Loan having a currency exceeding five years being raised in Australia at the date the advance is made or, if none is being raised at that date, in respect of the Commonwealth Public Loan having a currency exceeding five years last raised in Australia prior to that date.

(5) On the thirty-first day of December and the thirtieth day of June of each financial year referred to in clause 5 of this agreement each State will pay to the Commonwealth the interest which has accrued up to that thirty-first day of December or thirtieth day of June as the case may be on the advances made to that State during that financial year.

Repayment  
of advances  
by States.

10. (1) Subject to subclause (2) of clause 15 of this agreement, each State will repay to the Commonwealth the amount of each advance made to the State under this agreement together with interest thereon as aforesaid (except such interest as is paid by the State under subclause (5) of the last preceding clause) by equal annual instalments of principal and interest so that the whole of the amount of the advance and interest will be repaid in fifty-three years from the beginning of the financial year next succeeding the financial year in which the advance was made, the first such instalment being payable on or before the end of the financial year next succeeding the financial year in which the advance was made.

THE SCHEDULE—*continued.*

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

11. (1) Except as otherwise provided in this agreement, dwellings erected with that part of the advances which pursuant to clause 6 of this agreement are to be used for the erection of dwellings shall be of reasonable size and standard, primarily for families of low or moderate means, and may be built in such localities and in accordance with such policy as the State deems fit.

Use of  
advances  
for erection  
of dwellings.

(2) The dwellings referred to in the last preceding subclause may comprise blocks of flats, especially in high-density population areas, but, except by agreement between the Minister and the appropriate Minister of the State, no block of flats shall exceed three storeys in height above the main entrance level.

(3) A State may use advances which are to be used for the erection of dwellings—

- (a) for the resumption or acquisition on just terms of land upon which the dwellings are to be erected; and
- (b) subject to clause 12 of this agreement, to meet costs incurred by the State for the purposes of—
  - (i) forming, making, paving, kerbing or draining any streets, roads or thoroughfares for the purpose of the dwellings; and
  - (ii) draining or otherwise making suitable for the purpose of the dwellings, land upon which the dwellings are to be erected.

12. A State will ensure that advances by the Commonwealth are not used for—

- (a) shops;
- (b) except as may otherwise be agreed between the Minister and the appropriate Minister of the State, works, such as the construction of drainage systems or mains for sewerage, water, electricity or other services, which are normally the financial responsibility of Local Government or public utility authorities; or

Manner  
in which  
advances  
may not  
be used.



THE SCHEDULE—*continued.*

(2) As far as possible fifty per centum of the dwellings erected from time to time by a State under this agreement shall be allotted to—

- (a) members of the Forces;
- (d) dependants of members of the Forces; and
- (c) widows of deceased members of the Forces.

(3) Dwellings erected by the State pursuant to clause 13 of this agreement shall, for the purposes of the last preceding subclause, be deemed to be allotted to members of the Forces.

15. (1) Except as provided in clause 13 of this agreement, each State may, if it so desires and at such price and on such terms as it thinks fit, sell any dwellings, but sales pursuant to this subclause shall not affect the obligation of the State under clauses 9 and 10 of this agreement to repay and to pay interest on advances made under this agreement.

Sale of  
dwellings.

(2) Where a person to whom a dwelling could be sold is an eligible person who desires to purchase the dwelling from the Director in pursuance of the War Service Homes Act, 1918-1955, as amended from time to time, or to obtain an advance under that Act to enable him to purchase the dwelling, the State may, if requested so to do by the Director, sell the dwelling to the Director or that eligible person, in which event no amount of money shall be payable to the State by the Director or the eligible person, as the case may be, but the State shall transfer to the Director or to the eligible person, as the case may be, an estate in fee simple in the land on which the dwelling is erected, if the dwelling is erected on freehold land, or issue a Crown lease in perpetuity to the Director or to the eligible person, as the case may be, if the dwelling is erected on Crown land, subject in either case to the reservations, exceptions and conditions (if any) contained in the Crown Grant or Crown lease, as the case may be, and to such encumbrances, reservations, exceptions, covenants or conditions subject to which the sale is expressly made, and the amount of the State's indebtedness to the Commonwealth under subclause (1) of clause 10 of this agreement shall as from the date of sale be reduced by the amount of the purchase price of the dwelling less the amount, if any, credited to the purchaser.

16. (1) Each State shall credit that part of the advances made to it by the Commonwealth which pursuant to clause 6 of this agreement is to be used for the provision of finance for home builders to a special account in the Public Accounts of the State to be called the "Home Builders' Account."

Home  
Builders'  
Account.

THE SCHEDULE—*continued.*

(2) The Home Builders' Account shall be credited also with the moneys received by the State from building societies and other approved institutions in repayment of principal and interest in respect of loans made by the State to those societies and institutions under this agreement and shall be debited with the repayments of principal and the payments of interest payable by the State to the Commonwealth under subclause (5) of clause 9 and under clause 10 of this agreement in respect of the advances made to the State for the provision of finance for home builders and with any expenses incurred by the State in providing that finance in accordance with this agreement.

(3) All moneys at any time available in the Home Builders' Account (after allowing for amounts by which the Account is to be debited under the last preceding subclause) shall be used by the State for the provision of finance for home builders in that State by means of loans by the State to building societies and other institutions approved by the Minister subject to and in accordance with terms and conditions agreed or to be agreed between the Minister and the appropriate Minister of the State.

(4) The State shall not use moneys from the Home Builders' Account except subject to and in accordance with such terms and conditions as are agreed under the last preceding subclause.

(5) Each State shall at least fourteen days before the first day of each of the months of July, October, January and April of each year notify the Commonwealth of its proposals for the use of the moneys available in the Home Builders' Account.

IN WITNESS whereof the Prime Minister of the Commonwealth of Australia and the Premiers of each of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania have signed this agreement for and on behalf of the Commonwealth of Australia and of the said States respectively.

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