

Western Australia

Rural Housing (Assistance) Act 1976

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Rural Housing (Assistance) Act 1976

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NOTES

Rural Housing (Assistance) Act 1976

An Act to facilitate the provision of suitable housing on rural properties for farmers engaged in primary production; to constitute a Rural Housing Authority, and for purposes connected therewith.

[Assented to 9 June 1976.]

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. Short title

This Act may be cited as the *Rural Housing (Assistance) Act 1976*.

2. Commencement

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

3. Interpretation

In this Act unless the context requires otherwise —

“advance” means an advance made by an approved lending institution to an approved farmer for the purposes of this Act;

“approved farmer” means a person in respect of whom a certificate under section 15 has been issued;

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“approved lending institution” means an institution or body appointed to be an approved lending institution under section 11;

“Authority” means the Rural Housing Authority established under this Act;

“Fund” means the Rural Housing Fund established under this Act;

“guarantee” means a guarantee given pursuant to this Act by the Treasurer to an approved institution;

“holding” means —

- (a) land of which an approved farmer is the holder of the fee simple estate;
- (b) land of which an approved farmer is the lessee —
 - (i) under a pastoral lease granted under Part 7 of the *Land Administration Act 1997*; or
 - (ii) under any other lease granted under that Act and on which the approved farmer conducts activities related to primary production;

or

- (c) land of which an approved farmer is the lessee under a perpetual lease granted for the purposes of the scheme as defined in section 4 of the *War Service Land Settlement Scheme Act, 1954*;

[(d) deleted]

“section” means section of this Act.

*[Section 3 amended by No. 12 of 1978 s.2; No. 54 of 1986 s.2;
No. 31 of 1997 s.80.]*

4. Objects of Act

The objects of this Act are to facilitate the purchase or building of suitable housing on rural properties for farmers engaged in primary production by —

- (a) the establishment of the Authority;
- (b) the provision of guarantees by the Treasurer to approved lending institutions in respect of advances made by those institutions to approved farmers; and
- (c) the provision of funds to be lent to approved farmers, either through approved lending institutions or otherwise in accordance with this Act.

5. Rural Housing Authority

- (1) For the purposes of this Act an authority to be known as the Rural Housing Authority shall be established.
- (2) The Authority shall consist of four members of whom —
 - (a) one shall be a person who has had comprehensive experience in the planning, provision and management of housing throughout the State;
 - (b) one shall be a person who is or has been employed or engaged in a senior capacity by a lending institution the operations of which involve the making of loans to persons engaged in primary production within the State;
 - (c) one shall be a person who is or has been engaged in rural industry within the State and whose experience in that industry fits him for appointment to the Authority; and
 - (d) one shall be an officer in the Treasury Department of the Public Service of the State.

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- (3) The members of the Authority referred to in paragraphs (a), (b) and (c) of subsection (2) of this section shall —
 - (a) be appointed by the Governor; and
 - (b) unless sooner removed by the Governor for cause, be entitled to hold office for such terms not exceeding three years as are specified in the respective instruments of their appointments, but shall be eligible for re-appointment.
- (4) The member of the Authority referred to in paragraph (d) of subsection (2) of this section shall be appointed by the Minister on the nomination of the Treasurer and the Minister shall terminate the appointment of any such member at the request of the Treasurer.
- (5) The Governor may from time to time appoint one of the members referred to in paragraph (a), (b) or (c) of subsection (2) of this section to be the chairman of the Authority.
- (6) The Minister may —
 - (a) appoint any person qualified for appointment as a member of the Authority referred to in paragraph (a), (b) or (c) of subsection (2) of this section to be the deputy of such a member of the Authority;
 - (b) appoint an officer in the Treasury Department of the Public Service of the State nominated by the Treasurer for that purpose to be the deputy of the member referred to in paragraph (d) of subsection (2) of this section; and
 - (c) revoke the appointment of any person as a deputy of a member of the Authority,and at any meeting of the Authority at which a member is not present, the deputy of the member may exercise all the powers and functions of the member.
- (7) The members of the Authority, including the deputies of such members, other than any member or deputy who is an officer of the Public Service of the State, shall be paid such fees and

allowances as are from time to time determined by the Governor.

6. Meetings of the Authority

- (1) The Authority shall hold such meetings as are necessary for the purposes of its functions under this Act, but it shall hold not less than four meetings in any year.
- (2) The Chairman may at any time convene a meeting of the Authority, and shall convene a meeting of the Authority when so directed by the Minister.
- (3) At any meeting of the Authority —
 - (a) the Chairman or his deputy, if present, shall preside, but if neither the Chairman nor his deputy is present, the members present at the meeting shall appoint one of their number to preside thereat;
 - (b) three members form a quorum;
 - (c) all questions arising at the meeting shall be decided by a majority of the votes of the members present;
 - (d) each member shall be entitled to one vote; and
 - (e) in the event of an equality of votes the question shall be deferred until a subsequent meeting of the Authority.
- (4) Subject to this Act the Authority may regulate its procedure in such manner as it thinks fit, but shall cause minutes to be kept of its proceedings and shall, when so requested by the Minister, furnish to the Minister minutes of its proceedings at any meeting.

7. Authority to be body corporate

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

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

8. Authority may engage services of other staff

For the purpose of enabling the Authority to carry out its functions it may, with the consent of the Minister having the administration of an Act relating to a department of the Public Service, make use of the services of any officer or officers of that department.

9. Borrowing by Authority

- (1) The Authority shall have power to borrow money upon the guarantee of the Treasurer of the State for the purposes of carrying out its powers and functions 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, including the guarantee of interest, in subsection (1), for and on behalf of the Crown in right of the State.
- (4) Any moneys borrowed by the Authority under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.
- (5) 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 the purpose.

- (6) The Authority shall use all moneys borrowed under the power conferred by this section for the purposes of carrying this Act into effect.

10. Rural Housing Fund

- (1) For the purposes of this Act there shall be established and kept in an account in the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, a fund to be known as the Rural Housing Fund and that Fund shall, subject to any directions given by the Minister, be administered and controlled by the Authority.
- (2) There shall be credited to the Fund —
- (a) all moneys received from time to time by way of repayment of moneys advanced by the Authority to approved lending institutions or to approved farmers for the purposes of this Act;
 - (b) moneys borrowed by the Authority under section 9; and
 - (c) any other moneys that may be lawfully payable to the Authority or credited to the Fund.
- (3) There shall be charged to the Fund all moneys approved by the Authority to be advanced to approved lending institutions for re-lending to approved farmers and all moneys advanced under section 18 and all moneys necessary to meet the obligations of the Authority in respect of moneys borrowed by it.

[Section 10 amended by No. 49 of 1996 s.64.]

11. Approval of lending institutions

- (1) Any institution or body which desires to be concerned with advancing loans for the purposes of this Act, including —
- (a) any society registered under the *Building Societies Act 1920* or any Act in substitution therefor;
 - (b) any bank or savings bank; or

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- (c) any other institution the business of which includes the lending of moneys to persons desirous of purchasing or erecting dwelling houses,

may apply in writing to the Minister to become and be an approved lending institution for the purposes of this Act.

- (2) If it appears to the Minister that an institution or body which has made an application under subsection (1) of this section is suitable to be an approved lending institution for the purposes of this Act, he may, on such terms and conditions as he imposes, appoint the institution to be an approved lending institution.
- (3) Where it appears to the Minister that an approved lending institution has ceased to be suitable to continue to be an approved lending institution, he may, by notice in writing served on the approved lending institution, cancel its appointment as such, and thereupon —
 - (a) any guarantee given to the institution or body shall cease to apply to or in respect of the repayment of any loan or advance and interest thereon made by the institution or body after service of the notice; and
 - (b) the institution or body shall not be at liberty to, and shall not, because of the service of the notice of cancellation, call up or take any action to enforce repayment or accelerated repayment of any loan or advance or interest thereon made by it to an approved farmer prior to the notice being served, other than in accordance with the terms of the loan agreement entered into between the approved lending institution and the approved farmer as in force immediately prior to service of the notice,but the provisions of this subsection shall not —
 - (c) otherwise affect the operation of any guarantee given by the Treasurer to an approved lending institution prior to service of the notice;

- (d) otherwise affect the operation or terms of any debenture given by the institution or body to the Authority; and
- (e) affect the operation of section 17 in relation to any advance made by the institution or body to an approved farmer prior to the service of the notice.

12. Treasurer empowered to give guarantee to approved lending institution

- (1) Subject to the provisions of this section, authority is hereby conferred on the Treasurer to execute on behalf of the Crown in right of the State an instrument of guarantee by which the Treasurer in that behalf in that right guarantees to indemnify an approved lending institution against any loss incurred by it in respect of any advance made by it under and for the purposes of this Act to an approved farmer.
- (2) The instrument of guarantee shall contain such provisions as, subject to the provisions of this Act, are agreed between the Authority and the approved lending institution and are approved by the Treasurer.
- (3) The due payment of money payable by the Treasurer under a guarantee given or entered into by him under the authority of this Act is hereby guaranteed by the State.
- (4) The Treasurer may from time to time by notice in the *Government Gazette* fix the maximum amount which the Treasurer may guarantee under this Act during any period specified in the notice.

13. Appropriation

The due payment of any money payable —

- (a) by the Treasurer under a guarantee given or entered into by him under the authority of this Act; or
- (b) by the State pursuant to the guarantee given by section 9 in relation to the repayment of moneys borrowed by the Authority pursuant to that section —

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shall be charged to the Consolidated Fund and this section, without any other appropriation, is sufficient authority for making any such payments.

[Section 13 amended by No. 98 of 1985 Schedule 1; No 6 of 1993 s.11; No. 49 of 1996 s.64.]

14. Applications for financial assistance

- (1) Any farmer (being a person whose sole or principal activity is the carrying on of farming operations on his holding) desirous of obtaining financial assistance to enable him to erect a dwelling house or to effect additions or modernisation to an existing dwelling house, which is to be or is, as the case may be, situated on his holding, may apply to the Authority for approval as an approved farmer for the purposes of this Act.
- (2) The Authority may require a farmer making an application under subsection (1) of this section to furnish to it such accounts, documents and other information relevant to his application as it thinks fit.
- (3) A person who makes a false or misleading statement to the Authority in or in connection with an application under subsection (1) of this section, commits an offence.

Penalty: One thousand dollars.

[Section 14 amended by No. 53 of 1984 s.2.]

15. Approval of applications

- (1) The Authority shall consider any application made to it under section 14 and may approve the application on such terms and conditions as it thinks fit or may refuse the application, but in any event, the Authority shall not approve the application unless —

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- (a) where the applicant is a natural person — the Authority is satisfied that the dwelling house in respect of which an advance is required is intended to be used by the applicant as a home for himself and his dependants or as a home for a person whose sole or principal activity is the carrying on of farming operations on behalf of the applicant;
 - (b) where the applicant is a body corporate — the Authority is satisfied that —
 - (i) the applicant is an exempt proprietary company within the meaning of section 5 of the *Companies (Western Australia) Code*—
 - (ii) the farming operations carried on by the applicant on the holding concerned are solely or principally performed for or on behalf of the applicant by one or more natural persons holding shares in the share capital of the applicant; and
 - (iii) the dwelling house in respect of which the advance is required is intended to be used by the person or persons referred to in subparagraph (ii) of this paragraph as a home for him or them and his or their dependants or as a home for a person whose sole or principal activity is the carrying on of farming operations on behalf of the applicant.
 - (2) Where the Authority approves an application made under this section it shall issue a certificate to the effect that the farmer is an approved farmer for the purposes of this Act, and shall include therein any terms and conditions to which that approval is subject.

[Section 15 amended by No. 38 of 1981 s.2; No. 10 of 1982 s.28.]

16. Advances by approved lending institutions may be guaranteed

(1) Where —

- (a) an approved lending institution informs the Authority that it is prepared to make an advance to an approved farmer on condition that that advance would be guaranteed by the State under section 12 but subject to any relevant terms and conditions set out in the certificate of approval issued to that approved farmer;
- (b) the approved lending institution satisfies the Authority that it is not possible to obtain mortgage insurance on reasonable terms from a body carrying out the business of mortgage insurance in the State; and
- (c) the certificate issued under section 15 to the approved farmer was issued within the immediately preceding period of four months or such longer period as the Authority in any particular case allows,

the Authority may, with the approval of the Treasurer authorize the approved lending institution to make the advance to the approved farmer, and in that event the approved lending institution shall be indemnified, in accordance with section 12, against any loss incurred by it in respect of the advance.

- (2) Where an approved lending institution makes an advance to an approved farmer pursuant to subsection (1) of this section, it shall secure the due repayment to it of the moneys so advanced, together with interest due thereon by the approved farmer by taking or effecting such security as is agreed by the Authority and the approved lending institution to be the most appropriate in the circumstances.
- (3) For the purposes of this section the Treasurer may, either generally or as otherwise provided in the instrument of delegation, by instrument signed by him, delegate to the Minister the power of approval conferred on him by subsection (1) of this section and the power to execute a

guarantee to indemnify an approved lending institution under section 12 of this Act and where the Treasurer does so —

- (a) the Minister may exercise the powers in the same manner and to the same effect as if the powers were directly conferred on him by this Act and not by the instrument of delegation; and
 - (b) an approval or purported approval by the Minister and any indemnity given or purported to be given by him pursuant to an instrument of delegation under this subsection is presumed to be in accordance with the terms of the delegation under this subsection in the absence of proof to the contrary.
- (4) A delegation by the Treasurer under subsection (3) of this section may be revoked or varied by instrument in writing signed by the Treasurer.
- (5) The Treasurer may exercise any of the powers referred to in subsection (3) of this section notwithstanding the fact that he has delegated the powers under this section.

[Section 16 amended by No. 38 of 1981 s.3.]

17. Special assistance

- (1) Subject to subsection (1a) of this section, where the Authority is satisfied that —
- (a) an approved farmer would be unable, by reason of his financial circumstances, to meet the usual repayment obligations of an approved lending institution which would arise from the making of an advance of the amount reasonably required to enable him to provide a satisfactory dwelling house on his holding; and

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- (b) if the whole or part of the advance by the approved lending institution were to be made from funds provided to it by the Authority under terms which would permit more favourable repayment obligations than those referred to in paragraph (a) of this subsection, the approved farmer would be able to meet those repayment obligations,

the Authority may advance to the approved lending institution such amount as it thinks fit, but subject to —

- (c) the advance by the approved lending institution to the approved farmer being made on such terms and conditions as are agreed between the Authority and the approved lending institution;
 - (d) the approved lending institution giving to the Authority a debenture in such terms as the Authority requires securing the repayment to the Authority of the amount advanced by it to the approved lending institution, together with interest due thereon; and
 - (e) the approved lending institution securing the due repayment to it of the moneys advanced to the approved farmer together with interest due thereon, by taking or effecting such security as is agreed by the Authority and the approved lending institution to be the most appropriate in the circumstances.
- (1a) The Authority shall not make an advance under subsection (1) of this section in respect of a dwelling house that is to be used or intended to be used otherwise than —
- (i) where the applicant is a natural person — for the purpose of a home for the applicant and his dependants;
 - (ii) where the applicant is a body corporate — for the purpose of a home for one or more natural persons holding shares in the share capital of the applicant and the dependants of that person or those persons.

- (2) Where an advance has been made by an approved lending institution to an approved farmer of moneys wholly or partly provided by the Authority pursuant to this section, the financial circumstances of the approved farmer shall be reviewed from time to time by the Authority and —
- (a) if the Authority is of opinion that the approved farmer is able to meet higher repayment obligations than those currently provided under the advance to him it shall require the approved lending institution to repay to it the whole or such part of the amount originally provided by the Authority to the approved lending institution when the advance was first made to the approved farmer as the Authority specifies, and the approved lending institution shall comply with that requirement, but may make a corresponding adjustment to the repayment obligations of the approved farmer; and
 - (b) if the Authority is of opinion that the financial circumstances of the approved farmer have deteriorated, it may (except where the whole of the amount advanced by the approved lending institution to the approved farmer is derived from amounts advanced by the Authority to the approved lending institution for that purpose) advance a further amount to the approved lending institution, and in that event —
 - (i) the approved lending institution shall adjust the repayment obligations of the approved farmer to such extent as is agreed between the approved lending institution and the Authority; and
 - (ii) the approved lending institution shall give to the Authority a further debenture of the kind referred to in paragraph (d) of subsection (1) of this section.
- (3) Where an advance has been made by an approved lending institution to an approved farmer of moneys wholly or partly provided by the Authority pursuant to this section, the holding

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to which the advance related shall not, without the consent in writing of the Authority, be transferred or otherwise disposed of until the approved lending institution has repaid to the Authority all moneys advanced to the approved lending institution by the Authority in connection with the advance, together with all interest payable thereon.

[Section 17 amended by No. 38 of 1981 s.4.]

18. Authority may make advances direct to approved farmers in special circumstances

- (1) Subject to subsection (3) of this section, where an approved farmer satisfies the Authority that —
- (a) he would be unable, by reason of his financial circumstances, to meet the usual repayment obligations of an approved lending institution which would arise from the making of an advance of the amount reasonably required to enable him to provide a satisfactory dwelling house on his holding;
 - (b) if the whole or part of such an advance by an approved lending institution were to be made from funds provided to it by the Authority under terms which would permit more favourable repayment obligations than those referred to in paragraph (a) of this subsection, he would be able to meet such repayment obligations; and
 - (c) for reasons unrelated to his financial circumstances, the approved lending institution from which he has sought an advance or from which he would ordinarily be expected to seek an advance is unwilling to make an advance to him, the whole or part of which would be made from funds provided to it by the Authority,

the Authority may advance to the approved farmer an amount not exceeding that reasonably required to enable him to provide a satisfactory dwelling house on his holding.

- (2) Any advance made by the Authority pursuant to subsection (1) of this section shall be made on such terms and conditions as are agreed between the Authority and the approved farmer and the Authority shall secure the due repayment to it of the moneys so advanced together with interest due thereon by the approved farmer by taking or effecting such security as is the most appropriate in the circumstances.
- (3) The Authority shall not make an advance under this section in respect of a dwelling house that is to be used or intended to be used otherwise than —
 - (i) where the applicant is a natural person — for the purpose of a home for the applicant and his dependants;
 - (ii) where the applicant is a body corporate — for the purpose of a home for one or more natural persons holding shares in the share capital of the applicant and the dependants of that person or those persons.

[Section 18 amended by No. 38 of 1981 s.5.]

18A. Authority may assist successor in title

Where an approved farmer transfers or otherwise disposes of his holding or proposes to do so the Authority may approve of an application for financial assistance by a person who becomes or proposes to become the successor in title of the approved farmer in respect of any moneys that then remain owing by the approved farmer in respect of a security taken or effected for the purposes of this Act and the provisions of sections 14, 15, 16, 17 and 18 of this Act, with such modifications as are necessary, apply to and in relation to any such application.

[Section 18A inserted by No. 38 of 1981 s.6.]

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

A society registered under the *Building Societies Act 1920* or any Act in substitution therefor is by force of this section

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lawfully entitled to make an advance to an approved farmer “where the society is indemnified under this Act against any loss incurred in respect of the advance, notwithstanding that, by virtue of the provisions of that Act, or any provision in the rules, articles or constitution of the society, such an advance would, for any reason or reasons, otherwise be unlawful or *ultra vires* the powers of the society.

20. Authority to have access to certain documents, etc.

The manager, secretary, accountant or other executive or administrative officer of an approved lending institution or any bank at which any account, record or document of an approved lending institution is kept shall, whenever requested by the Authority to do so, make available to the Authority, or a person appointed in writing by the Authority, all documents and records, including records of accounts, which relate to or are connected with any advance, the subject of an indemnity given under this Act, and which are in the custody or under the control of the person or bank so requested, and permit the Authority or person so appointed to examine and take copies or extracts from them.

Penalty: Two thousand dollars.

21. 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 21 substituted by No. 98 of 1985 Schedule 1.]

22. Regulations

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.

NOTES

- ^{1.} This is a compilation of the *Rural Housing (Assistance) Act 1976* 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>Rural Housing (Assistance) Act 1976</i>	26 of 1976	9 Jun 1976	1 Nov 1976 (see <i>Gazette</i> 29 Oct 1976 p.4103)
	12 of 1978	15 May 1978	15 May 1978
	38 of 1981	25 Aug 1981	25 Aug 1981
	10 of 1982	14 May 1982	1 Jul 1982 (see section 2)
	53 of 1984	5 Sep 1984	3 Oct 1984
	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2255)
	54 of 1986	19 Nov 1986	17 Dec 1986
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))
<i>Acts Amendment (Land Administration) Act 1997 Part 53</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see section 2 and <i>Gazette</i> 27 Mar 1998 p.1765)