

WESTERN AUSTRALIA

COUNTRY HOUSING ACT 1998

(No. 4 of 1998)

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COUNTRY HOUSING ACT 1998

No. 4 of 1998

AN ACT for the establishment of an authority to facilitate the provision of —

- **housing in rural areas for farmers, their employees and retired farmers;**
- **adequate and suitable housing in rural areas for persons engaged in certain businesses and occupations;**

to repeal —

- **the *Rural Housing (Assistance) Act 1976*; and**
- **the *Industrial and Commercial Employees' Housing Act 1973*;**

to make consequential amendments to certain other Acts, and to make related provisions.

[Assented to 14 April 1998.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Country Housing Act 1998*.

Commencement

2. The provisions of this Act come into operation on such day as is fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears —

“**appointed member**” means a member referred to in section 5 (1) (a) or (b);

“**approved lender**” means a body or person approved by the Minister under section 30;

“**Authority**” means the Country Housing Authority established by section 4;

“**committee**” means a committee established under clause 9 of Schedule 1;

“**family member**” in relation to a person means —

(a) a child, step-child or remoter lineal descendant of the person; or

(b) the spouse or de facto spouse of that person or of a person referred to in paragraph (a),

or more than one of them;

“**farmer**” means a person whose sole or principal activity is the carrying on of primary production on his, her or its holding;

“farming company” means a corporation —

- (a) the shares in which are not listed on a stock exchange; and
- (b) which has assets which include —
 - (i) farming property; or
 - (ii) a share in a corporation —
 - (I) the shares in which are not listed on the stock exchange; and
 - (II) the assets of which include farming property;

“farming partnership” means a partnership, the assets of which include farming property;

“farming property” means —

- (a) land which is used solely or principally for the purpose of primary production; or
- (b) personal property which is used solely or principally in connection with the business of primary production;

“Fund” means the Country Housing Fund referred to in section 15 (2);

“holding” means land —

- (a) held in fee simple;
- (b) held on conditional purchase lease, pastoral lease or lease for special purposes under section 116 of the *Land Act 1933*, or otherwise under that Act;

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- (c) held 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*; or
- (d) in relation to which an application to purchase the fee simple has been approved under section 117AA of the *Land Act 1933*;

“member” means a member of the Authority;

“metropolitan region” has the same meaning as in section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;

“primary production” means agriculture, pastoral pursuits, grazing, dairy farming, bee-keeping, orcharding, viticulture, silviculture or other similar farming activities;

“retired farmer” means a natural person who has retired from his or her occupation as a farmer and transferred his or her —

- (a) total interest in farming property;
- (b) total interest in farming partnerships; or
- (c) total shares in farming companies,

to a family member of that person;

“rural employer” means an employer who provides employment for any person (including the employer him or herself), outside the metropolitan region;

“town” means an area that has been constituted a townsite and given a name under section 10 of the *Land Act 1933*.

PART 2 — COUNTRY HOUSING AUTHORITY

Division 1 — Establishment and staff

Country Housing Authority

4. (1) There is established an authority called the Country Housing Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal.

(3) Proceedings may be taken by or against the Authority in its corporate name.

(4) The Authority is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.

Membership of Authority

5. (1) The Authority consists of —

- (a) 3 persons appointed by the Minister each of whom has, in the opinion of the Minister, knowledge of and experience in any of the fields of planning, housing, finance, farming, industry, commerce or in another field relevant to the functions of the Authority;
- (b) a person appointed by the Minister from a list of 3 nominees submitted by the Western Australian Municipal Association referred to in section 9.58 of the *Local Government Act 1995* (“WAMA”);
- (c) an officer in the Treasury Department of the Public Service of the State, from time to time nominated by the Treasurer; and

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- (d) an officer of the Department principally assisting the Minister to whom the administration of the *Technology and Industry Development Act 1983* is committed in the administration of that Act, from time to time nominated by the Minister responsible for that department.

(2) When the submission of a list of nominees is required for the purposes of subsection (1) (b), that submission is to be made to the Minister in writing within such reasonable time after the receipt by WAMA of a notice from the Minister stating that the submission is required as is specified in that notice.

(3) If a submission is not made under subsection (2) within the time specified in the notice the Minister may appoint such person as the Minister thinks fit to be a member of the Authority in place of the person referred to in subsection (1) (b).

(4) The Minister is to appoint one of the appointed members to be chairperson and another of the appointed members to be deputy chairperson of the Authority.

(5) Schedule 1 has effect.

Remuneration

6. An appointed member is entitled to such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

Staff and facilities

7. (1) The Authority may by arrangement with the relevant employer 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 Crown in right 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.

Protection of members and staff

8. (1) An action in tort does not lie against a person other than the Authority for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(3) This section does not relieve the Authority of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

(5) This section has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

Confidentiality

9. A person who is or has been a member or a person referred to in section 7 must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$2 500.

Division 2 — Functions

Objective of the Authority

10. The Authority is to ensure that the resources of the Authority are managed to assist those persons for whom it considers housing finance options are otherwise limited.

Functions and powers of the Authority

11. (1) The functions of the Authority are —

- (a) in accordance with Parts 3 and 4, to facilitate the provision of housing outside the metropolitan region —
 - (i) for farmers and their employees;

- (ii) for retired farmers; and
- (iii) in connection with certain businesses and services;
- (b) to assess the eligibility of persons to be assisted under this Act;
- (c) to advance moneys for the purposes of and in accordance with this Act; and
- (d) to advise the Treasurer on the provision of indemnities by the Treasurer under Part 4.

(2) The Authority may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

(3) Without limiting subsection (2) or the other powers conferred on the Authority by this Act or any other written law, the Authority may for the purpose of performing any function —

- (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
- (b) with the approval of the Minister, buy, sell or otherwise deal in mortgages or other instruments evidencing indebtedness that are secured against land;
- (c) with the approval of the Minister, enter into any contract or arrangement with a bank, building society or other person whose ordinary business includes the provision of finance;
- (d) appoint agents or engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as it considers necessary to enable the Authority to perform its functions; and

- (e) accept any gift, devise or bequest if it is absolute, or subject to conditions which are within the functions of the Authority.

Delegation

12. The Authority may, by instrument in writing, delegate to —

- (a) a member or members of the Authority;
- (b) a person referred to in section 7; or
- (c) a committee,

any of its functions, except this power of delegation.

Division 3 — Relationship with the Minister

Authority subject to directions of Minister

13. (1) The Minister may give directions in writing to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be —

- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
- (b) included in the annual report submitted by the accountable authority of the Authority under section 66 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

- 14.** (1) The Minister is entitled —
- (a) to have information in the possession of the Authority; and
 - (b) where 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; and
 - (c) for the purposes of paragraph (b) make use of a person referred to in section 7 to obtain the information and furnish it to the Minister.
- (3) The Authority is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “**document**” includes any tape, disc 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.

Division 4 — Financial provisions

Funds of the Authority

15. (1) The funds available for the purpose of enabling the Authority to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by way of repayment of, or interest paid on, moneys advanced by the Authority under this Act;
- (c) moneys borrowed by the Authority under section 16 or 17;
- (d) the proceeds of the disposition of land by the Authority;
- (e) rents and other payments derived from land leased by the Authority to others;
- (f) gifts and bequests;
- (g) moneys from sinking fund investments made by the Authority; and
- (h) any other moneys lawfully received by, made available to or payable to the Authority.

(2) The funds referred to in subsection (1) are to be paid into and placed to the credit of an account at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985* called the “Country Housing Fund”.

- (3) The Fund is to be charged with —
- (a) the costs of the administration of this Act, including the establishment and administration of the Authority and any expense incidental to the administration of the Fund;
 - (b) the payment of remuneration and allowances to appointed members;
 - (c) the payment of any moneys required to be paid under an agreement referred to in section 7 (3);
 - (d) interest on, and repayments of, moneys borrowed by the Authority under section 16 or 17 and any fees payable in connection with any such borrowing;
 - (e) the payment of all moneys advanced under Part 3;
 - (f) the payment of all moneys necessary to meet the obligations of the Authority in respect of moneys borrowed by it; and
 - (g) all other expenditure lawfully incurred under and for the purposes of this Act.

Borrowing from Treasurer

16. The Authority may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

Other borrowing

17. (1) In addition to its powers under section 16, the Authority may with the prior written approval of the Treasurer

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and on such terms and conditions as the Treasurer approves, borrow money for the purpose of performing its functions.

(2) Any moneys borrowed by the Authority under subsection (1) may be raised —

- (a) as one loan or as several loans; and
- (b) in such manner as the Treasurer approves.

Borrowing limits

18. (1) The Treasurer may, by notice in writing to the Authority —

- (a) impose limits on the exercise of the power conferred by section 17 (1); and
- (b) from time to time vary the limit in force.

(2) The Authority is to comply with any limit for the time being in force but a liability of the Authority is not unenforceable or in any way affected by a failure of the Authority to do so.

(3) A person dealing with the Authority is not bound or concerned to enquire whether the Authority has complied or is complying with this section.

Guarantee by Treasurer

19. (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Authority in respect of moneys borrowed by it under section 17.

(2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

- (3) Before a guarantee is given, the Authority is to —
- (a) give to the Treasurer such security as the Treasurer requires; and
 - (b) execute all instruments that are necessary for the purpose.

Effect of guarantee

20. (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 19 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

(3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 19.

Distribution of surplus

21. (1) The Authority, as soon as is practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the surplus (if any) that it recommends as being appropriate to be paid by the Authority to the Treasurer for that financial year.

(2) The Minister, with the concurrence of the Treasurer, may fix the amount of any surplus to be paid by —

- (a) agreeing to an amount (if any) recommended under subsection (1); or
- (b) determining the amount that is to be paid.

(3) The Authority is to pay any surplus so fixed to the Treasurer at such time or times as the Treasurer specifies.

Application of *Financial Administration and Audit Act 1985*

22. 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.

PART 3 — ASSISTANCE BY THE AUTHORITY

Division 1 — Assistance to farmers

Applications for assistance by farmers

23. A farmer who wishes to —

(a) on the farmer's holding —

- (i) place or erect a dwelling; or
- (ii) effect additions or alterations to, or modernize, an existing dwelling,

for use as a home by the farmer and the farmer's dependants (if any) or by an employee of the farmer and the employee's dependants (if any); or

(b) in a town in the vicinity of the holding —

- (i) purchase land upon which a dwelling is erected;
- (ii) purchase land and place or erect a dwelling on it; or
- (iii) place or erect a dwelling on land owned by the farmer,

for use as a home by an employee of the farmer and the employee's dependants (if any),

may apply to the Authority for financial assistance for that purpose.

Approval of applications

24. (1) The Authority may approve an application under section 23 on such terms and conditions as it thinks fit or may refuse the application.

(2) The Authority is not to approve an application under section 23 where the applicant is a body corporate, unless the Authority is satisfied that —

- (a) the shares in the body corporate are not listed on a stock exchange;
- (b) 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
- (c) where the application is made under section 23 (a), the dwelling in respect of which the financial assistance is required is intended to be used as a home by the person or persons referred to in paragraph (b) and their dependants (if any).

Authority may assist successor in title

25. (1) This section applies where a farmer to whom financial assistance is being provided under this Act transfers or otherwise disposes of his or her holding to another person, or proposes to do so.

(2) 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 farmer in respect of any moneys that then remain owing by the farmer under a security taken or effected for the purposes of this Act.

(3) Sections 23, 24 and 32, with such modifications as are necessary, apply to and in relation to an application under subsection (1).

Division 2 — Assistance to retired farmers

Applications for assistance by retired farmers

26. (1) A retired farmer who wishes to, in a town outside the metropolitan region —

- (a) purchase land upon which a dwelling is erected;
- (b) purchase land and place or erect a dwelling on it; or
- (c) place or erect a dwelling on land owned by the retired farmer,

may apply to the Authority for financial assistance for that purpose.

(2) An application for financial assistance under this section cannot be made more than 12 months after the applicant became a retired farmer.

Financial assistance to retired farmers

27. (1) The Authority may approve an application under section 26 on such terms and conditions as it thinks fit or may refuse the application.

(2) The Authority is not to approve an application under section 26 for financial assistance by a retired farmer unless it is satisfied that the dwelling in respect of which the financial assistance is required is intended to be used as a home for the retired farmer and his or her dependants (if any).

Division 3 — Assistance to rural business and services

Subdivision 1 — Assistance to rural employers

Applications for assistance by rural employers

- 28.** (1) A rural employer who wishes to —
- (a) purchase land upon which a dwelling is erected;
 - (b) purchase land and erect a dwelling; or
 - (c) place or erect a dwelling on land owned by the rural employer,

outside the metropolitan region may apply to the Authority for financial assistance for that purpose.

(2) The Authority may approve an application under this section on such terms and conditions as it thinks fit or may refuse the application.

Subdivision 2 — Assistance to rural local governments

Applications for assistance by local governments

- 29.** (1) A local government of a district that is outside the metropolitan region which wishes to erect a dwelling or dwellings within its district —
- (a) to assist a business carried on or proposed to be carried on within its district; or
 - (b) to provide housing for Government employees, local government employees, or other persons providing services within its district,

may apply to the Authority for financial assistance for that purpose.

(2) The Authority may, with the approval of the Minister, approve an application under this section on such terms and conditions as it thinks fit or may refuse the application.

PART 4 — ASSISTANCE BY WAY OF INDEMNITY

Approval of lenders

30. (1) Any body corporate or natural person may apply in writing to the Minister to be an approved lender.

(2) The Minister may approve the application on such terms and conditions as the Minister thinks fit or may refuse the application.

Cancellation of approval

31. (1) If it appears to the Minister that an approved lender has ceased to be suitable to continue to be an approved lender, the Minister may, by notice in writing served on the approved lender, cancel the approval.

(2) Where a notice is served under subsection (1) —

- (a) any indemnity given under section 32 (3) to the lender does not apply to or in respect of the repayment of any advance made by the lender after service of the notice or interest on any such advance; and
- (b) the lender is not to, because of the service of the notice of cancellation, call up or take any action to enforce repayment or accelerated repayment of any advance to which section 32 applies or interest on the advance made by the lender before the notice was served, other than in accordance with the terms of a loan agreement as in force immediately before service of the notice.

(3) Subsection (2) does not affect the operation of any indemnity given under section 34 (1) by the Treasurer to the approved lender before the service of the notice.

Advances by approved lenders may be indemnified

32. (1) An approved lender may inform the Authority that the lender is prepared to make an advance to a farmer, retired farmer or rural employer on condition that the advance will be indemnified by the State.

(2) Where it is so informed the Authority may, with the approval of the Treasurer, authorize the approved lender to make the advance.

(3) If the advance is made the approved lender is to be indemnified, in accordance with section 34, against any loss incurred by the approved lender in respect of the advance.

Security for advance

33. Where an approved lender makes an advance under section 32 —

- (a) the approved lender is to secure the due repayment of the moneys so advanced, together with interest due on the moneys, by taking or effecting such security as is agreed by the Authority and the approved lender to be the most appropriate in the circumstances; and
- (b) the farmer, retired farmer or rural employer is to execute all such instruments as are necessary for the purpose.

Treasurer empowered to give indemnity to approved lender

34. (1) The Treasurer may on behalf of the Crown in right of the State execute an instrument indemnifying an approved lender against any loss incurred by the lender in respect of any advance made in accordance with section 32.

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(2) The instrument is to contain such terms and conditions as, subject to this section, are agreed between the Authority and the approved lender and approved by the Treasurer.

(3) The Treasurer may from time to time by order published in the *Gazette* fix —

- (a) the maximum amount of an advance which may be indemnified by the Treasurer under this section; and
- (b) the maximum amount in respect of which the Treasurer may give an indemnity under this section during any period specified in the order.

Effect of indemnity

35. (1) The due payment of moneys payable by the Treasurer under an indemnity given or entered into under section 34 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

(3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee under this section.

Treasurer may delegate

36. (1) The Treasurer may, either generally or as otherwise provided in the instrument of delegation, by instrument signed by him, delegate to the Minister —

- (a) the power of approval conferred on the Treasurer by section 32 (2); and
- (b) the power to execute an instrument indemnifying an approved lender under section 34.

- (2) Where the Treasurer delegates under subsection (1) —
- (a) the Minister may exercise the powers in the same manner and to the same effect as if the powers were directly conferred on the Minister and not by the instrument of delegation; and
 - (b) anything done by the Minister under the instrument of delegation is presumed to be in accordance with the terms of the delegation in the absence of proof to the contrary.

Indemnified loans may be re-financed

- 37.** (1) Where —
- (a) under section 34 the Treasurer has indemnified an approved lender against any loss incurred in respect of an advance made by the lender to a farmer, a retired farmer or a rural employer; and
 - (b) the Treasurer may be required to pay any money under the indemnity,

the Authority may repay to the approved lender the amount of the advance and any interest due.

(2) The amount so paid by the Authority is to be treated as financial assistance by the Authority to the farmer under section 24, the retired farmer under section 27 or the rural employer under section 28, as the case requires.

(3) Before making a payment to an approved lender under subsection (1) the Authority is to enter into an agreement with the farmer, the retired farmer or the rural employer, as the case requires, securing the due repayment to it of the amount to be so paid by the Authority together with interest by taking or effecting such security as in the opinion of the Authority is most appropriate in the circumstances.

PART 5 — GENERAL

Applications for assistance generally

38. (1) An application for financial assistance under this Act is to be made in writing in a form approved by the Authority.

(2) The Authority may require a person making an application for financial assistance to furnish to it such accounts, documents or other information as it thinks fit.

(3) A person must not in an application for financial assistance under this Act give information that the person knows to be false or misleading in a material particular.

Penalty: \$10 000.

Terms of provision of assistance by the Authority

39. (1) In this section —

“**assisted person**” means a person or body to whom financial assistance is provided under this Act.

(2) Subject to this Act, any financial assistance provided by the Authority under this Act is to be provided on such terms and conditions as are agreed between the Authority and the assisted person.

(3) The Authority is to publish in the *Gazette* the criteria, as amended from time to time, that assisted persons must satisfy in order to secure financial assistance.

(4) The Authority is to secure the due repayment to it of any moneys advanced together with interest due on those moneys by taking or effecting such security as in the opinion of the Authority is the most appropriate in the circumstances.

(5) The assisted person is to execute all such instruments as are necessary for the purposes of this section.

Determination of standard rate of interest

40. The Minister is to, from time to time, by order published in the *Gazette* fix a standard rate of interest to apply to financial assistance provided under this Act.

Guidelines by Minister for assistance

41. The Minister may, from time to time, issue to the Authority guidelines as to the terms upon which financial assistance may be provided by the Authority under this Act.

Ministerial approval for non-commercial assistance

42. (1) The Authority is not to provide financial assistance —

- (a) at a rate of interest lower than the current rate determined by the Minister under section 40; or
- (b) on terms which are outside guidelines issued by the Minister under section 41,

without the prior approval of the Minister.

(2) The Minister, in considering the grant or refusal of an approval under subsection (1), is to have regard to whether the grant of that approval would provide economic or social benefit to a rural town or region.

(3) Where the Minister has granted approval under subsection (1) the text of that approval is to be laid before each House of Parliament within 14 sitting days of that House after the approval is granted.

Additional powers of building societies to make advances under this Act

43. (1) A society within the meaning of the *Building Societies Act 1976* or the *Financial Institutions (Western Australia) Code* is by force of this section lawfully entitled to make an advance to a farmer, retired farmer or rural employer where the society is indemnified under this Act against any loss incurred in respect of the advance.

(2) Subsection (1) operates despite —

- (a) the provisions of the Act or Code referred to in that subsection; and
- (b) any provision in the rules, articles or constitution of the society by which such an advance would, for any reason or reasons, be unlawful or *ultra vires* the powers of the society.

Authority to have access to certain documents, etc.

44. An approved lender, or any bank or financial institution at which any account, record or document of an approved lender is kept, whenever requested by the Authority to do so —

- (a) is to make available to the Authority, or a person appointed in writing by the Authority, all documents and records, including records of accounts, which —
 - (i) relate to or are connected with any advance, the subject of an indemnity given under this Act; and
 - (ii) are in the custody or under the control of the person, bank or institution so requested;

and

- (b) is to permit the Authority or person so appointed to examine and take copies or extracts from them.

Penalty: \$10 000.

Regulations

45. The Governor may make regulations not inconsistent with this Act prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Review of Act

46. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement and in the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the Authority;
- (b) the need for the continuation of the functions of the Authority; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the expiration of the 5 year period referred to in subsection (1)), is to cause the report to be laid before each House of Parliament.

Repeal, savings and transitional provisions

47. Schedule 2 has effect.

Consequential amendments

48. Schedule 3 has effect.

SCHEDULE 1

[Section 5 (5)]

**PROVISIONS APPLICABLE TO THE MEMBERS OF THE
AUTHORITY**

***Division 1 — Provisions as to constitution and proceedings
of Authority***

Term of office

1. (1) An appointed member holds office for such term not exceeding 3 years as is specified in the instrument appointing the appointed member, but may from time to time be re-appointed.

(2) An appointed member whose term of office expires due to the effluxion of time continues in office until he or she is re-appointed or a successor comes into office (as the case may be).

Termination of appointment

2. (1) An appointed member may resign from office by notice in writing delivered to the Minister.

(2) The Minister may terminate the appointment of an appointed member —

- (a) if, in the opinion of the Minister, the appointed member is unable, through illness or absence from the State, to perform the functions of the office;
- (b) if, in the opinion of the Minister, the member misbehaves, neglects his or her duties or is incompetent;
- (c) if the member is an insolvent under administration, as that expression is defined in the Corporations Law;
- (d) if the member is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Authority of which the member has had notice; or
- (e) for any other act or omission that in the opinion of the Minister may adversely affect the functioning of the Authority.

Sch. 1**Temporary members**

3. (1) If an appointed member other than the chairperson is unable to act by reason of sickness, absence or other cause the Minister may appoint —

- (a) in the case of a member appointed under section 5 (1) (a), another person who has, in the opinion of the Minister, knowledge of and experience in any of the fields referred to in that paragraph; or
- (b) in the case of a member appointed under section 5 (1) (b), another person whom the Minister considers to be suitable to represent the interests of local governments,

to act temporarily in the place of that appointed member, and while so acting according to the tenor of that appointment the person is to be taken to be a member.

(2) If a member holding office under section 5 (1) (c) or (d) is unable to act by reason of sickness, absence or other cause the Treasurer or the relevant Minister, as the case may require, may, in writing delivered to the Authority, nominate another officer to act temporarily in the place of that member, and while so acting according to the tenor of that nomination the officer is to be taken to be a member.

(3) If a member is the deputy chairperson and is performing the functions of the chairperson the Minister may, under subclause (1) appoint another person to act in his or her place as member.

(4) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

(5) The appointment of a person as a temporary member may be terminated at any time by the Minister.

Meetings

4. (1) The Authority, subject to this Schedule, is to determine the procedure for convening and conducting its meetings.

(2) The Authority is to conduct not less than 4 meetings in any year.

(3) At a meeting of the Authority —

- (a) the chairperson, or in his or her absence the deputy chairperson, is to preside; and

(b) in the absence of both those members, a member elected by the members present is to preside.

(4) The Authority must keep minutes of its meetings.

Quorum

5. A quorum for a meeting of the Authority is 4 members.

Voting

6. (1) At any meeting of the Authority each member present has a deliberative vote.

(2) Subject to subclause (3), if the votes cast on a question are equally divided the question remains unresolved until a subsequent meeting of the Authority.

(3) If the votes cast on a question at a meeting of the Authority were equally divided and the votes cast on the question at a subsequent meeting of the Authority are again equally divided, the question is to be taken to have been resolved in the negative.

Resolution without meeting

7. A resolution in writing signed or assented to by each member by letter, telegram or facsimile is as effectual as if it had been passed at a meeting of the Authority.

Telephone or video meetings

8. A communication between not less than 4 members by telephone or audio-visual means is a valid meeting of the Authority if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

Committees

9. (1) The Authority may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

(2) Subject to the directions of the Authority and to the terms of any delegation under section 12, a committee may determine its own procedures.

Division 2 — Disclosure of interests etc.

Disclosure of interests

10. (1) A member who has a material personal interest in a matter being considered or about to be considered by the Authority must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

Penalty: \$5 000.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

Voting by interested members

11. A member who has a material personal interest in a matter that is being considered by the Authority —

- (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) on a proposed resolution under clause 12 in respect of the matter, whether relating to that member or a different member; and
- (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a) (ii),

is being considered by the Authority.

Clause 11 may be declared inapplicable

12. Clause 11 does not apply if the Authority has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

Quorum where clause 11 applies

13. (1) Despite clause 5, if a member of the Authority is disqualified under clause 11 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

(2) The Minister may deal with a matter insofar as the Authority cannot deal with it because of subclause (1).

Minister may declare clauses 11 and 13 inapplicable

14. (1) The Minister may by writing declare that clause 11 or 13 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

(2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.

SCHEDULE 2 — REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

[Section 47]

Repeal of *Rural Housing (Assistance) Act 1976*

1. The *Rural Housing (Assistance) Act 1976* is repealed.

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

2. The *Industrial and Commercial Employees' Housing Act 1973* is repealed.

Interpretation

3. In this Schedule, unless the contrary intention appears —

“**commencement day**” means the day on which the *Country Housing Act 1998* comes into operation;

“**former authority**” means the Rural Housing Authority established by section 5 of the repealed Act;

“**industrial housing authority**” means the Industrial and Commercial Employees' Housing Authority established by section 8 of the Industrial Housing Act;

“**Industrial Housing Act**” means the Act repealed by clause 2;

“**liability**” includes any obligation, claim or demand, present or future, certain or contingent, ascertained or sounding only in damages;

“**property**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action and a power of disposition over property;

“**repealed Act**” means the Act repealed by clause 1;

“**State Housing Commission**” means the State Housing Commission preserved and continued by the *Housing Act 1980*.

Assets, liabilities etc., to vest in Authority

4. (1) Subject to clause 5, on the commencement day —
- (a) any property, whether within or outside the State, which was vested in the former authority or, to which the former authority was entitled immediately before that day vests in the Authority together with all claims, rights and remedies that the former authority then had in respect of the property;
 - (b) any property, whether within or outside the State, which was vested in the industrial housing authority or, to which the industrial housing authority was entitled immediately before that day vests in the Authority together with all claims, rights and remedies that the industrial housing authority then had in respect of the property;
 - (c) the Authority becomes liable to pay, bear or discharge all the liabilities of the former authority and the industrial housing authority that are properly payable; and
 - (d) the Authority is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the former authority and the industrial housing authority.
- (2) Anything commenced by the former authority or the industrial housing authority before the commencement day may be continued by the Authority, so far as it is authorized by this Act.

Beneficial interest in Keystart Trust

5. (1) On the commencement day —
- (a) the beneficial interest of the industrial housing authority as capital beneficiary under the Trust Deed for the Keystart Housing Scheme Trust vests in the State Housing Commission together with all claims, rights, remedies and liabilities that the industrial housing authority then had in respect of that interest; and
 - (b) the State Housing Commission is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) of the industrial housing authority so far as the records relate to that beneficial interest.

(2) In this clause —

“Keystart Housing Scheme Trust” means the trust created by a deed of trust known as the “Keystart Trust Deed” dated 5 April 1989 as amended.

Management and disposal of industrial housing houses

6. (1) Despite the repeal of the Industrial Housing Act, for a period of 5 years from the commencement day the Authority may, in respect of industrial housing houses (in addition to its powers under this Act) exercise the powers of the industrial housing authority as set out in section 18 of the Industrial Housing Act.

(2) At the expiration of 5 years from the commencement day the Ministers shall by order published in the *Gazette* allocate to the State Housing Commission any industrial housing house properties held by the Authority and the liabilities of the Authority relating to those properties.

(3) An order under subclause (2) is to include a sufficient description to enable the property and liabilities to be identified.

(4) On the publication of an order under subclause (2) —

- (a) the property to which the order relates vests in the State Housing Commission together with all claims, rights and remedies that the Authority had in respect of the property;
- (b) the State Housing Commission becomes liable to pay, bear or discharge all the liabilities that are allocated under the order; and
- (c) the State Housing Commission is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Authority so far as the records relate to property or liabilities under the order.

(5) The price of the property is to be the agreed value of the property.

(6) Any amount owing by the State Housing Commission to the Authority by operation of this clause is payable by the State Housing Commission on demand by the Authority.

(7) In this clause —

“agreed value” means an amount agreed by the Authority and the State Housing Commission and in default of such agreement an amount determined by the Ministers;

“industrial housing house” means a dwelling-house situated on land which vests in the Authority under clause 4 (1) (b);

“Ministers” means the Ministers to whom the administration of this Act and the *Housing Act 1980* are respectively committed by the Governor, acting jointly.

Agreements and instruments

7. Subject to clause 5, any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the former authority or the industrial housing authority was a party; or
- (b) which contains a reference to the former authority or to the industrial housing authority,

has effect after that day as if —

- (c) the Authority were substituted for the former authority or the industrial housing authority, as the case requires, as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former authority or to the industrial housing authority were (unless the context otherwise requires) a reference to the Authority.

Registration of documents

8. (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978*, and any other person authorized by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take note of the provisions of this Schedule and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Schedule.

(2) Without limiting subclause (1) a statement in an instrument executed by the Authority that any estate or interest in land or other property has become vested in it under this Schedule is evidence of that fact.

Funds

9. (1) On the commencement day the Fund under section 10 of the repealed Act is to be closed and the moneys placed to the credit of the Fund.

(2) On the commencement day the Fund under section 24 of the Industrial Housing Act is to be closed and the moneys placed to the credit of the Fund.

Saving status of certain institutions

10. An institution or body appointed to be an approved lending institution under the repealed Act is to be taken to be an approved lender for the purposes of this Act as if the institution or body were approved by the Minister under section 30.

Validation of certain acts

11. No act or proceeding of the industrial housing authority before the commencement day is invalidated or prejudiced by reason only that at any time the industrial housing authority was not properly constituted, and effect is to be given to any such act or proceeding as if the industrial housing authority had been properly constituted.

Guarantees and indemnities under repealed Act

12. (1) The repeal of the repealed Act does not affect any guarantee or indemnity under section 12 of that Act as in force immediately before the commencement day.

(2) Section 35 applies to a guarantee or indemnity referred to in subclause (1) as if it were an indemnity under section 34.

Reference to “guarantee”

13. A reference in any other written law or a document executed before the commencement day to a guarantee by the Treasurer under section 12 of the repealed Act as in force before the commencement day is to be construed, unless the context otherwise requires, as if that reference were a reference to an indemnity by the Treasurer under section 34 (1) of this Act.

Annual report for part of a year

14. (1) The “accountable authority”, within the meaning in the *Financial Administration and Audit Act 1985*, of each of the former authority and the industrial housing authority is to report as required

by section 66 of that Act, but limited to the period from 1 July preceding the commencement day to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.

(2) The former authority and the industrial housing authority and each of their accountable authorities as constituted immediately before the commencement day continue in existence for the purpose of subclause (1) and for that purpose only.

(3) The Authority is to arrange for the provision of such clerical and other assistance as is reasonably required for the purpose of subclause (1).

(4) For the purposes of Division 14 of Part II of the *Financial Administration and Audit Act 1985* the period from the commencement day to the succeeding 30 June is to be regarded as a full financial year of the Authority.

Powers in relation to transitional provisions

15. (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the repealed Act and the Industrial Housing Act to this Act the Governor may make that provision by order published in the *Gazette*.

(2) If in the opinion of the Minister an anomaly arises in the carrying out of the provisions of this Schedule the Governor may, by order published in the *Gazette* —

- (a) modify those provisions to remove the anomaly; and
- (b) make such provision as is necessary or expedient to carry out the intention of those provisions.

(3) An order under this section may be made so as to have effect from the commencement day.

(4) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —

- (a) to affect, in a manner prejudicial to any person (other than the State) the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.

Exemption from State tax

16. (1) In this clause —

“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by operation of this Schedule; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of, giving effect to this Schedule.

SCHEDULE 3 — CONSEQUENTIAL AMENDMENTS

[Section 48]

***Constitution Acts Amendment Act 1899* amended**

1. The *Constitution Acts Amendment Act 1899* is amended in Part 3 of Schedule V —

- (a) by deleting “The Industrial and Commercial Employees’ Housing Authority established by the *Industrial and Commercial Employees’ Housing Authority Act 1973*.”;
- (b) by deleting “The Rural Housing Authority established under the *Rural Housing (Assistance) Act 1976*.”; and
- (c) by inserting after the item commencing “The Country High Schools Hostel Authority” the following item —

“
The Country Housing Authority established under the
Country Housing Act 1998.
”.

***Financial Administration and Audit Act 1985* amended**

2. The *Financial Administration and Audit Act 1985* is amended in Schedule 1 —

- (a) by deleting “Industrial and Commercial Employees’ Housing Authority”;
- (b) by deleting “Rural Housing Authority”; and
- (c) by inserting in the appropriate alphabetical position the following —

“ Country Housing Authority ”.

***Government Employees Superannuation Act 1987* amended**

3. The *Government Employees Superannuation Act 1987* is amended in Part B of Schedule 1 —

- (a) by deleting “Industrial and Commercial Employees’ Housing Authority”;
- (b) by deleting “Rural Housing Authority”; and

- (c) by inserting in the appropriate alphabetical position the following —

“ Country Housing Authority ”.

***Statutory Corporations (Liability of Directors) Act 1996* amended**

4. Schedule 1 to the *Statutory Corporations (Liability of Directors) Act 1996* is amended by inserting in the appropriate alphabetical position the following —

“
Country a member of the *Country Housing*
Housing Authority *Act 1998*
Authority
”.