

HOME PURCHASE ASSISTANCE AUTHORITY ACT 1993
No. 15

NEW SOUTH WALES



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HOME PURCHASE ASSISTANCE AUTHORITY ACT 1993
No. 15

NEW SOUTH WALES



Act No. 15, 1993

An Act to constitute a Home Purchase Assistance Authority; to specify its functions; and for other purposes. [Assented to 12 May 1993]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Home Purchase Assistance Authority Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act:

“**Authority**” means the Home Purchase Assistance Authority constituted by this Act;

“**Board**” means the Board of the Authority established by this Act;

“**Chief Executive Officer**” means the Chief Executive Officer of the Authority;

“**exercise**” of a function includes, if the function is a duty, the performance of the duty;

“**function**” includes a power, authority or duty;

“**Housing Corporation**” means the New South Wales Land and Housing Corporation constituted by the Housing Act 1985;

“**member**” means a member of the Board,

Object of Act

4. The object of this Act is to constitute a Home Purchase Assistance Authority for the purpose of:

- (a) facilitating the provision of assistance to home purchasers on low to moderate incomes; and
- (b) managing such existing and future home purchase assistance schemes (including the portfolio of loans under HomeFund schemes) as are directed by the Minister.

**PART 2—CONSTITUTION AND MANAGEMENT OF THE
AUTHORITY****Division 1—Constitution of the Authority****Constitution of the Authority**

5. (1) There is constituted by this Act a body corporate with the corporate name of the Home Purchase Assistance Authority.

(2) The Authority is, for the purposes of any Act, a statutory body representing the Crown.

Division 2—Management of the Authority**Ministerial control**

6. The Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

Establishment of the Board

7. (1) There is to be a Board of the Authority.

(2) The Board is to consist of:

(a) the Chief Executive Officer; and

(b) up to 5 part-time members appointed by the Governor on the recommendation of the Minister.

(3) A part-time member is to have qualifications or experience in one or more of the following fields:

(a) housing;

(b) supervision, management or audit of financial institutions;

(c) capital markets;

(d) risk management;

(e) public sector policy;

(f) consumer interest and protection;

(g) commerce;

(h) economics;

(i) law.

(4) One of the part-time members is, by the instrument of appointment as a member or by another instrument executed by the Governor, to be appointed as Chairperson of the Board.

(5) Schedule 1 has effect with respect to the members and procedure of the Board.

Functions of the Board

8. The functions of the Board are as follows:

- (a) to determine the policies and long-term strategic plans of the Authority;
- (b) to oversee the effective, efficient and economical management of the Authority;
- (c) to advise the Minister (at the request of the Minister or on its own initiative) on any matter relating to the functions and activities of the Authority.

Chief Executive Officer

9. (1) The Governor may appoint a Chief Executive Officer of the Authority.

(2) The employment of the Chief Executive Officer is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive Officer during the illness or absence of the Chief Executive Officer (or during a vacancy in the office of Chief Executive Officer). The person, while so acting, has all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.

(4) The Minister may, at any time, remove a person from office as acting Chief Executive Officer.

(5) An acting Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Functions of the Chief Executive Officer

10. (1) The affairs of the Authority are to be managed and controlled by the Chief Executive Officer in accordance with the policies determined by the Board, but subject to any directions of the Minister under this Act.

(2) The Chief Executive Officer may furnish reports to the Minister on any matter relating to the Authority's functions which the Chief Executive Officer thinks should be brought to the attention of the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Chief Executive Officer is taken to have been done by the Authority.

Staff of the Authority

11. (1) The staff of the Authority is (subject to this section) to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Authority may employ other staff with the approval of the Minister. Part 2 of the Public Sector Management Act 1988 does not apply to the employment of any such staff.

(3) The Authority may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local authority. Any staff of whose services the Authority makes use is taken to be the staff of the Authority for the purposes of this Act.

(4) The Authority may engage consultants or other persons for the purpose of getting expert assistance.

PART 3—FUNCTIONS OF THE AUTHORITY

General functions

12. (1) The Authority has the functions conferred or imposed on it by or under this or any other Act.

(2) The Authority may do all such things as are supplemental or incidental to the exercise of its functions.

Principal functions

13. (1) The Authority has the following principal functions:

- (a) to develop policies for home purchase assistance and to make recommendations to the Minister on such matters;
- (b) to manage such existing and future home purchase assistance schemes as are from time to time directed by the Minister.

(2) In particular, the Authority has the following functions:

- (a) determining guidelines for the eligibility of applicants for home purchase assistance;
- (b) determining the terms and conditions of loans or other assistance to those applicants;

- (c) advertising and marketing home purchase assistance;
- (d) providing information to the public on home purchase and home purchase assistance;
- (e) making loans or grants or giving other financial assistance to eligible applicants with appropriate security;
- (f) managing loans, including the collection of repayments and arrears and the realisation of securities;
- (g) investing money held by it in accordance with this Act;
- (h) managing financial risks associated with its activities;
- (i) managing any contingency fund in relation to home purchase assistance, as directed by the Minister.

Investment

14. The Authority may invest money held by it:
- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
 - (b) if that Act does not confer power to invest money held by the Authority, in any manner authorised for the time being for the investment of trust funds or in any other manner approved by the Minister with the concurrence of the Treasurer.

Delegation of functions

15. (1) The Authority may delegate to an authorised person any of the functions of the Authority, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Authority if the delegate is authorised in writing to do so by the Authority.

(3) In this section, “authorised person” means:

- (a) a member of the staff of the Authority; or
- (b) a person of a class prescribed by the regulations or approved by the Minister.

PART 4—MISCELLANEOUS**Act binds Crown**

16. This Act binds the Crown.

Minister may direct transfer of assets etc. of Housing Corporation to Authority

17. (1) The Minister may, by order in writing, direct that any asset, right or liability of the Housing Corporation be transferred to the Authority.

(2) When any such asset, right or liability is transferred by an order under this section, the following provisions have effect (subject to the order directing the transfer):

- (a) any asset of the Housing Corporation specified in the order vests in the Authority by force of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) any right or liability of the Housing Corporation specified in the order becomes by force of this section a right or liability of the Authority;
- (c) all proceedings relating to the asset, right or liability commenced before the transfer by or against the Housing Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the Authority;
- (d) anything done or omitted to be done in relation to that asset, right or liability before the transfer by, to or in respect of the Housing Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the Authority;
- (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the Housing Corporation is (to the extent that it relates to that asset, right or liability) to be read as, or as including, a reference to the Authority.

(3) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;
or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(5) No attornment to the Authority by a lessee from the Housing Corporation is required.

(6) Any instrument executed only for:

(a) a purpose ancillary to or consequential on the operation of this section; or

(b) the purpose of giving effect to this section,

is not chargeable with stamp duty.

Personal liability of members and others

18. A matter or thing done or omitted to be done by the Authority, the Board, a member of the Board or any person acting under the direction of the Authority or the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

Seal of Authority

19. The seal of the Authority is to be kept by the Chief Executive Officer and may be affixed to a document only:

(a) in the presence of the Chief Executive Officer or a member of the staff of the Authority authorised for the purpose by the Chief Executive Officer; and

(b) with an attestation by the signature of the Chief Executive Officer or the member of the fact of the affixing of the seal.

Service of documents on the Authority

20. (1) A document may be served on the Authority by leaving it at, or by sending it by post to, the office of the Authority or any one of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority in any other manner.

Recovery of charges etc. by the Authority

21. Any charge, fee or money due to the Authority may, apart from any other way in which it may be recovered, be recovered by the Authority as a debt in a court of competent jurisdiction.

Regulations

22. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Amendment of other Acts

23. The Acts specified in Schedule 2 are amended as set out in that Schedule.

Review of Act

24. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years after the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD**

(Sec. 7)

Deputies of part-time members

1. (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time member, and the Minister may revoke any such appointment.

(2) In the absence of a part-time member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is taken to be the member.

(3) A deputy while acting in the place of a part-time member who is Chairperson of the Board does not have the member's functions as Chairperson.

(4) A deputy while acting in the place of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Term of office of part-time members

2. Subject to this Schedule, a part-time member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of part-time members

3. A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of part-time members

4. (1) The office of a part-time member becomes vacant if the member:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by letter addressed to the Minister; or

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD—*continued*

- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a part-time member from office at any time.

Disclosure of pecuniary interests

5. (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member 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 Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD—*continued*

- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that Book must be open at all reasonable hours to inspection by any person on payment of the fee prescribed by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purpose of making a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

Filling of vacancy in office of part-time member

6. If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD—*continued*

(2) If by or under any Act, provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a part-time member is, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

8. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and regulations, to be as determined by the Board.

Quorum

9. The quorum for a meeting of the Board is a majority of the members or, if there is an even number of members, a number equal to one half of the number of members plus one. One of the members forming the quorum must be the Chief Executive Officer or acting Chief Executive Officer.

Presiding member

10. (1) The Chairperson of the Board or, in the absence of the Chairperson, another member (other than the Chief Executive Officer) elected to chair the meeting by the members present is to preside at a meeting of the Board.

(2) The member presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE BOARD—*continued***

Transaction of business outside meetings or by telephone etc.

12. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being. A resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Meetings

13. (1) The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

(2) The Board is to meet at least once in every second month.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 23)

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

Insert in alphabetical order:

Home Purchase Assistance Authority.

Home Purchase Assistance Authority Act 1993 No. 15

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory Bodies**):

Insert in alphabetical order:

Home Purchase Assistance Authority.

Public Sector Management Act 1988 No. 33

(a) Schedule 2 (**Administrative Offices**):

Insert after the matter relating to the Forestry Commission:

Home Purchase Assistance Authority	Chief Executive Officer of the Authority.
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(b) Schedule 3A (**Chief Executive Positions**):

In Part 2, after “Commissioner constituting the Forestry Commission”, insert “Chief Executive Officer of the Home Purchase Assistance Authority”.

*[Minister's second reading speech made in—
Legislative Council on 27 April 1993
Legislative Assembly on 29 April 1993]*