

HOUSING AGREEMENT ACT, 1985, No. 32

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 32, 1985.

An Act to authorise the execution by or on behalf of the State of New South Wales of an agreement between the Commonwealth and the States in relation to housing, and of agreements varying that agreement; and for certain other purposes. [Assented to, 26th April, 1985.]

Housing Agreement 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Housing Agreement Act, 1985".

Execution, etc., of certain agreements.

2. (1) The execution, by or on behalf of the State of New South Wales, of an agreement substantially in accordance with the form contained in Schedule 1 (including any agreement to be entered into, from time to time, in accordance with the provisions of that firstmentioned agreement that relate to the variation of that agreement) is hereby authorised.

(2) Where an agreement substantially in accordance with the form contained in Schedule 1 has been executed by or on behalf of the State of New South Wales before the date of assent to this Act, the agreement is hereby approved and ratified.

Variation of agreement to be laid before each House.

3. Where—
 - (a) an agreement (in this section referred to as "the principal agreement") is entered into between the Commonwealth and the State of New South Wales pursuant to section 2 (1) or is an agreement to which section 2 (2) applies; and
 - (b) in accordance with the provisions of the principal agreement relating to the variation of that agreement, a further agreement is entered into between the Commonwealth and the State of New South Wales,

the Minister shall cause a copy of the further agreement to be laid before each House of Parliament within 15 sitting days of that House after the entering into of the further agreement.

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SCHEDULE 1.

(Sec. 2.)

AN AGREEMENT made the One thousand nine hundred and
 eighty- between—

THE COMMONWEALTH OF AUSTRALIA of the first part,
 THE STATE OF NEW SOUTH WALES of the second part,
 THE STATE OF VICTORIA of the third part,
 THE STATE OF QUEENSLAND of the fourth part,
 THE STATE OF WESTERN AUSTRALIA of the fifth part,
 THE STATE OF SOUTH AUSTRALIA of the sixth part,
 THE STATE OF TASMANIA of the seventh part, and
 THE NORTHERN TERRITORY OF AUSTRALIA of the eighth part.

WHEREAS:

- (A) the Commonwealth and the States of Australia have from time to time entered into agreements for the purpose of the provision by the States with financial assistance from the Commonwealth of housing;
- (B) by an agreement between the Commonwealth, the States of Australia and the Northern Territory of Australia dated the twenty-third day of December 1981, being the agreement authorised to be executed on behalf of the Commonwealth by the Housing Assistance Act 1981 of the Commonwealth Parliament and being the last of the agreements referred to in Recital (A), provision was so made with respect to the five years commencing on the 1st July 1981;
- (C) the Ministers of the respective governments throughout Australia who are responsible for housing have agreed upon the provision of rental housing assistance and home purchase assistance in the various States and in the Northern Territory during the ten years commencing on the 1st July 1984;
- (D) the primary principle of this agreement is to ensure that every person in Australia has access to adequate and appropriate housing at a price within his or her capacity to pay by seeking to:
 - alleviate housing-related poverty; and
 - ensure that housing assistance is, as far as possible, delivered equitably to persons resident in different forms of housing tenure;

in implementing this principle, assistance provided under the agreement will also reflect the following detailed principles:

(a) Assistance Generally

the primary consideration in delivering housing assistance under this agreement will be the needs of people, rather than to attach assistance to particular dwellings or categories of dwellings;

housing assistance provided under this agreement will be available to all sections of the community irrespective of age, sex, marital status, race, religion, disability or life situation. However, priority in granting assistance shall be determined by the need for assistance;

in delivering housing assistance, as far as possible, people should be given an equal choice between the types of housing assistance available;

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housing assistance programs developed under this agreement should be designed so that maximum social benefit is derived from previous investment in housing;

housing assistance provided under this agreement should be co-ordinated with housing assistance programs that are developed outside this agreement;

(b) Public Rental Housing

programs and funding arrangements under this agreement should seek to develop the public housing sector as a viable and diversified form of housing choice and refrain from discrimination;

programs and funding arrangements under this agreement shall be developed so as to increase progressively the availability of public housing to a level commensurate with the need for it in the community;

public housing should reflect general community housing standards and should be accessible to community and other services. Poor location of dwellings, an inadequate range of choice of dwellings, and stigmatisation of the status of public tenants should be avoided to the maximum extent practicable;

public housing stock should, as far as possible, be designed to cater for the needs and preferences of current and likely future applicants;

clear recognition should be accorded to the separate but complementary roles of:

- capital expenditure on constructing and acquiring dwellings;
- financing of rental operations;
- managing rental operations including assistance for tenants; and
- sales of dwellings;

the design, style and siting of public housing will, to the maximum extent practicable:

- reflect the need for accessibility and suitability for habitation by disabled persons, Aboriginals, youth, the elderly, or other identified groups; and
- support the energy conservation policies of the governments;

public housing authorities should ensure that tenants have maximum opportunity to participate in the management of their dwellings and estates and in the development of public housing policies;

(c) Income-Related Assistance to Tenants

programs developed under this agreement should recognise the problems created by the inability of some tenants to afford adequate rental accommodation in both public and private rental sectors;

assistance measures in the public rental sector should be co-ordinated with assistance to private tenants and should recognise the income support nature of the assistance and the inter-relationship of this assistance with Commonwealth assistance to pensioners and other beneficiaries under the Social Security Act 1947;

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SCHEDULE 1—*continued.*

- (d) Home Ownership Assistance
assistance under this agreement shall seek to provide home ownership opportunities for those unable to obtain or maintain affordable finance from the private sector or from other sources outside the agreement;
- (e) Implementation
the State will be able to exercise maximum autonomy and flexibility in developing the administrative arrangements necessary to achieve these principles;
- (E) the Ministers referred to in Recital (C) recognise the relationship between the principles and policies reflected in this agreement and the need to co-ordinate these with those affecting generally home purchasers and tenants including tenants in private housing and in emergency and supported accommodation;
- (F) it is proposed that in order to implement the agreement of the Ministers the Commonwealth will grant to the States financial assistance under section 96 of the Commonwealth of Australia Constitution and like assistance to the Northern Territory and that the terms and conditions on which the grant of financial assistance should be made are those set out in this agreement;
- (G) the Commonwealth the States and the Northern Territory have decided that the agreement referred to in Recital (B) shall cease to operate on and from the first day of July 1984 and to vary in certain respects the operation of the agreements which have been entered into as aforesaid; and
- (H) the Parliament of the Commonwealth has authorised the execution by and on behalf of the Commonwealth of this agreement and the provision of financial assistance to the States in accordance with its provisions.

NOW IT IS HEREBY AGREED as follows:

PART I—OPERATION OF AGREEMENT

1. (1) This agreement shall come into force in respect of the Commonwealth and of a State when it has been signed on behalf of the Commonwealth and has been signed on behalf of the State with the authority of the Parliament of the State or, having been signed on behalf of the State without the authority, is approved by the Parliament of the State.

(2) This agreement shall come into force in respect of the Commonwealth and the Northern Territory when it has been signed on behalf of the Commonwealth and has been signed on behalf of the Northern Territory.

(3) Notwithstanding that in this agreement all the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania and the Northern Territory are named as parties, this agreement shall operate as an agreement between the Commonwealth and the party or parties in respect of which it comes into force as fully and effectually as if the party or parties in respect of which it comes into force were the only party or parties so named other than the Commonwealth.

(4) Except for obligations arising under Part VIII of the agreement referred to in Recital (B) and unperformed prior to the first day of July 1984 that agreement shall be deemed to have ceased to operate on and from that date.

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SCHEDULE 1—*continued.*

2. Acts and things provided for by this agreement which have been done or carried out by or with respect to a State or the Northern Territory in accordance with and in anticipation of its coming into force in respect of that State or Territory shall be deemed to have been done or carried out under this agreement as if it were in force at the relevant time or times in respect of that State, or that Territory, as the case may be.

PART II—PARTIES

3. (1) In this agreement, subject to this clause and except where the context otherwise indicates—

- (a) "the Commonwealth" means the Commonwealth of Australia as the party to this agreement;
- (b) each State named as a party in respect of which this agreement comes into force is referred to as a "State" and, except where the context otherwise indicates, "the States" means all of those States; and
- (c) "the Northern Territory" means the Northern Territory of Australia as the party to this agreement.

(2) A reference to a State in this Part and in the succeeding clauses of this agreement shall, except where the contrary intention appears and according to the requirements of the context, be deemed to include a reference to the Northern Territory.

4. Where in an existing Housing Agreement included in the Schedule the word "State" or the expression "the States" means a State or the States in respect of which that Agreement is in force, that word and that expression shall mean respectively, for the purposes of the operation of that Agreement, a State or the States in respect of which this agreement has come into force.

PART III—INTERPRETATION

5. (1) In this agreement—

"the Minister" means the Minister of State of the Commonwealth for the time being responsible for the administration of this agreement for the Commonwealth; and

"the State Minister" means the Minister of State of a State for the time being responsible for the administration of this agreement for the relevant State.

(2) A reference in this agreement to a Minister includes a Minister or other member of the Federal Executive Council or Minister of the relevant State, as the case may require, acting on behalf of or for the time being acting for the Minister referred to.

6. In this agreement, unless the contrary intention appears or the context otherwise requires—

"dwelling" means a dwelling-house or flat and includes such fences, outbuildings and other improvements and such connexions for sewerage, drainage, water, electricity, gas and other services as are provided or are reasonably required to be provided for the dwelling-house or flat;

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“home purchaser” means—

(a) a person purchasing with assistance under Part IX, housing including rental housing; or

(b) a person who is a rental purchaser;

“housing” means residential housing including dwellings and other forms of residential accommodation;

“person” includes a body, co-operative, group or other organization whether incorporated or not;

“previous housing arrangements” means the provisions in relation to housing

(a) that were made

(i) by the existing Housing Agreements;

(ii) by the State Grants (Housing) Act 1971, the Housing Assistance Act 1973, the Housing Assistance Act 1978, the States (Works and Housing) Assistance Act 1982 and the States (Works and Housing) Assistance Act 1983; and

(iii) under any arrangements entered into pursuant to the Special Employment-related Programs Act 1982; and

(b) that are made by legislation passed hereafter by the Commonwealth Parliament under which financial assistance is made available to the State for housing but on terms and conditions specified in this agreement;

“rental housing” means housing for rental which has been provided under the previous housing arrangements or is provided under this agreement and “rental dwelling” means a dwelling that is included in rental housing;

“rental purchase” means a purchase under a terms contract of sale;

“rental purchaser” means a person purchasing under a terms contract of sale;

“the Commonwealth Act” means the legislation of the Commonwealth Parliament by which this agreement is authorised to be executed by or on behalf of the Commonwealth;

“the existing Housing Agreements” means the Agreements set out in the first Schedule and where the singular is used means such one or other of those Agreements as the context requires; and

“year” means a period of twelve months commencing on the first day of July.

7. In this agreement, unless the contrary intention appears

(a) a reference to a Part or to a clause is to a Part or to a clause of this Agreement, as the case may be;

(b) a reference to a sub-clause is, unless otherwise indicated, to the relevant sub-clause of the clause in which the reference appears;

(c) each of the Schedules referred to is a Schedule to the agreement;

(d) words importing a gender include every other gender;

(e) words in the singular number include the plural and vice versa; and

(f) a reference to a date on or by which a thing is to be done shall, if that date falls on a Saturday, Sunday, public holiday or bank holiday in the place in which the thing is to be done, be read and construed as if the reference was to the day

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immediately preceding that day which is not a Saturday, Sunday, public holiday or bank holiday in that place.

PART IV—OBJECTIVE OF AGREEMENT

8. The objective of this agreement is the provision by the States and by the Northern Territory with financial assistance from the Commonwealth of housing assistance for rental housing and for home purchase in accordance with, and in fulfilment of, the principles set out in Recital (D).

PART V—FINANCIAL ASSISTANCE

9. (1) In order to assist the States in the achievement of the objective of this agreement, the Commonwealth will, upon and subject to the provisions of this agreement, provide to the States during the years of this agreement financial assistance for housing purposes (hereinafter in this agreement referred to as "financial assistance") by way of interest bearing repayable advances ("loan assistance") or interest free non-repayable grants ("grants").

(2) The years of this agreement shall be the ten years commencing on the first day of July in the years 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992 and 1993.

10. The Commonwealth will provide base financial assistance to the States—

- (a) in respect of the first year of this agreement—totalling Five hundred and thirty million dollars (\$530,000,000) and consisting of—
 - (i) Thirty-five million dollars (\$35,000,000) by way of grants for pensioner rental housing assistance under Part XI; and
 - (ii) Four hundred and ninety-five million dollars (\$495,000,000) by way of grants for untied assistance;
- (b) in respect of each of the immediately following two years—Five hundred and ten million dollars (\$510,000,000) of which ten million dollars is to be for expenditure in accordance with clause 35 on the local government and community housing program; and
- (c) in respect of each of the remaining years of the agreement—an amount determined by the Minister by writing signed by him.

11. The Commonwealth may provide to the States out of moneys appropriated by the Commonwealth Parliament for the purpose, in addition to any base financial assistance provided in any year, financial assistance for home purchase assistance, rental housing assistance and specific housing assistance in accordance with Part XI.

12. In relation to the years of this agreement other than the first, the financial assistance provided by the Commonwealth to the States out of the moneys appropriated by the Commonwealth Parliament for the purpose shall be in such proportions by way of grants and loan assistance, normally involving not less than 75 per cent of the former, as the Minister determines in writing.

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13. In and for the purposes of this agreement—
- (a) financial assistance to be provided under clause 10 shall be known as “base financial assistance”;
 - (b) financial assistance in addition to base financial assistance shall be known as “additional financial assistance”;
 - (c) the following grants shall be known as “specific housing assistance grants”—
 - (i) base financial assistance under sub-paragraph (a) (i) of clause 10;
 - (ii) base financial assistance of an amount of ten million dollars in each of the two years referred to in paragraph (b) of clause 10;
 - (iii) so much of other base financial assistance under paragraphs (b) and (c) of clause 10 as is authorised for expenditure under clause 35; and
 - (iv) so much of additional financial assistance authorised for expenditure under clause 35; and
 - (d) financial assistance, other than specific housing assistance grants, shall be known as “untied assistance”.
14. Financial assistance shall be allocated between the States in such manner as is provided by the Commonwealth Act and it shall be a condition with respect to the provision of untied assistance that a State will match the amount of that financial assistance from its own resources in accordance with Part VI.

PART VI—STATE MATCHING FUNDS

15. (1) In relation to untied assistance a State will provide from its own resources and apply funds (“matching funds”) in accordance with this Part.
- (2) The matching funds of a State to be provided under this Part shall be—
- (a) in respect of the first year of this agreement—an amount equal to the State’s share of Four hundred and fifty million dollars (\$450,000,000) of untied assistance, calculated *pro rata* with the allocation of the total of untied assistance to the State by or under the Commonwealth Act;
 - (b) in respect of each of the other years of this agreement—an amount equal to the amount of untied assistance that is provided to the State during each of those years.
- (3) Each State will by the fifteenth day of October in each year of this agreement furnish to the Commonwealth in a reasonable form to be determined by the Minister after consultation with the State Minister for the agreement of the Minister proposals for the provision and application of matching funds during that year.
- (4) Subject to sub-clauses (5), (6) and (7), matching funds in respect of a State may include—
- (a) surpluses resulting from rental housing assistance activities by the State under previous housing arrangements and, in the case of this agreement, any surplus or net proceeds referred to in sub-paragraphs 29 (b) (i) and 29 (b) (ii) respectively, but not including proceeds of a sale after the first day of July 1984 of housing or land obtained by the State under those arrangements and this agreement;
 - (b) revolving funds resulting from home purchase assistance activities under previous housing arrangements and under this agreement;

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- (c) allocations from—
- (i) consolidated revenue funds;
 - (ii) loan funds;
 - (iii) trust funds and other special accounts in the public account of the State to the extent that those funds have been financed from State resources, including deposits with the State Treasury;
 - (iv) borrowings by instrumentalities of the State under the terms of the Commonwealth-State arrangements associated with the Financial Agreement and known as the Gentlemen's Agreement; and
 - (v) appropriation from surpluses of authorities and instrumentalities of the State other than those referred to in paragraphs (a) and (b) of this sub-clause; and
- (d) any other amount, including an amount exempted from State taxes or forgone pursuant to this agreement, that is agreed upon for the purposes of this paragraph by the Minister and the State Minister.

(5) Except as provided in sub-clause (4) matching funds shall not be derived from financial assistance under this agreement.

(6) There shall not be included in the calculation of surpluses referred to in paragraph (a) of sub-clause (4) amounts applied by the State in accordance with paragraph (n) of clause 30.

(7) Matching funds shall not include funds which have been used to match financial assistance provided by the Commonwealth otherwise than under this agreement or previous housing arrangements.

16. Matching funds in respect of a State other than those referred to in paragraphs (a) and (b) of sub-clause 15 (4) shall be applied by the State on such housing programs of the State, in accordance with Recital (D), but not necessarily being programs for which this Agreement provides, as are from time to time agreed between the Minister and the State Minister.

17. An amount exempted or forgone by the State shall be deemed for the purpose of clauses 15 and 16 to have been applied or expended respectively by that State in that year.

PART VII—FINANCIAL ASSISTANCE ARRANGEMENTS

18. (1) Each State will, not later than the thirtieth day of November preceding the beginning of a year of this agreement, inform the Minister in a reasonable form determined by the Minister after consultation with the State Minister of the amounts of financial assistance that the State wishes the Commonwealth to provide to it in respect of the year for home purchase assistance, rental housing assistance programs and specific housing assistance and at the same time will provide estimates of financial performance and planned programs for the year and revised estimates of that performance and those programs for the then current year.

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(2) The Minister and the State Minister will consult as appropriate concerning the provision of financial assistance to the State, including additional financial assistance.

(3) In those consultations consideration shall be given to State requirements and practices.

19. (1) Financial assistance in respect of a year of this agreement shall be made available to a State during that year by regular monthly instalments unless otherwise agreed between the Minister and the Treasurer of the State.

(2) If, following consultation with the State Minister, the Minister is of the opinion that it is appropriate to do so, he may withhold a payment of financial assistance to a State which fails to comply with any of sub-clauses 15 (3), 18 (1), 43 (1) or 43 (2) until the State remedies that failure.

20. The State Minister will determine in accordance with Recital (D) in each year the allocation between home purchase assistance and rental housing assistance of the total amount of loan assistance and of grants of untied assistance to be provided by the Commonwealth to a State in that year and may at any time during a year vary the determination in respect of that year.

PART VIII—INTEREST AND REPAYMENTS OF LOAN ASSISTANCE

21. (1) Each payment of loan assistance to a State or so much of each payment as for the time being remains unrepaid to the Commonwealth will, until repayment as provided in clause 22, bear interest at the rate of 4½ per centum per annum computed from the date upon which the payment is made.

(2) A State will on the thirty-first day of December and the thirtieth day of June of a year during which payments of loan assistance are made to the State under this agreement pay to the Commonwealth the interest that has accrued on those payments up to the date of the payment of the interest.

22. Each State will repay to the Commonwealth the amount of each payment of loan assistance to the State and will pay interest thereon as provided in clause 21, other than that payable under sub-clause 21 (2), by equal annual instalments of principal and interest so that the amount of the payment, together with the interest, will be repaid in 53 years from the beginning of the year next succeeding the year of this agreement in respect of which the payment was made, the first such instalment being payable on or before the end of the year next succeeding the year of this agreement in respect of which the payment was made.

23. Accounting procedures in respect of the repayment by a State of loan assistance will be as agreed upon between the Minister for Finance of the Commonwealth and the Treasurer of the State or, in default of agreement, as determined by the Minister for Finance of the Commonwealth.

PART IX—HOME PURCHASE ASSISTANCE

24. (1) The Home Purchase Assistance Account established by each State in pursuance of the 1978 Housing Agreement with respect to the State and the 1980 Housing Agreement with respect to the Northern Territory shall continue to be operated by the State for the purpose of this agreement and shall be "the Account" referred to in this Part.

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(2) The moneys in this Account shall be made available for home purchase assistance in accordance with this Part.

25. (1) Each State will pay into the Account—

- (a) payments of loan assistance and grants made to the State that are allocated for home purchase assistance in accordance with this agreement; and
- (b) funds from any other source which the State decides to apply on home purchase assistance under this agreement.

(2) The Account shall also be credited with moneys received in the course of home purchase assistance operations provided for by this Part and shall be debited with management costs and other outgoings in respect of those operations.

26. (1) A State may use moneys in accordance with Recital (D) standing to the credit of the Account of the State for—

- (a) making repayments of principal and payments of interest in respect of loan assistance under this agreement or, where accounts under previous housing arrangements have been combined into the Account, repayments of principal and payments of interest in respect of loan assistance by the Commonwealth to the State which have been allocated for home purchase assistance under those arrangements;
- (b) making repayments of principal and payments of interest in respect of any State funds allocated for home purchase assistance in accordance with paragraph (b) of sub-clause 25 (1);
- (c) meeting expenditure by the State in providing and administering home purchase assistance;
- (d) making loans and grants to—
 - (i) terminating building societies or co-operative housing societies;
 - (ii) a lending authority of the State approved by the State Minister;
 - (iii) registered co-operative organisations including permanent building societies approved by the State Minister; and
 - (iv) such other class or classes of bodies or organisations as are from time to time agreed upon between the Minister and the State Minister, for the provision of home purchase assistance;
- (e) providing in implementation of clause 27 a subsidy to a class or classes of home purchasers and such lending institutions as are from time to time agreed upon by the Minister and the State Minister to reduce the cost to home purchasers of interest;
- (f) financing the construction and purchase of dwellings, including the purchase of dwellings from home purchasers, and financing purchases by home purchasers who are borrowers;
- (g) purchasing housing, including private housing, for sale to rental purchasers and financing such sales;

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- (h) the acquisition by the State of replacement housing of a value equal to the amount for which the State sells rental housing to home purchasers;
 - (i) urban renewal, housing advisory services and research and policy development in relation to matters not funded by the Australian Housing Research Council;
 - (j) expenditure in accordance with Part XI; and
 - (k) such other purposes as are from time to time agreed upon by the Minister and the State Minister.
- (2) In this clause references to societies are to societies registered as societies referred to under the relevant legislation of the State.
27. (1) The State shall ensure that—
- (a) the rate of interest that is charged in respect of so much as is for the time being outstanding on a loan or under a terms contract of sale, as the case may be, to a home purchaser shall be the rate that is from time to time agreed between the Minister and the State Minister having regard to the then ruling minimum Commonwealth Savings Bank market rate for housing loans and other factors as are for this purpose from time to time agreed;
 - (b) the minimum amount in annual repayments or payments, repayable or payable on a loan or rental purchase, as the case may be, shall be the lesser of—
 - (i) the annual amount that would be payable under a credit foncier loan with a term of twenty-five years and at the interest rate referred to in paragraph (a); or
 - (ii) twenty per centum of the gross annual income of the home purchaser and, if applicable, the husband or wife of the home purchaser or of a person living with the home purchaser as his or her spouse on a *bona fide* domestic basis although not legally married to him or her;
 - (c) for the purpose of paragraph (b), a review of gross income of home purchasers is undertaken triennially or at intervals as agreed between the Minister and State Minister and that repayments are also adjusted at least annually over the life of the loan or rental purchase by an amount or amounts, unless otherwise agreed, not less than the proportional change or changes in the Consumer Price Index or other economic index agreed from time to time between the Minister and the State Minister;
 - (d) subject to sub-clause (3) there is recovered from the home purchaser the amount by which in a year interest accruing in respect of the year at the rate referred to in this clause on the outstanding amount of the loan or rental purchase exceeds the amount of interest paid in that year;
 - (e) in relation to assistance under the First Home Owners Act 1983 payable by instalments to a home purchaser—
 - (i) the home purchaser requests that those instalments be paid to the lender or vendor, as the case may be; and

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- (ii) regard not be had to receipt by the vendor or lender of those instalments for the purpose of causing the amount of annual payments or repayments to fall below that for which this clause provides; and
 - (f) the provisions of this sub-clause and of sub-clause (2) are made applicable to any assistance for which this Part provides and which is made available on or after the first day of July 1985 unless prior to that date another date is agreed between the Minister and the State Minister.
- (2) In accordance with Recital (D) the State may require that the minimum amount in annual repayments or payments be greater than that specified in paragraph (b) of sub-clause (1).
- (3) The State Minister is to determine guidelines setting out circumstances in which recovery referred to in paragraph (d) of sub-clause (1) shall not be required. In so determining regard shall be had to movements in housing prices and in the income of home purchasers.
- (4) The State may cause the provisions of any of the preceding sub-clauses except paragraph (f) of sub-clause (1) to be reflected in the terms of loans made under prior arrangements.
28. (1) Subject to clause 27, it shall be a matter for the State—
- (a) to determine in accordance with Recital (D) eligibility and the amounts and conditions that are to apply, in respect of loans or rental purchase to persons who are to receive home purchase assistance under this agreement and under previous housing arrangements but in this connexion regard shall be had to family income, assets of the borrower, size and standard of the housing and its location; and
 - (b) to adopt other lending practices including capital indexed loans, high start loans and second mortgage lending which are best suited to achieve the principles of this agreement.
- (2) The conditions of eligibility shall be such that assistance is provided to those persons who are not able to obtain mortgage finance assistance in the open market or from other sources.
- (3) The State may reschedule repayments by borrowers or rental purchasers in the event of hardship.

PART X—RENTAL HOUSING ASSISTANCE

29. Funds available to a State during any year for its rental housing assistance program (for the purposes of this Part referred to as "rental housing assistance funds") shall consist of
- (a) in respect of a year of this agreement, payments of loan assistance and grants that are made under this agreement for rental housing assistance; and

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- (b) in respect of any year—
- (i) any surplus during the year of revenue, after allowing for rent forgone over outgoings incurred or provided for, arising directly from rental housing operations of the State under this agreement or previous housing arrangements and to which this agreement applies;
 - (ii) net proceeds from sale of rental housing and land acquired under previous housing arrangements or this agreement; and
 - (iii) any other funds which the State allocates for rental housing assistance under this agreement.

30. Without by this clause conveying any implication that funds are to be made available by the Commonwealth for, or are to be applied by a State for, any particular purpose or in order of priority, the purposes for which rental housing assistance funds may be used by the State in accordance with Recital (D) include the following—

- (a) to meet the costs of and associated with the acquisition, planning and development of land primarily for residential development;
- (b) to pay for the construction or acquisition of housing;
- (c) to repay the principal of and pay interest on loan assistance to the State for rental housing assistance;
- (d) to provide funds to such voluntary, non-profit, charitable bodies, rental housing co-operatives and other housing management bodies or groups as are approved by the State Minister;
- (e) to enable housing to be let to such charitable bodies, rental housing co-operatives and other organisations as are approved by the State Minister;
- (f) to engage in urban renewal activities related to public housing;
- (g) to allocate funds to local government bodies for the provision of rental housing where the State Minister considers that it would be more appropriate for such rental housing assistance to be carried out by those bodies;
- (h) to make payments for, or provide bridging finance for, the provision of open space, landscaping, community facilities and for costs associated with land development, including contributions to headworks and reticulation of services;
- (i) to undertake research and policy development in relation to matters not funded by the Australian Housing Research Council;
- (j) to undertake and participate in joint ventures, co-operative enterprises or similar arrangements in order that public housing developments may be integrated with private housing and to achieve a desirable socio-economic mixture of housing;
- (k) to lease housing from the private housing sector;
- (l) to provide housing advisory services related to public housing;
- (m) to provide rental subsidy for eligible persons renting private housing;
- (n) noting that the Commonwealth assists pensioners and other beneficiaries in the private rental market, to supplement, up to an amount determined in writing by the Minister in respect of each year, rental revenue reduced by the operation

*Housing Agreement 1985*SCHEDULE 1—*continued.*

of clause 33 in respect of pensioners and other beneficiaries under the Social Security Act 1947;

(o) expenditure in accordance with Part XI; and

(p) any other purposes agreed upon between the Minister and the State Minister.

31. The conditions of eligibility of persons for rental housing assistance shall be determined by the State in accordance with Recital (D) and so that priority in granting assistance is determined by the need for assistance.

32. (1) Subject to sub-clause (2) and clause 33, the State will in respect of its rental housing apply a policy of fixing rents at a level not less than that which would result from an application of the formula set out in the Second Schedule, and also review those rents at least annually.

(2) If the State wishes, it may phase in the said policy over a period of three years or other period which takes into account the level of rents prevailing in the private rental market and is agreed to between the Minister and the State Minister.

33. The State shall forego the collection of so much of rents fixed in accordance with clause 32 as it considers that tenants having regard primarily to their income are not able to afford to pay.

34. (1) A State may sell rental housing but such sales, if any, shall be in accordance with Recital (D) and subject to the following conditions—

- (a) all sales of housing shall be at market value or replacement cost at the time of the sale but not so as to preclude the State, if it so wishes, from providing a credit to the tenant in recognition of improvements that the tenant has made to the housing except that, in the case of any body, co-operative, group or other organisation which makes available rental housing provided under this agreement and in respect of which it is agreed between the Minister and State Minister, sales need not be at that value or cost;
- (b) in all sales of rental housing, the vendor is, at or prior to the date of the sale, to have received an amount calculated in accordance with paragraph (a);
- (c) in the case of a rental purchase, home purchase assistance funds are to be used to enable the vendor to receive an amount referred to in paragraph (b); and
- (d) net proceeds from sales of housing shall be applied to construct or purchase replacement housing which is to be included in rental housing for the purpose of this agreement.

(2) The State will ensure that if any body, co-operative, group or other organisation which acquires housing with rental housing assistance funds or acquires at other than market value or replacement cost, rental housing from the State, sells, otherwise disposes of, or uses that housing for a purpose other than rental housing as provided for under this Part, it shall repay to the State an amount equal to the net proceeds from the sale, at market value or replacement cost, of that housing.

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SCHEDULE 1—*continued.***PART XI—SPECIFIC HOUSING ASSISTANCE**

35. The Minister may, in writing under his hand authorise, subject to guidelines made consistently with this agreement and agreed between the Minister and State Minister relating to the following programs including guidelines as to the provision of any funds by the State in relation to each program, grants to the State for expenditure on—

- (i) rental housing assistance for pensioners;
- (ii) rental housing assistance for Aborigines;
- (iii) mortgage and rent relief;
- (iv) crisis accommodation;
- (v) local government and community housing; and
- (vi) any other program determined by the Minister following consultation with the States.

36. (1) Rental housing provided with grants for specific housing assistance may be sold by a State subject to and in accordance with the provisions of clause 34.

(2) Unless otherwise agreed by the Minister the net proceeds of sale of rental housing provided for a specific purpose or program with grants under this Part shall only be applied to provide rental housing for the same purpose or program.

(3) This clause shall apply to rental housing that has been provided from grants made by the Commonwealth to a State under Part III of the Housing Assistance Act 1978 or under Part XI of the agreement referred to in Recital (B).

PART XII—SUPERSESSION OF PREVIOUS HOUSING ARRANGEMENTS

37. The provisions of this agreement with respect to rental housing and home purchase assistance shall, except as provided herein, supersede the provisions of the existing Housing Agreements to the intent that this agreement will provide the arrangements between the Commonwealth and each State in relation to the provision of rental housing, including the sale of housing so provided, and to the provision of assistance for home purchasers under the previous housing arrangements and this agreement.

PART XIII—OBSERVANCE OF AGREEMENT

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

39. A State shall determine an agency or agencies (including bodies or organisations that are not authorities of the State) for the performance of this agreement on behalf of the State and acts and things that are done by or with respect to the agency or agencies so determined shall, for the purposes of this agreement, be deemed to have been done by or with respect to the State.

*Housing Agreement 1985***SCHEDULE 1—continued.**

40. If the Minister, in writing under his hand, informs the Treasurer of a State he is satisfied that the State has failed to ensure that an amount of financial assistance provided to the State has been applied for the purposes and in the manner provided for by this agreement with respect to that financial assistance, the State will repay that amount, or such part of that amount as the Minister thinks reasonable, to the Commonwealth.

41. If a State fails for any reason to meet the requirement for the provision by it of matching funds in accordance with Part VI or Part XI with respect to any financial assistance that has been provided to it, the State will upon request by the Minister, in writing under his hand, repay to the Commonwealth the amount of that financial assistance or so much of that amount as is specified in the request.

PART XIV—TRIENNIAL EVALUATION

42. In accordance with the arrangements to be agreed upon between the Minister and the State Minister the operation of the agreement is to be evaluated triennially.

PART XV—SUPPLY OF INFORMATION

43. (1) A State will furnish in respect of each year to the Commonwealth by the thirtieth day of November next occurring after that year and in a reasonable form to be determined by the Minister after consultation with the State Minister—

- (a) statements which set out particulars of the expenditure during the year by the State of—
 - (i) matching funds on programs agreed upon by the Minister and the State Minister; and
 - (ii) grants for specific housing assistance;
- (b) statements in respect of the operation of—
 - (i) the Home Purchase Assistance Account; and
 - (ii) the rental housing assistance program,which show the origin of funds received, and the manner in which funds were applied; and
- (c) statements which set out—
 - (i) the manner in which the State has fixed rents in accordance with clause 32;
 - (ii) the total of the amount forgone by the State in accordance with clause 33 for that year and the basis thereof;
 - (iii) the excess of the amounts that are received into the Home Purchase Account over payments that are made from that Account in accordance with sub-clause 25 (2);
 - (iv) the guidelines determined pursuant to sub-clause 27 (3) and the number of cases and amount forgone as a result of application of the guidelines;
 - (v) any surplus of revenue over outgoings, after allowing for rent forgone, arising from rental housing operations; and
 - (vi) all proceeds of sale in that year of rental housing.

(2) A statement furnished pursuant to sub-clause (1) is to be certified as to its correctness by a person appointed by the State Minister for that purpose.

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SCHEDULE 1—*continued.*

(3) A State Minister will, upon request by the Minister, supply to the Minister such information relevant to the operation of this agreement in respect of the State and other information relating to expenditure by the State on housing assistance generally as is reasonably so requested.

PART XVI—VARIATION OF AGREEMENT

44. (1) The provisions of this agreement other than Part IV may be varied as between the Commonwealth and a State by agreement in writing between the Minister and the State Minister but only after consultations between the Minister and other State Ministers.

(2) A copy of an agreement or copies of the documents which constitute an agreement under sub-clause (1) shall be tabled in the Parliaments of the Commonwealth and of the State within 15 sitting days of respective Parliaments from the date upon which the agreement is made.

(3) An agreement under sub-clause (1) shall not affect the operation of this agreement as between the Commonwealth and the States other than that with which the agreement has been made.

PART XVII—REPRESENTATION AND COMMUNICATIONS

45. (1) The Commonwealth shall, subject to sub-clause (2), be represented for the purposes of this agreement by the Department of Housing and Construction and the Minister shall notify the State Minister of the address of that Department and of any change at any time of that address.

(2) In the event that the administration of this agreement for the Commonwealth is allocated to a Minister other than the Minister for Housing and Construction, the Commonwealth shall be represented by the Department administered by that other Minister and that Minister shall notify the State Minister of the address of that Department.

46. The State shall be represented for the purposes of this agreement by the Department administered by the State Minister or such other agency of the State as the State Minister shall nominate ('Agency') and the State Minister shall notify the Minister of the address of that Department or Agency and of any change at any time of the Department or Agency or of the address.

47. (1) A notice or other communication under or in connexion with this agreement shall be duly given if it is in writing signed by, or on behalf of, or attributed to, the head of the Department or Agency by which it is given and addressed to or delivered at the address of the Department or Agency to which it is directed.

(2) For the purposes of this clause writing includes a teleprinter message and the address for such a message shall be the teleprinter address of the receiving Department or Agency.

(3) A notice or other communication shall be given under this clause when it is received in the appropriate form by the Department or Agency to which it is directed.

*Housing Agreement 1985*SCHEDULE 1—*continued.***FIRST SCHEDULE**

Clause 6

EXISTING HOUSING AGREEMENTS

1. The 1945 Agreement
Agreement made 19 November 1945 between the Commonwealth and the State to which Tasmania is not now a party—Act No. 44 of 1945.
2. The 1955 Agreement
Supplemental Agreement made 16 April 1955 between the Commonwealth and the States, other than Tasmania—Act No. 12 of 1955.
3. The 1956 Agreement
Agreement made 13 February 1957 between the Commonwealth and the States—Act No. 43 of 1956.
4. The 1961 Agreement
Agreement made 4 October 1961 between the Commonwealth and the States—Act No. 31 of 1961.
5. The 1966 Agreement
Agreement made 21 December 1966 between the Commonwealth and the States—Act No. 24 of 1966.
6. The 1973 Agreement
Agreement made 17 October 1973 between the Commonwealth and the States—Act No. 43 of 1973.
7. The 1974 Agreement
Supplemental Agreement made 20 December 1974 between the Commonwealth and the States—Act No. 102 of 1974.
8. The 1978 Agreement
Agreement made 17 October 1978 between the Commonwealth and the States—Act No. 79 of 1978.
9. The 1980 Northern Territory Agreement
Agreement made 11 March 1980 between the Commonwealth and the Northern Territory.
10. The 1981 Agreement
Agreement made 23 December 1981 between the Commonwealth, the States and the Northern Territory but in relation to the period 1 July 1981 to 30 June 1984 only.

SECOND SCHEDULE

Clause 32

COST RENT FORMULA

The following formula is to be used to determine real cost rents for public rental accommodation. States are to charge rents at least equal to those resulting from the use of this formula. The formula is not to be applied to the costs of individual dwellings but rather to the total cost pool of the rental stock. In allocating the total cost rent pool to individual tenancies States will have regard to variation in housing standards and locations within the constraints of available administrative arrangements for assessing these variations.

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SCHEDULE 1—*continued.*

1. Recovery of operating expenses

The costs to be recovered in this area are ordinarily listed in the rental accounts of State housing authorities as yearly expenditure items. These include:

- (a) administration;
- (b) rates;
- (c) insurance;
- (d) specific operating expenses associated with particular types of units;
- (e) annual maintenance;
- (f) yearly allowance for rent arrears and debts written off;
- (g) yearly allowance for vacancies;
- (h) leasing expenses related to land and dwellings;
- (i) operating expenses of community facilities; and
- (j) any other operating costs agreed between Federal and State Housing Ministers.

2. Interest charges

Interest payable on loan funds invested in public rental housing.

3. Depreciation

- (i) depreciation rate is to reflect a life of between 40–75 years of the capital improvements on the land;
- (ii) the value of capital improvement will be based on the estimated current capital improved value;
- (iii) the minimum annual depreciation rate will be not less than the rate resulting from a term of 75 years.

IN WITNESS WHEREOF etc.
