



New South Wales

Housing Act 2001 No 52

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New South Wales

Housing Act 2001 No 52

Act No 52, 2001

An Act to consolidate certain legislation relating to housing; to repeal the *Housing Act 1912*, the *Housing Act 1976*, the *Housing Act 1985* and the *Home Purchase Assistance Authority Act 1993*; to amend various Acts consequentially; and for other purposes. [Assented to 17 July 2001]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Housing Act 2001*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 July 2001.

3 Definitions

In this Act:

building includes any part of a building and any appurtenance to a building, any fence, wall and any other structure or a part of a structure and any provision for lighting, heating, refrigeration, water supply, drainage or sewerage.

Commonwealth State agreement includes any agreement to which the Commonwealth and the State are parties, whether or not other persons or bodies are also parties to the agreement.

Corporation means the New South Wales Land and Housing Corporation constituted by this Act.

council has the same meaning as it has in the *Local Government Act 1993*.

Department means the Department of Housing.

Director-General means the Director-General of the Department.

exercise a function includes perform a duty.

function includes a power, duty or authority.

Home Purchase Assistance Fund means the fund established under the trust deed entitled "Trust Deed establishing the Home Purchase Assistance Fund", being an agreement entered into on 14 February 1989 between the State, the Department of Housing, the Treasury, Permanent Custodians Limited and Permanent Trustee Company Limited.

house or *housing* means any kind of dwelling.

Housing Account means the account established under section 63.

housing area means a housing area constituted under section 36.

Housing Reserve Fund means the Housing Reserve Fund established under section 66.

proprietor in relation to land means the proprietor of a legal or equitable estate of fee simple in the land.

public authority means any public or local authority constituted by or under an Act other than this Act.

public housing means housing owned or leased by the Corporation, and managed by the Department, that is leased to members of the public that meet the Department's or the Corporation's eligibility criteria, but does not include housing leased to a person in accordance with the *HomeFund Restructuring Act 1993* or that is substituted for housing leased in accordance with that Act.

4 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

Note. For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of other Acts that are the subject of repeal by this Act.

Part 2 Objects of Act

5 Objects of Act (cf Act No 163, 1985, s 4, Act No 15, 1993, s 4)

- (1) The objects of this Act are as follows:
- (a) to maximise the opportunities for all people in New South Wales to have access to secure, appropriate and affordable housing,
 - (b) to ensure that housing opportunities and assistance are available to all sections of the community with housing needs,
 - (c) to ensure that public housing is developed as a viable and diversified form of housing choice,
 - (d) to ensure that public housing reflects the housing standards of the general community and is designed to cater for the ongoing needs of consumers,
 - (e) to maximise the opportunities for tenants of public and community housing programs to participate in the management of their housing and in the development of public and community housing policies,
 - (f) to promote orderly and economic urban development and the adequate supply of affordable and suitably located land for housing at the minimum practicable cost to consumers,
 - (g) to promote equity between levels of assistance provided to people living in public housing, private rental housing and those who own or are purchasing their homes,
 - (h) to maintain an efficient housing administration to ensure the effective co-ordination and provision of all housing services,
 - (i) to encourage social mix and the integration of different housing forms in existing and new communities,
 - (j) to encourage the planning and development of new urban areas as communities with a full range of appropriate services and facilities available in the shortest practicable time,
 - (k) to promote a viable and stable building and construction industry in the residential sector,
 - (l) to facilitate the provision of assistance to home purchasers on low to moderate incomes,

- (m) to provide for the management of such existing and future home purchase assistance schemes (including the portfolio of loans under HomeFund schemes) as the Minister directs,
 - (n) to provide for the funding of such other rental and home purchase assistance schemes as the Minister directs,
 - (o) to encourage the development of flexible and innovative financial arrangements to facilitate access to home ownership for persons in receipt of low and moderate incomes,
 - (p) to ensure appropriate mechanisms and forums are established to allow input into housing policy by representative community organisations and non-government agencies involved in housing policy and provision,
 - (q) to attract investment in public housing, including related activities such as tenant employment and the provision of integrated services,
 - (r) to enable the provision under this Act of corporate, technical and information technology services, in or outside New South Wales, to government and non-government agencies.
- (2) In the administration of this Act, regard is to be had to the objects of this Act to the maximum extent possible taking into consideration the needs of the State and available resources, and subject to any directions of the Minister.

Section 6	Housing Act 2001 No 52
Part 3	New South Wales Land and Housing Corporation
Division 1	Establishment of Corporation

Part 3 New South Wales Land and Housing Corporation

Division 1 Establishment of Corporation

6 Establishment of New South Wales Land and Housing Corporation

- (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Land and Housing Corporation.
- (2) The affairs of the Corporation are to be managed by the Director-General.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Director-General, or with the authority of the Director-General, is taken to have been done by the Corporation.
- (4) The Corporation is, for the purposes of any Act, a statutory body representing the Crown.
- (5) The Corporation is subject to the direction and control of the Minister.
- (6) The Corporation may, in the exercise of its functions, use the name "Landcom".
- (7) The Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
- (8) The Corporation and the Department are, to the maximum extent possible, to act in a complementary manner, so as to achieve a unified administration of this Act.

Division 2 General functions of Corporation

7 Functions of Corporation generally

- (1) The Corporation:
 - (a) has the functions conferred on it by or under this or any other Act and may do such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of its functions, and

- (b) has such other functions as are necessary to implement any Commonwealth State agreement, in so far as it relates to housing.
- (2) The Corporation is to manage financial risks associated with its activities.

8 Functions of Corporation relating to land and housing (cf Act No 62, 1976, s 9)

- (1) In this section:
 - develop* includes re-develop.
 - public purpose* includes any purpose for which land may be acquired under any other Act.
 - urban development* includes the expansion, establishment and re-development of urban areas.
- (2) The Corporation has the following functions:
 - (a) to acquire land for present or future urban development and for public purposes,
 - (b) from time to time, as prevailing circumstances require, to develop and make available, or to make available for development by others, such of the land so acquired as the Corporation considers necessary or expedient for urban development and for public purposes,
 - (c) to carry out or promote research or investigations into matters connected with urban development,
 - (d) to make such reports or recommendations to the Minister or any other person or body in relation to urban development as the Corporation considers necessary or appropriate.
- (3) In the exercise of its functions, the Corporation:
 - (a) is to make residential land available at the lowest price the Corporation considers practicable having regard to the costs incurred by the Corporation in relation to the land and the financial resources available for the Corporation's continued operation, and
 - (b) is to promote orderly and economic urban development.

9 Functions of the Corporation relating to home purchase assistance
(cf Act No 15, 1993, s 13)

- (1) The Corporation has the following 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) Without limiting the generality of subsection (1), the Corporation has the following functions:
- (a) to determine guidelines for the eligibility of applicants for home purchase assistance,
 - (b) to determine the terms and conditions of loans or other assistance to those applicants,
 - (c) to advertise and market home purchase assistance,
 - (d) to provide information to the public on home purchase and home purchase assistance,
 - (e) to make loans or grants or give other financial assistance, with or without security, to eligible applicants,
 - (f) to manage loans, including to collect repayments and arrears and realise securities,
 - (g) to manage the Housing Reserve Fund and any contingency fund in relation to home purchase assistance, as directed by the Minister.

10 Functions relating to collection of information and provision of advice, services and products (cf Act No 7, 1912, s 40G)

- (1) The Corporation has the following functions:
- (a) to carry out all such surveys and investigations into issues related to housing as may be necessary or expedient for the purposes of this Act, or for the purpose of ascertaining the housing conditions in any locality,
 - (b) to publish for general information the results of any such survey or investigation,
 - (c) to publish from time to time in printed form or on the Internet matter dealing with housing,

- (d) to take steps by the holding of architectural competitions or otherwise to obtain the better design and arrangement of houses and of subdivisions of land for houses and related purposes,
 - (e) to recommend the making of regulations under the *Environmental Planning and Assessment Act 1979* concerning any matter relating to building,
 - (f) to give to any person such advice or assistance of a technical or architectural nature, and such advice of a financial nature, on matters relating to housing, as the Corporation may from time to time determine.
- (2) Without limiting the generality of subsection (1), the Corporation may:
- (a) provide to any person or organisation corporate services, information technology services, advice and associated products, and
 - (b) provide to persons or organisations involved in the provision of housing, or that are part of the housing industry, technical services, advice or associated products.
- (3) A function referred to in subsection (2) may be exercised within or outside the State.
- (4) The Corporation may charge for the provision of services, advice or products in accordance with this Act.

11 Consultation and negotiation (cf Act No 62, 1976, s 18)

- (1) In the exercise of its functions the Corporation is, as far as practicable:
- (a) to consult with public authorities whose functions include those of the same or of a similar nature, and
 - (b) to negotiate with any such authorities for the purpose of arranging or providing services and facilities on land vested in the Corporation.
- (2) Without affecting the generality of subsection (1), any research or investigation by the Corporation into matters connected with urban development that is of the same or of a similar nature as that which may be undertaken within the Department of Urban Affairs and Planning or any other public authority is, unless otherwise agreed, to be carried out or promoted in conjunction with that Department or public authority.

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Part 3	New South Wales Land and Housing Corporation
Division 2	General functions of Corporation

- (3) In the exercise of its functions relating to the provision of public housing, the Corporation is, as far as practicable, to consult with public housing tenants and organisations representing the interests of public housing tenants.

Division 3 General powers to enter contracts and agreements

12 Corporation may enter into contracts (cf Act No 62, 1976, s 16)

- (1) The Corporation may make and enter into contracts with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise by the Corporation of its functions.
- (2) A contract under subsection (1) may provide for:
- (a) the whole or any part of any works to be undertaken by the Corporation, or
 - (b) the whole or any part of the cost of any works to be paid by the Corporation, or
 - (c) a loan to be made by the Corporation to meet the whole or any part of the cost of any works, or
 - (d) the Corporation to pay the cost of providing any services during a specified period.
- (3) Without affecting the generality of subsection (1), the Corporation may make and enter into a contract under this section with any person for the construction on land vested in the Corporation or that person, or in the Corporation and that person, of buildings or of other works, and for the sale, lease or exchange of any such land together with the buildings or other works on the land.

13 Corporation may enter into arrangements with other public authorities (cf Act No 1976 No 62, s 17)

- (1) The Corporation may enter into an arrangement or agreement with any public authority that:
- (a) the public authority is to act as agent of the Corporation for the purposes of this Act, or

- (b) the Corporation is to act as agent of the public authority for the purposes of this Act,
on such terms and conditions as are agreed on between the Corporation and the public authority.
- (2) Despite anything in any other Act, any public authority is authorised and empowered to enter into arrangements or agreements referred to in subsection (1) and may do or suffer anything necessary or expedient for carrying out any such arrangements or agreements.

Division 4 Administration

14 Staff of Corporation

- (1) Such staff as may be necessary to enable the Corporation to exercise its functions may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Corporation may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency or public or local authority. Any staff of whose services the Corporation makes use is taken to be staff of the Corporation.
- (3) The Corporation may engage persons having suitable qualifications and experience as consultants to the Corporation or the Department, or both.

15 Delegations

- (1) The Corporation may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) The Director-General may delegate to an officer of the Department or the Corporation the exercise of any of the Director-General's functions under this Act (including any function delegated to the Director-General under this section), other than this power of delegation.

16 Reports from Corporation to Minister

- (1) The Corporation must furnish the Minister with full information as to any business of the Corporation that the Minister requires.

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Division 4 Administration

- (2) The Corporation must at all times allow the Minister and every person authorised by the Minister to inspect all books, papers, documents, accounts, buildings, property and places under its control.

17 Annual report

A report under the *Annual Reports (Departments) Act 1985* in respect of the Department may include any report required to be made annually in respect of the Corporation under the *Annual Reports (Statutory Bodies) Act 1984*.

Part 4 Acquisition, sale, development and management of land and property

Division 1 General powers of Corporation in relation to land and property

18 General powers of Corporation in relation to land vested in Corporation (cf Act No 62, 1976, ss 10 and 14 (1))

For the purposes of this Act and subject to this Act, the Corporation may, in relation to land vested in the Corporation:

- (a) control and manage the land, and
- (b) subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with the land and grant easements or rights-of-way over the land or any part of that land, and
- (c) demolish any building on the land of which it has exclusive possession, and
- (d) provide or relocate, or arrange for the provision or relocation of, utility services to or in relation to the land, and
- (e) subdivide and re-subdivide the land and consolidate subdivided or re-subdivided land, and
- (f) set out and construct roads on the land, and
- (g) erect, alter, repair or renovate buildings on the land or make other improvements to the land, and
- (h) cause any other work to be done on or in relation to the land for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* applying to the land.

19 Surrender of land (cf Act No 7, 1912, s 12)

- (1) The Corporation may accept a surrender of any land leased, dedicated or granted under this Act.
- (2) The land so surrendered may be disposed of by the Corporation under this Act.

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Part 4 Acquisition, sale, development and management of land and property

Division 1 General powers of Corporation in relation to land and property

- (3) The Corporation may agree to cancel any contract of sale of land from the Corporation at the request of the purchaser of the land.
- (4) The Corporation may, if it thinks fit, pay to the person surrendering any land leased, granted or dedicated under this Act, or to the purchaser of land on the cancellation of a contract of sale, such sum by way of compensation for any visible and effective improvements on the land, as to the Corporation seems fair.
- (5) An amount paid under subsection (4) must not exceed the value of the improvements at the date of the surrender or cancellation and must relate to costs that have not been defrayed or advanced by the Corporation.
- (6) The Corporation may also in its discretion repay to a purchaser on the cancellation of a contract of sale of land from the Corporation the whole or such proportion as it thinks fit of the purchase money of the land that has been paid by the purchaser under this Act.

20 Application of Public Works Act 1912 (cf Act No 62, 1976, s 11 (2) and (3))

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land by the Corporation is taken to be for an authorised work and the Corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (2) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

21 Power to accept gifts (cf Act No 62, 1976, s 13)

- (1) The Corporation may acquire by gift, bequest or devise any property for any of the purposes of this Act and may agree to, and carry out the conditions of, the gift, bequest or devise.
- (2) The rule of law relating to remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Corporation has agreed.
- (3) Duty is not chargeable in respect of any gift, bequest or devise made to the Corporation.

Division 2 Acquisition of land

22 Acquisition of land (cf Act No 62, 1976, s 11 (1))

The Corporation may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

23 Compulsory acquisition of land for failure to comply with certain requirements (cf Act No 7, 1912, s 41)

- (1) The Minister may compulsorily acquire in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* land on which a house has been erected by the Corporation for a purchaser if the purchaser does not execute a form of purchase agreement or mortgage approved by the Corporation on being required in writing by the Corporation to do so.
- (2) The Minister may compulsorily acquire in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* land on which a house has been erected by a person to whom an advance has been made under this Act for the erection of the house if the person does not execute a form of mortgage approved by the Corporation on being required in writing by the Corporation to do so.
- (3) The compensation to be assessed for the purposes of this section is only in respect of the interest of the purchaser or person to whom the advance was made, and any increased value to the land due to the expenditure of the Corporation, or of the advance made by it, is to be disregarded.

Division 3 Contracts for sale of land

24 Conditions on sale of land vested in Corporation (cf Act No 62, 1976, s 14)

- (1) The Corporation may in any contract for the sale of land vested in the Corporation include conditions for or with respect to any or all of the following:
 - (a) the erection of any building on that land by the purchaser within a specified period,

- (b) conferring on the Corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a),
 - (c) conferring on the Corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the Corporation a sum determined in a specified manner where the Corporation does not exercise that option or right,
 - (d) the determination of the repurchase price payable by the Corporation under a condition referred to in paragraph (b) or (c).
- (2) Subsection (1) does not limit the conditions that may be included by the Corporation in any contract for the sale of land.
- (3) A condition referred to in subsection (1) that is included in a contract of sale does not merge in the transfer of title to the land the subject of the contract of sale on completion of the sale.
- (4) If the Corporation requests the Registrar-General in a manner approved by the Registrar-General and pays the fee prescribed under the *Real Property Act 1900*, the Registrar-General must make in the Register kept under that Act a recording appropriate to indicate:
- (a) that land specified in the request is held subject to a condition authorised under subsection (1), or
 - (b) that a recording made in accordance with paragraph (a) has ceased to have effect.
- (5) The Corporation must not make such a request except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold. However, the Registrar-General need not be concerned to inquire whether any such request has been made for that purpose.
- (6) If a recording has been made in the Register in accordance with subsection (4) (a) in respect of any land, the Registrar-General must not register under the *Real Property Act 1900* a transfer of that land to or by a person other than the Corporation unless:
- (a) a recording in accordance with subsection (4) (b) has been made in respect of the land, or

- (b) the consent of the Corporation to the transfer has been endorsed on the transfer.

25 Imposition of conditions on sale of certain land (cf Act No 62, 1976, ss 14A–14C)

- (1) If the Corporation requests the Registrar-General in the manner approved by the Registrar-General and pays the fee prescribed under the *Real Property Act 1900*, the Registrar-General must make in the Register kept under that Act a recording appropriate to identify:
 - (a) that land of which the Corporation is then the registered proprietor and that is specified in the request is, on a sale by the Corporation to a purchaser, to be held by the purchaser subject to:
 - (i) conditions specified or referred to in the request, being all or any of the conditions referred to in section 24 (1), or
 - (ii) the condition that the land may not be transferred, without a specified building or building of a specified class or description having been erected on the land, except with the consent of the Corporation, or
 - (b) that a recording made in accordance with paragraph (a) has ceased to have effect.
- (2) If a recording has been made in the Register in accordance with subsection (1) (a) in respect of any land (being a recording that has not ceased to have effect) and the Corporation subsequently enters into a contract for the sale of the land, each condition to which the recording relates has effect as a condition of the contract for the sale of the land.
- (3) A condition referred to in subsection (1) does not merge in the transfer of title to the land on completion of a sale of the land by the Corporation.
- (4) If a recording has been made in the Register in accordance with subsection (1) (a) in respect of any land, the Registrar-General must not register under the *Real Property Act 1900* a transfer of the land to or by a person other than the Corporation unless:
 - (a) a recording in accordance with subsection (1) (b) has been made in respect of the land, or
 - (b) the consent of the Corporation to the transfer has been endorsed on the transfer.

26 Cancellation of agreement (cf Act No 7, 1912, s 42)

If any contract for the sale of land from the Corporation is cancelled or forfeited for non-fulfilment of the conditions of the contract, the Corporation may, instead of any damages provided for in the contract, claim and recover for use and occupation an amount equivalent to 8.5 per cent per annum of the improved capital value of the property.

27 Possession to Corporation on cancellation of agreement (cf Act No 7, 1912, s 43)

- (1) If a purchaser under a contract of sale of land from the Corporation makes default in relation to any of the conditions of the contract, and the default continues for a period of 60 days or more:
 - (a) the whole of the purchase money and other money owing under the contract becomes due and payable immediately, and
 - (b) those amounts may be recovered by the Corporation with interest at the rate payable under the contract, and
 - (c) the Corporation may, with or without giving notice, cancel the contract or enter into possession of the land described in the contract, and any house erected on that land, and receive the rents and profits of that land.
- (2) At any time after the cancellation of a contract under this section, or when the Corporation proposes to enter into possession of the land and house described in the contract and receive the rents and profits of the land, the Corporation may:
 - (a) require the purchaser or occupant to deliver up possession of the land and house described in the contract, and
 - (b) if the purchaser or occupant refuses to deliver possession, issue a warrant to the sheriff to deliver possession to the person specified in the warrant.
- (3) On the receipt of a warrant under this section the sheriff must execute the warrant and deliver possession of the house and land in accordance with the warrant.
- (4) The costs incurred in connection with the issue and execution of the warrant, to be determined by the Sheriff, are to be paid by the person refusing to give possession.
- (5) Any costs due to the Corporation under this section may be recovered by the Corporation as a debt in a court of competent jurisdiction.

- (6) The Corporation may, in its discretion, repay to a purchaser whose agreement has been cancelled under this section the whole or such proportion as it thinks fit of the purchase money of the house which has been paid by the purchaser under this Act.
- (7) If the Corporation has, without cancelling a contract of sale, entered into possession of the land and house described in the contract, it may remain in possession until such time as it indicates to the person entitled to the benefit of the contract its intention to vacate possession or until the terms and conditions of the contract have been fully completed and satisfied.

Division 4 Construction of buildings

28 Construction of buildings by Corporation (cf Act No 7, 1912, s 7)

The Corporation may erect on any land vested in or acquired by the Corporation buildings for residential, business, or other purposes, or for public use, and has the duty of maintaining and repairing them for so long as the Corporation has control over the land.

29 Building materials (cf Act No 7, 1912, s 7A)

The Corporation may manufacture or produce for, or purchase from or supply to, any person building materials, fittings or appliances on such terms and conditions as the Corporation may from time to time determine.

30 Temporary buildings (cf Act No 7, 1912, s 7B)

The Corporation may construct buildings for emergency housing accommodation and, on such terms and conditions as it considers reasonable, may sell or hire any such building to any person legally possessed of land.

31 Construction of other buildings (cf Act No 7, 1912, s 18)

- (1) This section applies to a request from:
 - (a) any Minister of the State of New South Wales or any Minister of State of the Commonwealth, or
 - (b) any Government Department of the State of New South Wales or any Department of State of the Commonwealth, or

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Division 4	Construction of buildings

- (c) any statutory body representing the Crown and incorporated under any Act of New South Wales or the Commonwealth, or both.
- (2) The Corporation may, on receiving a request to do so and at the cost of and on such terms as may be agreed on by the Minister, Department or statutory body making the request, construct buildings and carry out works:
 - (a) on land vested in the Minister, Department or statutory body, or
 - (b) on land otherwise lawfully available to the Minister, Department or statutory body for the construction of the buildings or the carrying out of the works.
- (3) The Corporation may exercise the powers conferred on it under this section even if the cost of the buildings constructed or the works carried out by it is not met directly out of funds of the Minister, Department or statutory body making the request so long as an arrangement has been made with the Treasurer by the Minister, Department or statutory body for the payment of that cost to the Housing Account.
- (4) In this section:
 - buildings* means buildings intended for use for any purpose.
 - works* includes road, drainage, and site developmental works and any other incidental works.

Division 5 Change in management of land

32 Management of land purchased or compulsorily acquired otherwise than under this Act (cf Act No 7, 1912, s 17)

- (1) The Governor may, by notification published in the Gazette, impose on the Corporation the duty of managing any land:
 - (a) that has been purchased or compulsorily acquired on behalf of the Crown otherwise than under this Act, and
 - (b) that is not by statute or other authority placed in the charge of any other officer or public body.
- (2) The Governor may revoke or alter any such notification by further notification published in the Gazette.

- (3) For the purpose of managing land under this section, the Corporation has, exclusively, the powers of a Constructing Authority under Division 7 of Part 6 of the *Public Works Act 1912*.
- (4) Money received by the Corporation in respect of land managed by it under this section is to be paid into the Treasury into such account as the Treasurer may direct.
- (5) The expenditure of the Corporation in relation to land managed by it under this section is to be met from money appropriated by Parliament for that purpose.

33 Withdrawal of land from Corporation (cf Act No 7, 1912, s 18B)

- (1) The Governor may by proclamation withdraw from the Corporation any land vested in the Corporation under this Act.
- (2) On publication of the proclamation in the Gazette the land specified in the proclamation ceases to be vested in the Corporation and is taken to be Crown land reserved under the *Crown Lands Act 1989*.
- (3) On any land so withdrawn being subsequently sold, leased or otherwise disposed of, subsections (4) and (5) apply.
- (4) If the land is land that was not Crown land and was compulsorily acquired or purchased for housing purposes, the proceeds of the sale or lease or other disposition, less the costs of collection and other necessary expenses, are to be paid to the Housing Account.
- (5) If the land is land that was Crown land and was compulsorily acquired for housing purposes, the proceeds of the sale, lease or other disposition are to be applied as follows:
 - (a) the costs of collection and other necessary expenses are to be paid first,
 - (b) of the balance, the amount which represents the value of the land at the date of the acquisition is to be credited to such accounts as it would be credited to if the amount were received in the ordinary course of the alienation of Crown land,
 - (c) of the balance remaining, the Housing Account is to be credited with the amount (if any) expended from that account in respect of the acquisition and any works for the improvement of the land,

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- (d) if there is any balance remaining, the surplus is to be divided equally, and one-half credited to the Housing Account and the other half credited as specified in paragraph (b).

34 Dedication of land by Corporation for public purposes (cf Act No 62, 1976, s 15)

- (1) The Corporation may, by order published in the Gazette, declare that it proposes to surrender land that is vested in the Corporation and described or referred to in the order to be dedicated under the *Crown Lands Act 1989* for any public purpose specified in the order.
- (2) On the surrender of land described or referred to in an order under this section, the land is taken to be Crown land dedicated under the *Crown Lands Act 1989* for the public purpose specified in the order.
- (3) Without limiting the power conferred under subsection (1), the Corporation may, by notification published in the Gazette, dedicate as a public reserve or drainage reserve land that is vested in the Corporation and described or referred to in the notification and that is situated in an area within the meaning of the *Local Government Act 1993*.
- (4) On the publication in the Gazette of a notification referred to in subsection (3), the land described or referred to in the notification vests in the council of the area in which the land is situated and is subject to the provisions of the *Local Government Act 1993* relating to public reserves or drainage reserves, as the case may be.

35 Exercise of council's powers by Corporation (cf Act No 62, 1976, s 19)

- (1) The Minister administering the *Local Government Act 1993* may, by order published in the Gazette:
 - (a) transfer to the Corporation such of the functions conferred on a council by or under that Act as are specified or described in the order, and
 - (b) specify or describe any land vested in the Corporation in or, in relation to which, any transferred function is to be exercised by the Corporation.
- (2) An order under this section operates so as to transfer to the Corporation, in accordance with the terms of the order, the functions referred to in the order.

- (3) Without affecting the generality of subsection (2), a function conferred on the Corporation by an order under this section is to be exercised by the Corporation only in or in relation to land vested in the Corporation and specified or described in the order.
- (4) The provisions of the *Local Government Act 1993* apply:
- (a) subject to paragraph (b) with such adaptations as are necessary,
or
 - (b) with such adaptations as are specified in the order,
- to and in relation to the exercise of functions specified or described in an order under this section as if the Corporation were a council and the land in respect of which those functions may be exercised formed part of that council's area.
- (5) A function conferred on the Corporation by an order under this section is, to the extent specified in the order, taken to be transferred from the council specified in the order, and, to that extent, the council ceases to have that function or to be under any obligation in relation to that function.

Part 5 Housing areas

36 Declaration of housing areas (cf Act No 7, 1912, s 4D)

- (1) The Minister may recommend to the Governor that any area should be constituted a housing area and any such recommendation must be accompanied by a plan indicating the area proposed to be constituted a housing area.
- (2) If the Minister has made a recommendation with respect to any area, the Governor may by notification published in the Gazette and in a newspaper circulating in the area concerned declare the area to be a housing area and on the publication of the notification in the Gazette the area is constituted a housing area.
- (3) The Governor may revoke any such notification on a similar recommendation and in a similar manner.
- (4) The Corporation must cause a plan of the housing area to be lodged with:
 - (a) the Registrar-General, and
 - (b) the Valuer-General, and
 - (c) the council of the area within which the housing area is situated.

37 Consequences of declaration of housing areas (cf Act No 7, 1912, s 4D)

- (1) During any period within which any notification is in force in respect of any housing area under this Part, the owner of, and any other person having an interest in, the land within the housing area must not, without the consent of the Corporation:
 - (a) construct, build, place, reconstruct, rebuild, demolish, damage, replace or repair any building or work or part of a building or work on the land, or
 - (b) sell the land or any part of the land or any interest in the land, or
 - (c) lease the land or any part of the land for a term exceeding one year.

Maximum penalty: 10 penalty units.

- (2) On the acquisition for the purposes of this Act of any land within a housing area, no compensation is payable in respect of any improvements made in contravention of subsection (1).
- (3) If any transaction is entered into in contravention of subsection (1) (b) or (c), the transaction is not invalid, and the rights, powers and remedies of any person under the transaction are the same as if this section had not been enacted.

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Part 6	Advances for houses, other buildings and land
Division 1	Advances for houses to individuals

Part 6 Advances for houses, other buildings and land

Division 1 Advances for houses to individuals

38 Definition

A reference in this Division to land owned by a person is a reference to land held in fee simple by the person or held by the person under the *Crown Lands Act 1989*.

39 Making of applications

- (1) Any person may make an application to the Corporation under this Division.
- (2) An application must be in a form approved by the Corporation.

40 Corporation may assist in obtaining a house (cf Act No 7, 1912, s 24)

- (1) The Corporation may advance money to a person or on the person's behalf to enable the person to erect a house on land owned by the person.
- (2) The Corporation may erect a house for a person on land owned by the person.
- (3) The Corporation may advance money to a person or on a person's behalf to enable the person to purchase a house.

41 Determination of applications (cf Act No 7, 1912, s 25)

- (1) The Corporation may grant an application under this Division unconditionally or subject to such conditions as it thinks fit, or it may refuse the application.
- (2) However, the Corporation must not grant an application unless the applicant:
 - (a) satisfies the Corporation that the house is for the applicant's use or for the use of a member of the applicant's family, and
 - (b) satisfies such other requirements as to eligibility as may from time to time be determined by the Corporation and approved by the Minister.

- (3) If the application is for the erection of a house by the Corporation on land:
- (a) owned by the applicant, and
 - (b) subject to a mortgage or charge securing money owing by the applicant or in respect of which there is money owing to the Crown,
- the amount required to discharge that mortgage or charge or that debt to the Crown may be added to the amount to be expended by the Corporation in the erection of the house.
- (4) The Corporation may determine from time to time a limit on the amount that may be added to the amount to be expended as referred to in subsection (3) and the amount that may be so added must not exceed that limit.
- (5) The repayment of any amount that is added under subsection (4) to an amount to be expended is to be provided for in the security given by the applicant under section 46.

42 Agreement to be entered into (cf Act No 7, 1912, s 27)

A person who makes an application for the Corporation to take action under section 40 (1) or (2) must, if the application is granted, enter into such agreement as may be required by the Corporation and pay the fee (if any) prescribed by the regulations.

43 Advice to be obtained in relation to purchase of house (cf Act No 7, 1912, s 28)

- (1) Before an application for the Corporation to take action under section 40 (3) is granted, the Corporation must, after taking expert advice, determine the value of the property proposed to be purchased.
- (2) The amount to be advanced by the Corporation must not exceed the value so determined or the purchase price, whichever is less.

44 Where money advanced not applied to proper purpose (cf Act No 7, 1912, s 29)

- (1) If at any time, in the opinion of the Corporation, any money advanced under this Division has not been applied to the purpose for which it was advanced, or has not been carefully and economically expended, the Corporation:

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- (a) may refuse to pay any further instalments of the proposed advance, and
 - (b) may at once call in the whole amount already advanced, together with costs and expenses incurred in connection with the advance.
- (2) Any amount referred to in subsection (1) (b) must immediately be repaid by the person to whom the advance in question was made.

45 Periods for repayment (cf Act No 7, 1912, s 30)

- (1) The regulations may make provision for or with respect to the maximum periods for repayment by instalments of advances and money expended by the Corporation under this Division.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe different periods of time in respect of different buildings having regard to the materials of which they are constructed.

46 Security for advance (cf Act No 7, 1912, s 31)

- (1) A person to whom money is advanced by the Corporation under this Division or in respect of whom money is expended by the Corporation under this Division must give security to the satisfaction of the Corporation.
- (2) If any money advanced or expended under this Division is secured by a mortgage of land, the mortgage must:
 - (a) contain covenants for keeping the mortgaged premises in repair and insured in the name of the Corporation, and
 - (b) be registered in the Land Titles Office.

47 Conditions annexed to land while subject to mortgage (cf Act No 7, 1912, s 33)

The following conditions apply in respect of land subject to any mortgage under this Division:

- (a) the land, and any part of the land, must not be transferred, assigned, or let without the previous consent in writing of the Corporation,

- (b) any transfer, assignment, or letting of the land, or any part of the land, in contravention of this section, is void, and the Corporation may cause the estate of the owner in the land to be sold,
- (c) if the owner of the land becomes bankrupt, the Corporation may cause the owner's estate in the land to be sold.

48 Application for foreclosure (cf Act No 7, 1912, s 34)

- (1) This section applies to land that is not under the provisions of the *Real Property Act 1900*.
- (2) If any amount of principal or interest due in respect of any advance made or money expended by the Corporation under this Division on the security by mortgage of land is unpaid for a period of three months after the due date, the Corporation may make an application to the Registrar-General in writing for an order for foreclosure.
- (3) An application under this section may be made instead of taking proceedings in any court.
- (4) An application under this section must state that:
 - (a) the default has been made in the circumstances referred to in subsection (2), and
 - (b) the land, estate or interest mortgaged has been offered for sale by public auction by a licensed auctioneer, and
 - (c) the amount of the highest bid at the sale was not sufficient to satisfy the amount due, together with the expenses incurred by the Corporation in connection with the sale, and
 - (d) notice in writing of the intention of the Corporation to make the application has been given to the mortgagor or other person entitled to the equity of redemption.
- (5) An application under this section must be accompanied by a certificate of the auctioneer by whom the land was put up for sale or of some person present when the land was put up for sale and such other proof of the matters stated in the application as the Registrar-General requires.
- (6) The statements made in an application under this section must be verified by statutory declaration.

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Part 6	Advances for houses, other buildings and land
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- (7) The Registrar-General may, at the expense of the Corporation, cause notice to be published once in the Gazette and once in each of the three succeeding weeks, in at least one newspaper circulating in the district in which the mortgaged land is situated, offering the land for sale.
- (8) The notice must specify a time (not less than one month from the date of the publication of the notice in the Gazette) on or after which the Registrar-General may issue to the Corporation an order for foreclosure unless in the interval a sufficient amount has been realised by the sale of the land to satisfy the principal and interest due and all the expenses incurred by the taking of action under this section or connected with the sale.
- (9) An order for foreclosure under this section, on registration under the *Conveyancing Act 1919*, has the effect of barring all right and equity of redemption in the land concerned on the part of the mortgagor or of any person claiming through or under the mortgagor.

49 Sale of land on default of mortgagor (cf Act No 7, 1912, s 35)

If land is sold by the Corporation under this Division, the land is freed from any charge in respect of money owed under a mortgage in favour of the Corporation or any restriction imposed by this Act.

50 Building relief to owner of land (cf Act No 7, 1912, s 39A)

The Corporation may, at its discretion, make advances on such securities and at such rates of interest and subject to such covenants, conditions and provisions as it thinks fit to impose for the purpose of enabling any person who owns land to alter, extend, paint, repair, renovate or improve buildings on that land, or to carry out other improvements on that land.

**Division 2 Advances for public buildings and to councils,
societies, associations and clubs for houses and
other buildings**

51 Corporation may assist councils to erect houses (cf Act No 7, 1912, s 39)

The Corporation may, subject to and for the purposes of this Act and subject to the provisions of the *Local Government Act 1993*, assist councils to erect houses by making grants or loans to those councils on such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the Corporation thinks fit.

52 Power to assist building societies by loans (cf Act No 7, 1912, s 38)

The Corporation may, subject to and for the purposes of this Act, assist any building society, whose objects include the erection or provision of houses for its members, by making grants or loans to the society, or subscribing for any share or loan capital of the society, on such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the Corporation thinks fit.

53 Building relief (cf Act No 7, 1912, s 39A)

The Corporation may, at its discretion, make advances on such securities and at such rates of interest and subject to such covenants, conditions and provisions as it thinks fit to impose for the purpose of enabling:

- (a) any building of a public or civic character or any public recreation ground to be constructed, erected, renovated, repaired or extended, or
- (b) any pastoral, agricultural or horticultural association, club, progress association or friendly society to extend, paint, repair or renovate buildings.

Part 7 Rental rebate

54 Application of Part

This Part applies to tenants:

- (a) who are renting public housing, or
- (b) who are renting housing leased in accordance with the *HomeFund Restructuring Act 1993* or that is substituted for housing leased in accordance with that Act, or
- (c) who belong to such class or classes of tenant as may be prescribed by the regulations.

55 Application for rental rebate

A tenant to whom this Part applies may make an application to the Corporation in a form approved by the Corporation for a weekly rebate of rental.

56 Grant of rental rebate

- (1) The Corporation may, after making an investigation under section 58, grant to an applicant a weekly rebate of rental.
- (2) The amount of rebate is to be determined by the Corporation in accordance with guidelines approved by the Minister.

57 Cancellation or variation of rental rebate

- (1) The Corporation may, after conducting an investigation under section 58, vary or cancel any rental rebate granted under this Part.
- (2) The Corporation is to determine the date (being a date occurring before, on or after the making of the determination) on which the variation or cancellation has effect or is taken to have effect.
- (3) The Corporation is to give notice in writing to a tenant of any decision to vary or cancel any rental rebate being received by the tenant and is to include in the notice the date on which the variation or cancellation takes effect or is taken to have effect.
- (4) If the Corporation reduces or cancels a tenant's rental rebate under this Part with effect from a preceding date, the Corporation may, by notice in writing to the tenant, require the tenant to pay to the Corporation:

- (a) an amount equal to any rental rebate or part of a rental rebate received by the tenant on or after the date that the variation or cancellation took effect to which, because of the variation or cancellation, the tenant was not entitled, and
 - (b) interest (at the rate payable on unpaid judgments of the Supreme Court) on any outstanding amount under paragraph (a) from a date specified in the notice, being a date not earlier than the date on which the notice is issued to the tenant.
- (5) Any amount (together with interest) referred to in subsection (4) that is unpaid may be recovered by the Corporation as a debt in any court of competent jurisdiction.

58 Investigation of application

- (1) The Corporation may make an investigation to determine the weekly income of:
 - (a) a person who is an applicant for, or a recipient of, a rental rebate under this Part, and
 - (b) any other resident of the house in which that person resides.
- (2) The Corporation may require a person who is an applicant for, or a recipient of, a rental rebate under this Part to produce such evidence as the Corporation thinks fit of the person's weekly income and of the weekly income of any other resident of the house in which that person resides.

Part 8 Joint ventures, interests in private corporations and trusts

Note. The *Public Authorities (Financial Arrangements) Act 1987* imposes requirements and limitations on authorities covered by that Act with respect to the entry into and maintenance of financial arrangements and joint ventures.

59 Definitions

In this Part:

joint venture has the same meaning as in section 22K of the *Public Authorities (Financial Arrangements) Act 1987*.

private corporation means a corporation within the meaning of the *Corporations Law*, whether formed in or outside New South Wales.

subsidiary corporation means a private corporation in which the Corporation has a controlling interest.

60 Power to enter into joint ventures (cf Act No 7, 1912, ss 16, 16A)

- (1) The Corporation may, with the approval of the Minister, enter into a joint venture with other persons or bodies for any of the following purposes:
 - (a) the acquisition, development, management or disposal of land for residential, business, public or other purposes,
 - (b) the provision of services and products in relation to the provision of housing or to the housing industry,
 - (c) implementing the objects of this Act.
- (2) The Corporation must not enter into a joint venture with a public authority constituted by or under an Act without the concurrence of the Minister administering that Act and the approval of the Treasurer.
- (3) The Treasurer may require the Minister and the Corporation to provide information to enable the Treasurer to determine whether to give an approval under Part 2D of the *Public Authorities (Financial Arrangements) Act 1987* in relation to the joint venture or to grant concurrence under subsection (2).
- (4) The Corporation is to comply with any conditions to which the approval or concurrence of the Treasurer is subject.

- (5) Despite anything in any other Act, any public authority constituted by or under an Act is authorised and has power to enter into a joint venture referred to in this section and may do or suffer anything necessary or convenient for, or incidental to, carrying out the joint venture.

Note. Part 2D of the *Public Authorities (Financial Arrangements) Act 1987* requires an authority, before entering into an arrangement to carry on a joint venture, to obtain the Treasurer's approval to the arrangement.

61 Powers in relation to formation of and interests in corporations

- (1) The Corporation, with the approval of the Minister and for the purpose of furthering the objects of this Act:
- (a) may form, or participate in the formation of, private corporations, and
 - (b) may acquire interests in private corporations, and
 - (c) may sell or otherwise dispose of interests in private corporations.
- (2) The Minister must not give such an approval except with the concurrence of the Treasurer.
- (3) The concurrence of the Treasurer may be given unconditionally or subject to conditions.
- (4) The regulations may make provision for or with respect to requirements to be met before the concurrence of the Treasurer is given. Such a regulation may be made only on the recommendation of the Treasurer.
- (5) The Treasurer may require the Minister and the Corporation to provide information to enable the Treasurer to determine whether to give concurrence under this section.
- (6) The Corporation is to comply with any conditions to which the concurrence of the Treasurer is subject and is to ensure that any subsidiary corporation to which the concurrence relates complies with any such condition.
- (7) A subsidiary corporation is not, and does not represent, the Crown.
- (8) Schedule 2 has effect.

Section 62 Housing Act 2001 No 52

Part 8 Joint ventures, interests in private corporations and trusts

62 Formation of trusts

The Corporation may, but only with the approval of the Minister and the Treasurer, form or join in forming a trust for any of the purposes referred to in section 60 (1).

Part 9 Finance

63 Housing Account (cf Act No 163, 1985, s 8)

- (1) There is to be established a Housing Account in the Special Deposits Account.
- (2) The Housing Account is to consist of:
 - (a) all money advanced to the Department or the Corporation by the Treasurer or appropriated by Parliament for the purposes of the Department or the Corporation, and
 - (b) all money received in respect of land sold or leased by the Corporation under this Act, and
 - (c) all money directed or authorised to be paid into the Housing Account by or under this or any other Act, and
 - (d) all money received by the Department or the Corporation from any other source (other than money required to be paid into the Housing Reserve Fund).
- (3) The Housing Account is to be applied for the purpose of enabling the Department and the Corporation to exercise their functions.
- (4) All expenditure incurred by the Department, including salaries, is to be met from the Housing Account.
- (5) The Corporation is to keep a separate account within the Housing Account in respect of the following:
 - (a) money transferred to the Corporation by the operation of Schedule 3 that was, immediately before the transfer, held by the Home Purchase Assistance Authority and provided to the Authority under a Commonwealth State agreement to be used for the purposes of mortgage assistance,
 - (b) all money made available to the Corporation under section 64.

64 Money advanced by Commonwealth (cf Act No 163, 1985, s 9)

- (1) Except as otherwise determined by the Treasurer of the State, any money received by the State from the Treasurer of the Commonwealth in pursuance of any enactment of the Commonwealth passed either before or after the commencement of this Act under which money is granted to the States to be applied by the States for purposes

contemplated by this Act, is to be paid by the Treasurer of the State to a special account in the Treasury.

- (2) From a special account referred to in subsection (1) the Treasurer of the State, on the recommendation of the Minister, is from time to time to make available to the Corporation money to meet expenditure incurred or to be incurred in carrying out the purposes for which the money was granted by the Commonwealth.
- (3) This section does not apply in respect of any money received by the State that is to be applied for the purposes of the *Aboriginal Housing Act 1998*.

65 Proceeds of sale of certain land to be paid to Consolidated Fund (cf Act No 163, 1985, s 10)

The net proceeds of the sale of any land vested in the Corporation and of a class or description for the time being determined by the Treasurer, with the concurrence of the Minister, is to be paid from the Housing Account to the Consolidated Fund in accordance with arrangements determined from time to time by the Treasurer.

66 Establishment of Housing Reserve Fund (cf Act No 15, 1993, s 13A)

- (1) The Corporation is to establish a Housing Reserve Fund.
- (2) The following amounts must be paid into the Housing Reserve Fund:
 - (a) contributions to the Home Purchase Assistance Fund,
 - (b) money that is appropriated by Parliament for the purposes of the Fund,
 - (c) money that is authorised or required, by or under this or any other Act or law, to be paid into the Fund,
 - (d) interest and any other amounts from time to time accruing from the investment of the Fund.
- (3) Money may be paid out of the Housing Reserve Fund only for any of the following purposes:
 - (a) contributing to the funding of any mortgage and rent relief program conducted by the State in accordance with any relevant Commonwealth State agreement,

- (b) contributing to the funding of rental housing and home purchase assistance programs in accordance with the State's obligations to provide matching funds under any relevant Commonwealth State agreement,
- (c) contributing to the funding of any other housing program conducted or approved by the Minister, including any program for the restructuring of a HomeFund scheme.

67 Financial year

- (1) The financial year of the Corporation is the same as that of the Department.
- (2) Nothing in this Part affects the operation of the *Public Finance and Audit Act 1983*.

Part 10 Miscellaneous

68 Investigation (cf Act No 7, 1912, s 40F)

- (1) The Corporation may, and whenever required by the Minister must, conduct investigations as to the methods that should be adopted to ensure the provision in the State of adequate housing accommodation on reasonable terms or at reasonable rentals.
- (2) The Corporation must furnish the Minister with a report setting out the results of any investigation made under this section.

69 False statements and representations

- (1) A person must not wilfully make any false statement or representation:
 - (a) to obtain or claim from the Corporation accommodation or a rental rebate, or any other advantage or concession, or
 - (b) to deceive any officer or employee of the Corporation in relation to obtaining accommodation or a rental rebate, or any other advantage or concession from the Corporation, or
 - (c) to affect the rate or amount of any rental rebate from the Corporation.

Maximum penalty: 20 penalty units.

- (2) A person must not by means of personation or any other fraudulent device obtain or claim from the Corporation accommodation or any rental rebate or any other advantage or concession.

Maximum penalty: 20 penalty units.

- (3) A person:
 - (a) who causes the commission of an offence against this section, or
 - (b) by whose order or direction such an offence is committed, or
 - (c) who aids, abets, counsels or procures or by act or omission is directly or indirectly concerned in the commission of such an offence,

is guilty in the same degree and liable to the same penalty as the principal offender.

70 Misuse of information (cf Act No 163, 1985, s 13)

- (1) If, through his or her association with the Department or the Corporation, a person has knowledge of specific information relating to proposals made, or to be made, under or for the purposes of this Act in respect of the acquisition, use, development or disposal of land and that information is not generally known but, if generally known, might reasonably be expected to affect materially the market price of that land, that person contravenes this subsection if that person:
- (a) deals, directly or indirectly, in that or in any other land for the purpose of gaining a personal advantage by the use of that information, or
 - (b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in that or in any other land.

Maximum penalty: 20 penalty units.

- (2) If, through his or her association with the Department or the Corporation, a person is in a position to influence proposals made, or to be made, under or for the purposes of this Act in respect of the acquisition, use, development or disposal of land and does influence the proposals by securing the inclusion or alteration of any matter in, or the exclusion or omission of any matter from, the proposals, that person contravenes this subsection if that person:
- (a) does so for the purpose of gaining a personal advantage, or
 - (b) does so for the purpose of enabling another person to gain an advantage.

Maximum penalty: 20 penalty units.

- (3) If:
- (a) a contravention of subsection (1) occurs and an advantage, referred to in that subsection, is gained from any dealing in land to which the contravention relates, or
 - (b) a contravention of subsection (2) occurs and an advantage, referred to in that subsection, is gained from any dealing in land which would not have been gained if the proposals concerned had not been influenced,

any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of an offence in respect of a contravention of subsection (1) or (2), liable to another person for the amount of any loss incurred by that other person by reason of the gaining of that advantage.

- (4) If a loss referred to in subsection (3) is incurred by reason of an advantage gained from a dealing in land, the amount of the loss is the difference between the price at which the dealing was effected and:
- (a) in the case of any dealing to which subsection (1) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the specific information used to gain that advantage had been generally known at that time, or
 - (b) in any case to which subsection (2) relates, the price that, in the opinion of the court before which it is sought to recover the amount of the loss, would have been the market price of the land at the time of the dealing if the proposals concerned had not been influenced.
- (5) An action to recover a loss, referred to in subsection (3), may not be brought more than 5 years after the dealing in land in relation to which the loss was incurred.
- (6) For the purposes of this section, a person is associated with the Department or the Corporation:
- (a) if the person is an officer of the Department or the Corporation, or
 - (b) if the person is an officer or employee of the Department of Urban Affairs and Planning or a person who is a member of a committee or subcommittee established by or under the *Environmental Planning and Assessment Act 1979*, or
 - (c) if the person is a councillor or an employee of a council, or
 - (d) if the person acts or has acted as banker, solicitor, auditor or professional adviser or in any other capacity for the Department, the Corporation, the Minister, the Department of Urban Affairs and Planning or a council, or
 - (e) if the person is a director, manager or secretary of a body corporate associated by virtue of paragraph (d).

71 Disclosure of information (cf Act No 163, 1985, s 14)

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Corporation) unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act (or any such other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

72 Service of documents

- (1) A document may be served on the Corporation by leaving it at, or by sending it by post to:
 - (a) the office of the Corporation, or
 - (b) if it has more than one office, any one of its offices.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in a manner not provided for by subsection (1).

73 Recovery of amounts due to Corporation

Any charge, fee or other money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

74 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be disposed of summarily before a Local Court.

75 Regulations

- (1) 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.
- (2) In particular, the regulations may make provision for or with respect to fees in connection with any application under this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 25 penalty units.

76 Repeals

- (1) The *Housing Act 1912* is repealed.
- (2) The *Housing Act 1976* is repealed.
- (3) The *Housing Act 1985* is repealed.
- (4) The *Home Purchase Assistance Authority Act 1993* is repealed.

77 Amendment of other Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

78 Savings, transitional and other provisions

Schedule 3 has effect.

79 Review of Act

- (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 from the date of assent to this Act.
- (3) A report on 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 Amendment of other Acts

(Section 77)

1.1 Aboriginal Housing Act 1998 No 47

Section 4 Definitions

Omit “*Housing Act 1985*” from the definition of *Land and Housing Corporation*.

Insert instead “*Housing Act 2001*”.

1.2 Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11

[1] Section 59 Treasurer’s indemnity for loans by co-operative housing society

Omit “Home Purchase Assistance Authority” from section 59 (1).

Insert instead “New South Wales Land and Housing Corporation”.

[2] Section 60 Treasurer’s guarantee for co-operative housing society loans

Omit “Home Purchase Assistance Authority” from section 60 (1).

Insert instead “New South Wales Land and Housing Corporation”.

[3] Section 191 The Standards Committee

Omit section 191 (1) (b). Insert instead:

- (b) the Director-General of the Department of Housing or his or her nominee (being a member of staff of the Department of Housing or the New South Wales Land and Housing Corporation),

1.3 Defamation Act 1974 No 18

Section 17P Matters relating to the HomeFund Advisory Panel

Omit the section.

1.4 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit “Home Purchase Assistance Authority” from Part 1 of Schedule 1.

1.5 HomeFund Commissioner Act 1993 No 9

Section 9 Delegation of functions

Omit section 9 (3) (b).

1.6 HomeFund Restructuring Act 1993 No 112

[1] Section 3 Definitions

Insert “(as in force before its repeal)” after “1993” in the definition of *Home Purchase Assistance Authority* in section 3 (1).

[2] Section 3 (1)

Omit the definition of *HomeFund Advisory Panel* .

[3] Section 3 (1)

Insert in alphabetical order:

New South Wales Land and Housing Corporation means the New South Wales Land and Housing Corporation constituted under the *Housing Act 2001*.

[4] Section 6 Restructuring scheme

Omit “section 13A (3) (e) of the *Home Purchase Assistance Authority Act 1993*”.

Insert instead “section 66 (3) (c) of the *Housing Act 2001*”.

[5] Section 7 Variation of the restructuring scheme

Omit “Home Purchase Assistance Authority”.

Insert instead “New South Wales Land and Housing Corporation”.

[6] Section 9 Administration of restructuring scheme

Omit “Home Purchase Assistance Authority” from section 9 (1).

Insert instead “New South Wales Land and Housing Corporation”.

[7] Section 9 (2)

Omit “Home Purchase Assistance Authority” from section 9 (2) where firstly occurring.

Insert instead “New South Wales Land and Housing Corporation”.

[8] Section 9 (2)

Omit “*Home Purchase Assistance Authority Act 1993*, including its functions under section 13 (2)”.

Insert instead “*Housing Act 2001*, including its functions under section 9 (2)”.

[9] Section 10 Appeal against categorisation of borrower

Omit the section.

[10] Section 11 Decision on appeal

Omit the section.

[11] Section 12 Procedures for appeals

Omit the section.

[12] Section 13 Conferral of functions on HomeFund Advisory Panel

Omit the section.

[13] Section 21 Report

Omit “Home Purchase Assistance Authority”.

Insert instead “New South Wales Land and Housing Corporation”.

[14] Schedule 4 Savings and transitional provisions

Omit clause 4.

1.7 Landlord and Tenant (Rental Bonds) Act 1977 No 44

Section 20 Rental Bond Interest Account

Omit section 20 (2E).

1.8 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Home Purchase Assistance Authority”.

1.9 Public Sector Management Act 1988 No 33

Schedule 3B Senior executive positions

Omit from Part 1 under the heading **Department of Housing:**

Director, Operations, Home Purchase Assistance Authority

Executive Director, Home Purchase Assistance Authority

Insert instead:

Executive Director, Home Purchase Assistance Division

Director Operations, Home Purchase Assistance Division

1.10 Residential Tenancies Act 1987 No 26

Section 3 Definitions

Omit “Urban Affairs and Planning” from paragraph (c) of the definition of *social housing provider* in section 3 (1).

Insert instead “Housing”.

1.11 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit “Home Purchase Assistance Authority” from Part 1 of Schedule 1.

1.12 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit “Home Purchase Assistance Authority” from Part 1 of Schedule 1.

1.13 Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit “Home Purchase Assistance Authority” from Part 1 of Schedule 3.

1.14 Teacher Housing Authority Act 1975 No 27

Section 4 Definitions

Omit “*Housing Act 1941*” from the definition of *Minister for Housing*.

Insert instead “*Housing Act 2001*”.

Schedule 2 Superannuation provisions

(Section 61 (8))

1 Persons to whom Schedule applies

This Schedule applies to a person who:

- (a) is employed by a private corporation in which the Corporation has acquired an interest under section 61, and
- (b) immediately before being so employed was an employee of the Department or the Corporation, and
- (c) was, at any time while being employed by the Department or Corporation, a member of or contributor to an FTC scheme or STC scheme.

2 Interpretation

- (1) In this Schedule:
LGSS means the local government superannuation scheme.
- (2) Expressions used in this Schedule have the same meaning as in the *Superannuation Administration Act 1996*.

3 Transfer of employees to another superannuation scheme

- (1) The Treasurer may by order in writing transfer a person to whom this Schedule applies from an FTC scheme or an STC scheme to:
 - (a) the LGSS, or
 - (b) another superannuation scheme (whether or not established under an Act) that is designated by the Treasurer for the purposes of this clause by order in writing.
- (2) The superannuation scheme to which a person is transferred under this clause is referred to in this Schedule as *the new scheme* and the person is referred to in this Schedule as a *transferred person*.
- (3) The Treasurer is not to make such an order in respect of a person unless the person has, no later than 3 months after the date on which the person ceased to be employed by the Corporation, elected, by notice in writing given to the Trustee, to transfer to the new scheme.

- (4) The Treasurer, FTC and STC are to take all necessary steps generally to facilitate the superannuation coverage of transferred persons by the new scheme.
- (5) For that purpose, the Treasurer may enter into arrangements with the trustee of the new scheme, including arrangements for the amendment of any relevant trust deed.
- (6) Section 127 of the *Superannuation Administration Act 1996* does not limit or otherwise affect the operation of this clause and in particular does not prevent the transfer to the LGSS of transferred persons or the superannuation coverage of transferred persons by the LGSS.

4 Regulations

- (1) Regulations may be made for or with respect to the transfer of a person to whom this Schedule applies from an FTC scheme or an STC scheme to the new scheme in accordance with a direction of the Treasurer under this Schedule.
- (2) In particular, regulations may be made for or with respect to the following:
 - (a) the transfer of assets and liabilities of an FTC scheme or an STC scheme, in respect of a transferred person, to the new scheme,
 - (b) the transfer of assets and liabilities within an FTC scheme or STC scheme, or between any such schemes, from any reserve in respect of the employer or former employer of a transferred person to the Crown's reserve,
 - (c) the preservation or deferral of benefits of transferred persons,
 - (d) the entitlements, rights and obligations under the new scheme of a transferred person,
 - (e) providing for the resolution, by a prescribed authority or person, of all or any prescribed class of disputes concerning the entitlements, rights and obligations of a transferred person under the new scheme.
- (3) A regulation made under this Schedule has effect despite any provision of an Act under which an FTC scheme or an STC scheme is constituted.

5 Mobility between new scheme and public sector schemes

For the purposes of section 128A of the *Superannuation Administration Act 1996*, a transferred person is taken to be an employee referred to in section 128A (3) (a).

Schedule 3 Savings, transitional and other provisions

(Section 78)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date 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 or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part, *former Housing Act* means the *Housing Act 1912*, the *Housing Act 1976* or the *Housing Act 1985*.

3 New South Wales Land and Housing Corporation

The Corporation is a continuation of and the same legal entity as the New South Wales Land and Housing Corporation constituted by the *Housing Act 1985*.

4 Department of Housing

The Department of Housing established under the *Housing Act 1985* is taken to have been established by order under the *Public Sector Management Act 1988*.

5 Contracts, documents and agreements under former Housing Acts

- (1) Any contract executed under any provision of a former Housing Act is taken to have been executed under the corresponding provision of this Act.
- (2) Any approval, warrant or delegation executed under any provision of a former Housing Act and in force immediately before the commencement of this clause is taken to have been given or made under the corresponding provision of this Act.
- (3) The repeal of section 16 (5) of the *Housing Act 1912* does not affect any guarantee given under that subsection before its repeal.
- (4) The repeal of section 16 (6) of the *Housing Act 1912* does not affect any advance or other financial accommodation provided under that subsection before its repeal.

6 Dissolution of Home Purchase Assistance Authority and HomeFund Advisory Panel

- (1) The Home Purchase Assistance Authority constituted under the *Home Purchase Assistance Authority Act 1993* is dissolved.
- (2) The Board of the Home Purchase Assistance Authority is dissolved.
- (3) The HomeFund Advisory Panel appointed under section 17B of the *Home Purchase Assistance Authority Act 1993* is dissolved.
- (4) A person holding office as a member of the Board of the Home Purchase Assistance Authority or the HomeFund Advisory Panel immediately before the commencement of this clause ceases to hold office on that commencement and is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.
- (5) Section 18 of the *Home Purchase Assistance Authority Act 1993* (Personal liability of members and others) continues to have effect despite the repeal of that Act.

7 Transfer of assets, rights and liabilities of Home Purchase Assistance Authority

- (1) On the dissolution of the Home Purchase Assistance Authority, the assets, rights and liabilities of the Authority are transferred to the Corporation.
- (2) On the transfer, the following provisions have effect:
 - (a) the assets of the Home Purchase Assistance Authority vest in the Corporation by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of the Home Purchase Assistance Authority become by virtue of this clause the rights and liabilities of the Corporation,
 - (c) all proceedings by or on behalf of, or against, the Home Purchase Assistance Authority pending immediately before the transfer are taken to be proceedings pending by or against the Corporation,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the Home Purchase Assistance Authority is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Corporation,
 - (e) a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the Home Purchase Assistance Authority is, subject to the regulations under clause 1, to be read as, or as including, a reference to the Corporation.
- (3) The operation of this clause 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, or

- (d) as an event of default under any contract or other instrument.

8 Duty

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights or liabilities under clause 7, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

9 Housing Reserve Fund

The Housing Reserve Fund established under section 13A of the *Home Purchase Assistance Authority Act 1993* before the repeal of that section is taken to have been established under section 66 of this Act.

10 References to former bodies and Acts

- (1) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires or the regulations otherwise provide:
 - (a) a reference to the New South Wales Land and Housing Corporation constituted by the *Housing Act 1985* is to be read as a reference to the Corporation constituted by this Act, and
 - (b) a reference to a former Housing Act is to be read as a reference to this Act.
- (2) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires or the regulations otherwise provide, a reference to the Home Purchase Assistance Authority constituted by the *Home Purchase Assistance Authority Act 1993* is to be read as a reference to the Corporation.
- (3) In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires or the regulations otherwise provide:
 - (a) a reference to the Land and Housing Corporation is to be read as a reference to the New South Wales Land and Housing Corporation constituted by this Act, and

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- (b) a reference to the Housing Commission of New South Wales or the Land Commission of New South Wales or a member of either Commission is to be read as a reference to the Corporation, and
- (c) a reference to an officer of either Commission is to be read as:
- (i) subject to subparagraph (ii) a reference to the person holding the office or position (if any) in the staff establishment of the Department or Corporation that corresponds to the office or position held by that officer, or
 - (ii) a reference to the person holding such office or position in the staff establishment of the Department or Corporation as may be determined by the Director-General from time to time in writing.
- (4) Except in so far as the context or subject-matter otherwise indicates or requires or the regulations otherwise provide, a reference in any other Act, in any instrument made under any Act or in any document of any kind, being a reference, or a reference to be construed as a reference, to:
- (a) The Housing Commission of New South Wales, or
 - (b) the corporation constituted by section 3 of the *Housing Act 1912* as in force immediately before 20 February 1983, or
 - (c) the Homes for Unemployed Trust, or
 - (d) The Housing Improvement Board of New South Wales,
- is taken to be a reference to the Corporation.
- (5) Except in so far as the context or subject-matter otherwise indicates or requires or the regulations otherwise provide, a reference in any other Act, in any instrument made under any Act or in any document of any kind, being a reference, or a reference to be construed as a reference, to the *Housing of the Unemployed Act 1934*, the *Housing Improvement Act 1936* or the *Housing Act 1941*, is taken to be a reference to this Act.

[Minister's second reading speech made in—
Legislative Assembly on 22 June 2001
Legislative Council on 4 July 2001]

BY AUTHORITY