

# Housing Act 2001 No 52

[2001-52]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Business Names \(Commonwealth Powers\) Act 2011 No 44](#) (not commenced — to commence on 28.5.2012)

### Authorisation

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# Housing Act 2001 No 52



New South Wales

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.

## 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.

**community housing** means housing (other than public housing) for people on a very low, low or moderate income or people with additional needs.

**Note—**

Section 75 (2) (c) permits the regulations to prescribe what is meant by a very low, low or moderate income for the purposes of this Act.

**community housing agreement** means an agreement between the Corporation and a registered community housing provider made in accordance with this Act.

**community housing provider** means a body corporate that provides community housing.



**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 Human Services.

**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.

**registered community housing** means community housing that is provided by a registered community housing provider.

**registered community housing provider** means a community housing provider that is registered under Part 9A.

**Registrar** means the Registrar of Community Housing appointed under Division 1 of Part 9A.

#### **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 and community 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 ensure that the public housing system focuses on housing people who are most in need,
- (f1) to ensure that the available supply of public housing is shared equitably among people who are most in need,
- (g) to promote equity between levels of assistance provided to people living in public housing, community 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 ensure that registered community housing is developed as a viable and

diversified component of the New South Wales social housing sector,

- (k) to support the provision of registered community housing for people on a very low, low or moderate income,
  - (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.

## **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) (Repealed)
- (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.
- (3) The Corporation cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service to enable the Corporation to exercise its functions.

### **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.
  - residential development** includes the expansion, establishment and re-development of residential areas.
- (2) The Corporation has the following functions:
  - (a) to acquire land for present or future residential 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 residential development and for public purposes.

(c), (d) (Repealed)

(3) (Repealed)

**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) (Repealed)

(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 (Repealed)**

## **15 Delegations**

- (1) The Corporation may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (1A) A delegate of the Corporation may sub-delegate to a person any function delegated by the Corporation if the delegate is authorised to do so by the Corporation.
- (2) The Director-General may delegate to an officer of the Department, or to 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.
- (2A) A delegate of the Director-General may sub-delegate to an officer of the Department any function delegated by the Director-General if the delegate is authorised to do so by the Director-General.
- (3) The Registrar may delegate to an officer of the Department, or to the Corporation, the exercise of any of the Registrar's functions under this Act (including any function delegated to the Registrar 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.
- (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.
- (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))

- (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](#).
- (2) Without limiting subsection (1), land may be acquired by the Corporation under subsection (1) for the purposes of the Crown Lands Homesites Program or any other policy or program of the Government relating to residential development (within the meaning of section 8). Any land so acquired may be transferred to any person or body responsible for administering the relevant program or policy.

**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
- (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,
  - (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.

## **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:
  - (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.
- (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 prescribed under section 101 of the *Civil Procedure Act 2005* in respect of unpaid judgments) 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 7A Housing of registrable persons**

### **58A Definitions**

In this Part:

**registrable person** has the meaning that it has in the *Child Protection (Offenders Registration) Act 2000*, and includes a corresponding registrable person within the meaning of that Act.

**termination** of a lease includes the termination of any right of a tenant to hold over (however arising) after the expiry of the period of the lease.

### **58B Termination of lease of registrable person in certain circumstances**

- (1) The Director-General may, on the recommendation of the Commissioner of Police, by written order terminate the lease of a tenant who is renting public housing and who is a registrable person.
- (2) The Commissioner of Police may make a recommendation under this section only if the Commissioner considers that the presence of the tenant at the public housing



places any neighbours in the locality or the tenant at risk of being physically harmed or injured.

- (3) On termination of the lease, the tenant must vacate the public housing the subject of the lease.
- (4) An order of the Director-General under this section terminating a lease operates:
  - (a) to give the New South Wales Land and Housing Corporation an immediate right to exclusive possession of the premises concerned, and
  - (b) to authorise any police officer, using such force as is reasonably necessary, to enter the premises concerned and take such steps as are reasonably necessary in order to give the Corporation possession of the premises.
- (5) This section extends to a lease entered into before the commencement of this Part.

#### **58C Provision of alternative housing**

- (1) On termination of a lease under this Part, the Director-General must ensure alternative housing (whether or not public housing) is made available to the tenant.
- (2) The Director-General is required to ensure that alternative housing continues to be made available to the registrable person for so long as the person would have been a tenant under the terminated lease (subject to compliance by the registrable person with the terms and conditions under which the alternative housing is provided).

#### **58D No compensation payable**

- (1) No act or omission of a person in good faith in purported administration or execution of this Part gives rise to any civil liability against:
  - (a) the person, or
  - (b) the State or an authority of the State.
- (2) However, the Director-General must ensure that the tenant is repaid any rent, fee or charges for occupying the public housing referable to a period after termination of the lease under this Part.

#### **58E Certain termination provisions do not apply to termination under this Part**

Parts 5–7 of the [Residential Tenancies Act 2010](#) do not apply to or in respect of the termination of a lease under this Part.

#### **58F Protection of exercise of functions of Director-General and Commissioner of Police under this Part**

- (1) This section applies to a function (a **protected function**) conferred or imposed on the Director-General or the Commissioner of Police, including a delegate of the

Director-General or Commissioner of Police, (a **protected person**) by or under this Part.

- (2) The exercise by any protected person of any protected function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a protected person, with the provisions of this Act or the rules of natural justice (procedural fairness).
- (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the protected person, with those provisions or with those rules so far as they apply to the exercise of any protected function.
- (5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).
- (6) In this section:

**exercise** of functions includes:

  - (a) the purported exercise of functions, and
  - (b) the non-exercise or improper exercise of functions, and
  - (c) the proposed, apprehended or threatened exercise of functions.

**proceedings** includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the [Supreme Court Act 1970](#),

but does not include any investigation or proceedings under the [Independent Commission Against Corruption Act 1988](#).

## **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.

## **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 9A Community housing**

**Division 1A Interpretation**

**67AA Definitions**

In this Part:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) that creates, modifies or

extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**land** includes:

- (a) a legal or equitable estate or interest in the land, or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent and whether personal or assignable).

**new owner**, in relation to land vested by an order under this Part, means the community housing provider in which the land is vested by the order.

**notice of intent to cancel registration** means a notice issued under section 67F (3).

**notice of non-compliance** means a notice issued under section 67F (2).

**officer** of a registered community housing provider has the same meaning as the term **officer** of a corporation has in the [Corporations Act 2001](#) of the Commonwealth.

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent and whether personal or assignable).

**vesting date**, in relation to land vested in a community housing provider by an order under this Part, means the date on which the vesting takes effect.

## **Division 1 Registrar of Community Housing**

### **67A Appointment of Registrar of Community Housing**

- (1) The Minister may appoint a person as the Registrar of Community Housing.
- (2) The Registrar is, in the exercise of functions under this Act, subject to the control and direction of the Minister.
- (3) The employment of the Registrar is subject to Part 3.1 of the [Public Sector Employment and Management Act 2002](#), but is not subject to Chapter 1A or 2 of that Act.

### **67B Registrar's functions**

The Registrar's functions are as follows:

- (a) to maintain a register of community housing providers,
- (b) to assess the suitability of organisations to be registered as community housing providers,

- (c) to investigate complaints and other matters in respect of registered community housing providers,
- (d) to provide information to persons in relation to community housing,
- (e) to provide advice to the Minister in relation to community housing and any other matter under this Part,
- (f) to advise on the matters to be included in a regulatory code for registered community housing providers,
- (g) any other function conferred or imposed on the Registrar by or under this or any other Act.

## **Division 2 Registration of community housing providers**

### **67C Register**

- (1) The Registrar is to keep a register of community housing providers.
- (2) The register is to be kept in the form determined by the Registrar and is, subject to the regulations, to contain such information with respect to community housing providers as may be determined by the Registrar.
- (2A) Without limiting subsection (2), the Registrar is to include in the register a copy of each notice of intent to cancel registration issued to a registered community housing provider.
- (3) The register must be available for inspection free of charge by any person:
  - (a) in person at the head office of the Department at all reasonable times, and
  - (b) by such other means (such as Internet access) and at such other times as the Registrar determines.
- (4) The Registrar may carry out searches of the register on a person's behalf and may charge a fee for the search, not exceeding the amount (if any) prescribed by the regulations.

### **67D Applications for registration**

- (1) The Registrar may, on the application of a body corporate that is a community housing provider, register the body corporate if the Registrar is satisfied that the application demonstrates the body corporate's commitment to providing community housing consistently with this Act and the regulations.
- (2) An application must be made in a form approved by the Registrar and be accompanied by the relevant fee, if any, prescribed by the regulations.



- (3) The Registrar may register a body corporate in a particular class on the register and may register it indefinitely or for a specified period.
- (4) The Registrar is, on determining an application under this section, to give written notice to an applicant of that determination setting out the class of registration (if any), the date on which the registration will be cancelled (if the registration is for a specified period) and the reasons for the Registrar's determination.

#### **67E Conditions of registration**

- (1) It is a condition of registration that the registered community housing provider:
  - (a) must, at the times and in a manner approved by the Registrar, provide information that satisfies the Registrar that the provider is exercising its functions in compliance with this Act and the regulations, and
  - (b) must, within a reasonable time after receiving a written request for information from the Registrar in relation to the affairs of the provider, provide the Registrar with the information requested and provide, in a form that satisfies the Registrar, a copy of any record specified in the request, and
  - (c) must allow the Registrar to carry out inspections at any reasonable time of the provider's premises or records.
- (2) Registration is also subject to any condition that may be prescribed by the regulations.
- (3) Subsection (1) does not authorise:
  - (a) a community housing provider to provide information to the Registrar that identifies an individual who is an occupier of residential premises, or
  - (b) the Registrar to enter residential premises occupied by an individual, other than with the consent of the individual.

#### **67F Compliance with Act and regulations**

- (1) The Registrar may take action under this section if the Registrar reasonably believes that a registered community housing provider is not complying with this Act or the regulations.
- (2) The Registrar may issue to a registered community housing provider a notice in writing (a **notice of non-compliance**) identifying the matters required to be addressed in order to avoid cancellation of the provider's registration and specifying a period of at least 30 days in which those matters are to be addressed.
- (3) The Registrar may issue a **notice of intent to cancel registration** to a registered community housing provider if the Registrar is of the opinion that:

- (a) the provider has not addressed the matters identified in a notice of non-compliance issued to the provider within the period specified in the notice of non-compliance, or
  - (b) the provider's failure to comply with this Act or the regulations is serious and requires urgent action.
- (4) A notice of intent to cancel registration is a notice in writing that identifies the matters that the Registrar considers warrant cancellation of the provider's registration and states:
- (a) that the provider's registration will be cancelled unless, within the period specified in the notice (being a period of at least 14 days), the provider satisfies the Registrar that its registration should not be cancelled, or
  - (b) that the provider's registration will be cancelled unless:
    - (i) within the period specified in the notice (being a period of at least 14 days), the provider appoints in accordance with section 67FA a person with qualifications of a kind specified in the notice as a special adviser to assist the provider to address those matters, and
    - (ii) within such further period specified in the notice, the provider reports to the Registrar on those matters and satisfies the Registrar that its registration should not be cancelled.
- (5) Any period specified in a notice under this section may be extended in writing by the Registrar at the request of the community housing provider concerned if the Registrar is satisfied that there are good reasons for extending the period.

**67FA Appointment of special adviser**

- (1) A special adviser is a person appointed by a registered community housing provider for the purposes of a notice of intent to cancel registration issued to the provider.
- (2) A special adviser is to be appointed to assist the provider in complying with this Act and the regulations and, in particular, to assist the provider in addressing the matters identified in the notice of intent to cancel registration.
- (3) A special adviser is to be a person who is independent of the community housing provider.
- (4) The costs relating to the appointment of a special adviser and payable to a special adviser are payable by the community housing provider.
- (5) The community housing provider is to give the special adviser access to any accounts, records or other documents that the special adviser considers necessary to inspect in order to carry out his or her functions as special adviser.

### **67G Cancellation of registration**

- (1) The Registrar must cancel the registration of a body corporate as a registered community housing provider if the Registrar is satisfied of any one or more of the following:
  - (a) that the body corporate has made an application for its registration to be cancelled,
  - (b) that the body corporate has been wound up or has otherwise ceased to exist,
  - (c) that the body corporate's registration was for a specified period and that period has expired,
  - (d) that a notice of intent to cancel registration has been issued to the body corporate under section 67F and the body corporate has failed, within the period specified in the notice, to satisfy the Registrar that its registration should not be cancelled or to appoint a special adviser as referred to in section 67F (4) (b).
- (2) The Registrar is, on determining to cancel a registration under this section, to give written notice to the body corporate of that determination setting out the date on which the registration is cancelled and the reasons for the Registrar's determination.
- (3) The registration of a body corporate is cancelled on the date specified in the notice under subsection (2), not being a date prior to the giving of the notice.
- (4) No compensation is payable to any person or body in connection with the cancellation of a registration under this section.

### **67GA Information to be provided to Corporation by Registrar**

The Registrar is to give the Corporation a copy of the following:

- (a) each notice of intent to cancel registration,
- (b) each extension granted by the Registrar under section 67F (5),
- (c) each notice of cancellation of registration given by the Registrar under section 67G (2).

### **67H Review of certain decisions by Administrative Decisions Tribunal**

- (1) A body corporate may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Registrar:
  - (a) a decision to refuse to register the body corporate as a registered community housing provider,
  - (b) a decision to cancel the registration of the body corporate as a registered community housing provider.

- (2) A decision of the Registrar made under this Division, other than a decision referred to in subsection (1), is final and not subject to appeal or review.

### **Division 3 Giving assistance to registered community housing providers**

#### **67HA Circumstances in which Corporation is considered to have interest in certain land**

For the purposes of this Part, the Corporation is taken to have an interest in land of a community housing provider in the following circumstances:

- (a) if the land is vested in, or transferred to, the community housing provider by an order under this Part or in accordance with an instruction given under this Part,
- (b) if the land is acquired by the community housing provider wholly or partly with funding provided by the Corporation,
- (c) if the Corporation constructs housing or makes other improvements on the land,
- (d) if a community housing agreement with the community housing provider identifies the land as being land in which the Corporation has an interest.

#### **67I Corporation may give assistance**

- (1) The Corporation may, if it is consistent with the objects of this Act and if it considers it prudent to do so, give assistance to a registered community housing provider under a community housing agreement.
- (2) Assistance may include, but is not limited to, either or both of the following:
  - (a) providing funding, land or other property to a community housing provider,
  - (b) entering into a partnership with a community housing provider.
- (3) Assistance is not to be given to a community housing provider unless the community housing provider is registered and, as far as reasonably practicable, the Corporation is to withdraw assistance from a community housing provider that ceases to be registered.
- (4) The Corporation is to ensure that the giving of any assistance under this section is consistent with the *Public Authorities (Financial Arrangements) Act 1987* and any relevant guidelines of the Director-General.

#### **67J Community housing agreements**

- (1A) The Corporation may enter into a community housing agreement with a registered community housing provider:
  - (a) for the purposes of providing assistance under section 67I, or

(b) with respect to land that has been vested in or transferred to the community housing provider by order under this Part or in accordance with an instruction given under this Part.

(1) A community housing agreement:

(a) may be in a standard form approved by the Director-General, and

(b) is to contain such terms and conditions as may be prescribed by the regulations, and

(c) may contain such terms and conditions as the Corporation considers appropriate (whether or not the standard form of agreement is used).

(2) Without limiting subsection (1), a community housing agreement may include provisions with respect to:

(a) requiring the registered community housing provider concerned to meet specified standards and targets in relation to the community housing services and programs provided by that community housing provider, and

(b) ensuring that the funding, housing and other assistance provided to the registered community housing provider is used for the purposes for which it was provided.

(3) The regulations may make provision for or with respect to community housing agreements.

**67K Conditions of community housing agreements relating to land in which Corporation has an interest**

A community housing agreement may include conditions relating to any land of the community housing provider concerned in which the Corporation has an interest, including conditions that have effect if:

(a) the community housing provider fails to use the land for the purposes contemplated by the agreement, or

(b) the community housing provider proposes to sell or otherwise dispose of the land, or

(c) the registration of the community housing provider is cancelled under this Act.

**67L No dealings in land in which Corporation has an interest without consent of Corporation**

(1) A community housing provider must not transfer or otherwise deal with land in which the Corporation has an interest unless:

(a) the Corporation consents to the transfer or other dealing, or

(b) the transfer or other dealing is authorised, or is of a class that is authorised, by a

community housing agreement with that community housing provider (**an exempt transaction**), or

- (c) a community housing agreement with the community housing provider provides that this section does not apply to the land concerned.
- (2) The Corporation must not unreasonably withhold consent under subsection (1) (a).
- (3) The Registrar-General must, on application by the Corporation, make a recording in the Register kept under the *Real Property Act 1900* to signify that the land specified in the application is subject to this section.
- (4) The application is to provide details of any exempt transactions.
- (5) If a recording under subsection (3) has been made by the Registrar-General, the Registrar-General is not to register under the *Real Property Act 1900* a transfer of that land or any other dealing that is otherwise registrable under that Act unless:
  - (a) the consent of the Corporation to the transfer or other dealing has been endorsed on the transfer or other dealing, or
  - (b) the transfer or other dealing is an exempt transaction (as notified to the Registrar-General by the Corporation), or
  - (c) the recording has ceased to have effect (as recorded by the Registrar-General under subsection (6)).
- (6) The Registrar-General must, on the application of the Corporation, make in the Register a recording to signify that a recording made under subsection (3) has ceased to have effect.
- (7) An application by the Corporation under this section is to be made in an approved form under the *Real Property Act 1900* and is to be accompanied by such fee, if any, as may be prescribed by the regulations under that Act.
- (8) If the Corporation makes an application under this section, the Registrar-General is not to inquire into whether the Corporation has an interest in the land concerned or into the terms of any community housing agreement.
- (9) This section does not affect the operation of any other prohibition or restriction relating to transfers or other dealings in land.

#### **67M Creation of charge in agreement**

- (1) A community housing agreement may provide that land of a community housing provider that is a party to a community housing agreement is to be charged with the payment of money that is or may become payable under the agreement.

- (2) If the land is land to which the *Real Property Act 1900* applies, section 56 of that Act applies in respect of any such charge.

#### **67N Agreements binding on community housing providers**

- (1) A community housing agreement is binding on the community housing provider to which it relates.
- (2) The Corporation may monitor the activities of a community housing provider to determine whether it is complying with the terms and conditions of a community housing agreement.

### **Division 4 Vesting of Corporation land in registered community housing providers**

#### **67O Vesting of Corporation land in registered community housing provider**

- (1) The Governor may, by order published in the Gazette, vest land owned by the Corporation in a registered community housing provider that is a company registered under the *Corporations Act 2001* of the Commonwealth.
- (2) Land is authorised to be included in an order under this section even if the land is subject to other interests.
- (3) The vesting of the land in the registered community housing provider takes effect:
  - (a) on the day specified in the order, or
  - (b) if no day is specified in the order or the day specified in the order occurs before the order is published in the Gazette, on the day on which the order is published in the Gazette.
- (4) Subject to the other provisions of this section, land may be vested by order under this section despite any requirement of any other Act or law that relates to dealing with or disposing of the land.

#### **67P Effect of vesting of land**

- (1) On the vesting date relating to land vested by order under this Division, the land vests in the new owner for an estate in fee simple:
  - (a) without the need for any further conveyance, transfer, assignment or assurance, and
  - (b) subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the vesting date.
- (2) On the vesting date relating to land vested by order under this Division, the following provisions have effect:

- (a) the rights or liabilities of the Corporation in relation to the land become by virtue of this section the rights or liabilities of the new owner,
  - (b) all proceedings relating to the land commenced before the vesting date by or against the Corporation or a predecessor of the Corporation and pending immediately before the vesting date are taken to be proceedings pending by or against the new owner,
  - (c) any act, matter or thing done or omitted to be done in relation to the land before the vesting date by, to or in respect of the Corporation 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 new owner,
  - (d) the new owner has all the entitlements and obligations of the Corporation in relation to those assets, rights and liabilities that the Corporation would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Corporation or a predecessor of the Corporation is (to the extent that it relates to that land or those rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the new owner.
- (3) Regulations may be made for or with respect to the conversion of references to the Corporation in any document or class of document to references to the new owner as a consequence of any vesting of land under this Division.

## **Division 5 Provisions to protect Corporation's interest in land**

### **67Q Director-General may require information from registered community housing provider**

- (1) The Director-General may, by notice in writing, require a registered community housing provider or an officer of a registered community housing provider to do one or more of the following things:
  - (a) provide, in accordance with directions in the notice, such information relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider as is specified in the notice,
  - (b) produce, in accordance with directions in the notice, such records relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider as are specified in the notice and permit examination of the records, the taking of extracts from them and the making of copies of them,
  - (c) authorise a person described in the notice to comply with a requirement of the



kind referred to in paragraph (a) or (b),

(d) furnish to the Director-General such authorisations and consents as the Director-General requires for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider.

(2) A person who complies with a requirement of a notice under subsection (1) does not on that account incur a liability to another person.

(3) A person who is the subject of a notice under subsection (1) must comply with a requirement of the Director-General contained in the notice.

Maximum penalty: 20 penalty units.

(4) A reference in this section:

(a) to an asset of a registered community housing provider extends to an asset that was previously owned by the community housing provider but has been disposed of, and

(b) to a registered community housing provider includes a reference to a community housing provider whose registration has been cancelled.

**67R Instructions to community housing provider in relation to land in which Corporation has an interest**

(1) The Corporation may take action under this section in respect of a community housing provider that holds land in which the Corporation has an interest if:

(a) the provider's registration under this Part is cancelled, or

(b) the provider has become insolvent, or

(c) the land was vested in or transferred to the provider by order under this Part or in accordance with an instruction given under this Part and the provider failed to enter into a community housing agreement with the Corporation with respect to the land before the expiration of the period of 40 days after that vesting or transfer or the expiration of such other period as may be prescribed by the regulations.

(2) The Corporation may give instructions to a community housing provider or an officer of a community housing provider requiring:

(a) the transfer of land in which the Corporation has an interest so that it vests in the Corporation or in a specified registered community housing provider, or

(b) that a term or condition of a community housing agreement that is binding on the

community housing provider be complied with.

- (3) A community housing provider or officer of a community housing provider to whom an instruction is given under this section must comply with the instruction.
- (4) Before giving an instruction under this section, the Corporation is to have regard to the following matters:
  - (a) the interests of any tenants of the community housing provider who may be affected,
  - (b) the interests of any creditors of the community housing provider who may be affected.
- (5) This section applies to land in which the Corporation has an interest only if the interest has been recorded under section 67L (3).

#### **67S Displacement of [Corporations Act 2001](#) (Cth) and other relevant legislation**

- (1) Sections 67Q and 67R are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the [Corporations Act 2001](#) of the Commonwealth in relation to the provisions of that Act generally.

**Note—**

Section 5G of the [Corporations Act 2001](#) of the Commonwealth enables a State to displace the operation of the provisions of the Corporations legislation of the Commonwealth in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section. See, in particular, section 5G (4), (5) and (11) of the [Corporations Act 2001](#) of the Commonwealth in relation to the displacement effected by this section.

- (2) Sections 67Q and 67R prevail to the extent of any inconsistency with the [Associations Incorporation Act 1984](#), the [Associations Incorporation Act 2009](#) and the [Co-operatives Act 1992](#).

## **Division 6 Miscellaneous**

### **67T Provisions relating to operation of Divisions 4 and 5**

- (1) Compensation is not payable to any person or body in connection with the operation of Division 4 or 5.
- (2) The operation of Division 4 or 5 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.

- (3) The operation of Division 4 or 5 is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to a person in whom property is vested or to whom property is transferred under Division 4 or 5 by a lessee of the previous owner of the property is required.
- (5) The operation of Division 4 or 5 includes the making of an order under Division 4, the giving of instructions under Division 5 and the taking of any action in compliance with such instructions.

#### **67U No duty payable in relation to vestings or transfers under Act**

Duty under the *Duties Act 1997* is not chargeable for or in respect of:

- (a) a vesting or transfer of property effected under Division 4 or 5, or
- (b) anything certified by the Minister as having been done in consequence of such a vesting or transfer.

#### **67V No compensation payable by Crown**

- (1) Compensation is not payable by or on behalf of the Crown in connection with the operation of this Part.
- (2) Without limiting subsection (1), compensation is not payable by or on behalf of the Crown arising directly or indirectly from any of the following:
  - (a) the publication in the register kept under section 67C of any notice of intent to cancel registration,
  - (b) the appointment of a special adviser under section 67FA,
  - (c) the exercise by any person of any function of a special adviser under section 67FA or a failure by any person to exercise any such function.
- (3) In this section:

**compensation** includes damages or any other form of monetary compensation.

**the Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

## **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: 3 months imprisonment or 20 penalty units, or both.

- (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: 3 months imprisonment or 20 penalty units, or both.

- (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.

### **69A Failure to notify of change of circumstances**

- (1) A person must not, with the intention of retaining or continuing to obtain a benefit to which the person knows that he or she is not entitled, fail to notify the Corporation of any relevant change of circumstances within the time specified in subsection (2).

Maximum penalty: 3 months imprisonment or 20 penalty units, or both.

- (2) The Corporation must be notified under subsection (1) within 28 days after the person first becomes aware of the relevant change of circumstances.

(3) In this section:

**benefit** means any accommodation, rental rebate or any other advantage or concession from the Corporation.

**relevant change of circumstances** means a change in the person's circumstances that will remove or reduce the person's entitlement to a benefit.

#### **69B Access to information for preventing, investigating or prosecuting fraud**

- (1) For the purposes of preventing or investigating fraud against the Corporation, or prosecuting a person for any such fraud, the Corporation may request, collect, use and disclose information from any one or more of the following registers:
  - (a) a driver licence register within the meaning of the *Road Transport (Driver Licensing) Act 1998*,
  - (b) the Register within the meaning of the *Road Transport (Vehicle Registration) Act 1997*,
  - (c) the Register within the meaning of the *Business Names Act 2002*,
  - (d) the Register maintained under section 31B of the *Real Property Act 1900*,
  - (e) (Repealed)
  - (f) any register maintained under the *Maritime Services Act 1935* or the *Marine Safety Act 1998* with respect to registrable vessels.
- (2) A person or body who maintains a register referred to in subsection (1) is, on receipt of a written request from the Corporation, to disclose to the Corporation any information held on the register that relates to the person or property in respect of which the request is made.
- (3) The Corporation may, in relation to a request under this section for information about a person or property, disclose information about that person or property to the person or body to whom the request is being made.
- (4) In this section, **information** includes personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

#### **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, Australian legal practitioner, 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).

#### **72A Persons living with tenants liable to repay certain amounts**

A person is jointly and severally liable with another person (***the tenant***) to pay to the Corporation any amount that the tenant is liable to pay to the Corporation if:

- (a) the person lives or has lived with the tenant, and
- (b) the tenant is liable to pay the amount to the Corporation because the tenant improperly obtained a rental rebate or any other advantage or concession to which the tenant was not entitled because of the person living with the tenant, and
- (c) the person was over 18 years of age at the time the tenant became liable to pay the amount and knew, or should reasonably have suspected, that the tenant was improperly obtaining the rental rebate or the other advantage or concession.

#### **72B Registration of debt as charge on land**

- (1) The Corporation may, after obtaining an order of a court in proceedings against a person for the recovery of money, apply to the Registrar-General for registration of the order in relation to any land owned by the person (including any land owned jointly with another person).
- (2) An application may not be made under this section unless:
  - (a) the amount payable to the Corporation under the order (or the total amount payable under the orders) to which the application relates exceeds \$1,000 or such other amount as is prescribed by the regulations, and
  - (b) the amount, or part of the amount, is payable because the person improperly obtained a rental rebate or any other advantage or concession from the Corporation.
- (3) An application under this section must define the land to which it relates.
- (4) The Registrar-General must, on application under this section and lodgment of the court order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (5) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Corporation of the amount payable under the order.



- (6) Such a charge ceases to have effect in relation to the land:
- (a) if the Corporation certifies in writing that the amount payable under the order has been paid to the Corporation or that the Corporation has otherwise agreed to the cancellation of the charge—on registration of the cancellation of the charge by the Registrar-General, or
  - (b) on the sale or other disposition of the property with the consent of the Corporation, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,
- whichever first occurs.
- (7) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.
- (8) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (6).
- (9) If:
- (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,
- a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (6), taken to have notice of the charge.
- (10) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.
- (11) In this section, a reference to an order of a court includes a reference to a judgment of a court.

### **73 Recovery of amounts due to Corporation**

- (1) 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.
- (2) The Corporation may recover an amount awarded to it by a court in proceedings against a person for the recovery of money by reducing or cancelling, in accordance with Part 7, any rental rebate to which the person may otherwise be entitled.

#### **74 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be disposed of summarily before the Local Court.
- (2) A prosecution or proceeding in respect of an offence under this Act may only be instituted by or on behalf of the Corporation.

#### **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 any one or more of the following:
  - (a) prescribing a regulatory code or codes for registered community housing providers or classes of such providers setting out requirements that those providers must comply with in relation to their operations and the provision of community housing,
  - (b) fees in connection with any application under this Act,
  - (c) prescribing what is meant by a very low, low or moderate income for the purposes of this Act,
  - (d) prescribing terms or conditions that are taken to be included in community housing agreements, including in an existing community housing agreement.
- (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 (Repealed)**

#### **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 (Repealed)

## 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 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 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 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 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 STC scheme, in respect of a transferred person, to the new scheme,
  - (b) the transfer of assets and liabilities within an 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 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

*Housing Amendment (Community Housing Providers) Act 2007*

*Housing Amendment (Tenant Fraud) Act 2008*

*Housing Amendment (Registrable Persons) Act 2009*

*Housing Amendment (Community Housing Providers) Act 2010*

(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
  - (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.

### **Part 3 Provisions consequent on enactment of *Housing Amendment (Community Housing Providers) Act 2007***

#### **11 Community housing providers taken to be registered on the commencement of Part 9A**

A community housing provider that is registered with the Office of Community Housing immediately before the commencement of Part 9A is, on the commencement of that Part, taken to be registered under that Part until whichever of the following occurs first:

- (a) the community housing provider applies to be registered under that Part and the application is determined by the Registrar,
- (b) the registration is cancelled in accordance with that Part,
- (c) 2 years after the commencement of that Part.

#### **12 References to registered organisations**

A reference in any document to an organisation for the time being registered with the Office of Community Housing is, on the commencement of Part 9A, taken to be a reference to a registered community housing provider.

#### **13 Existing agreements taken to be community housing agreements**

An agreement between the Corporation and a community housing provider that is in force immediately before the commencement of Part 9A under which the Corporation provides assistance to the community housing provider is, on the commencement of that Part, taken to be a community housing agreement.

#### **14 Assistance provided to unregistered community housing providers under existing agreements**

Section 67I (1)–(3) does not apply to or in respect of assistance provided to a community housing provider within 2 years after the commencement of Part 9A, but only if:

- (a) the community housing provider is not registered with the Office of Community Housing immediately before the commencement of that Part, and
- (b) the assistance is provided under an agreement that is in force immediately before the

commencement of that Part.

## **Part 4 Provisions consequent on enactment of [Housing Amendment \(Tenant Fraud\) Act 2008](#)**

### **15 Failure to notify of change of circumstances**

- (1) Section 69A extends to a change in a person's circumstances that occurred before the commencement of that section but only if the change continues to affect the person's entitlement to accommodation or a rental rebate or any other advantage or concession from the Corporation after the commencement of that section.
- (2) A change of circumstances referred to in subclause (1) must be notified to the Corporation within 28 days after the commencement of section 69A.

### **16 Persons living with tenants liable to repay certain amounts**

Section 72A extends to an amount that a tenant (within the meaning of that section) was required to pay to the Corporation before the commencement of that section.

### **17 Registration of debt as charge on land**

Section 72B extends to an order that was obtained by the Corporation before the commencement of that section.

## **Part 5 Tenant fraud amnesty**

### **18 Temporary amnesty**

- (1) The objective of this clause is to provide an amnesty:
  - (a) to encourage a person to notify the Corporation if the person is incorrectly or improperly obtaining a benefit from the Corporation, and
  - (b) to encourage a person to notify the Corporation of any change in the person's circumstances that removes or reduces the person's entitlement to a benefit from the Corporation, and
  - (c) to protect any such person from prosecution or civil proceedings in respect of the matters notified before the end of the amnesty period.

- (2) In this clause:

**benefit** includes an entitlement to accommodation or a rental rebate or any other advantage or concession.

**end of the amnesty period** means 1 October 2008 or such other day as may be prescribed by the regulations.

**fraud offence** means an offence relating to improperly obtaining a benefit from the Corporation, other than an offence that involves violence or a threat against a person.

**Note—**

Examples of fraud offences include an offence under section 69 or 69A of this Act, or an offence under section 178BA or 178BB of the [Crimes Act 1900](#).

- (3) A person cannot be prosecuted for a fraud offence in respect of any conduct that would constitute such an offence if the person notifies the Corporation of the person's conduct:
  - (a) before the end of the amnesty period, and
  - (b) before the Corporation has commenced an investigation into the conduct.
- (4) If a person notifies the Corporation in accordance with subclause (3), no action or proceeding may be brought by the Corporation to recover any penalty, damages or other monies from the person in respect of:
  - (a) the conduct constituting the fraud offence that occurred before the notification, or
  - (b) the benefit that the person incorrectly or improperly obtained, as a result of that conduct, from the Corporation before the notification.
- (5) The onus of proving that a notification took place for the purposes of this clause is on the person who made the notification.
- (6) This clause does not apply to any prosecution or to any action or proceeding commenced before the commencement of this clause.
- (7) Nothing in this clause prevents the Corporation from varying, cancelling or refusing to grant any benefit under this Act as a result of any notification given under this clause.