

Queensland



# STATE HOUSING ACT 1945

**Reprinted as in force on 3 October 2001  
(includes amendments up to Act No. 45 of 2001)**

**Reprint No. 3**

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# Information about this reprint

This Act is reprinted as at 3 October 2001. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# STATE HOUSING ACT 1945

[as amended by all amendments that commenced on or before 3 October 2001]

**An Act to make better provision for housing and improving the housing requirements and conditions in the State, to provide for the constitution of and powers and authorities of a State housing commission, to provide for advances for housing, and for other purposes**

## PART 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *State Housing Act 1945*.

### 4 Definitions

(1) In this Act—

“**BCCM Act**” means the *Body Corporate and Community Management Act 1997*.

“**capital cost**”, of a house together with the land on which it is situate, includes the value of the land, the costs of and incidental to the erection of the house, together with a sufficient sum to cover any costs incurred or assessed by way of fees in respect of salaries paid or payable to architects, clerks of works, surveyors, or other persons and the cost (if any) of survey and subdivision and the value of so much of the land purchased or acquired as is laid out as streets, the cost of clearing, draining, fencing or otherwise improving the land by the commission, and any other costs incidental to the purchase, acquisition and disposal of the land together with the interest as assessed by the commission on all expenditure in connection with the house and land.

“**chief executive (valuations)**” means the chief executive within the meaning of the *Valuation of Land Act 1944*.

“**commission**” means the Queensland Housing Commission created by this Act, and where necessary includes the chief executive, secretary or any officer of the commission.

“**dwelling house**” includes the house and its appurtenances, the part or parts of a building comprising a lot shown on a building units plan registered pursuant to the *Building Units and Group Titles Act 1980* or a lot that, under the BCCM Act, is a lot included in a community titles scheme, necessary outbuildings, fences, and permanent provision for lighting, water supply, drainage, and sewerage, but does not include any land.

“**fund**” see section 16(1).

“**house**” includes dwelling house.

“**land**” includes (but without limiting its ordinary meaning or the meaning assigned to it by the *Acquisition of Land Act 1967*) any land the fee simple of which is subject to any trust or which is held from the Crown upon any tenure or subject to any trust under any Act relating to the alienation of Crown lands, and also includes any estate or interest in land (legal or equitable) and any easement, right, power, or privilege over, on, or in connection with land.

“**Land Act**” means the *Land Act 1994* or any Act in substitution for the same.

“**Local Government Acts**” means the *Local Government Act 1993*, and the *City of Brisbane Act 1924*.

“**mortgage**” means any deed, memorandum of mortgage, instrument or agreement whereby security for payment of advances and moneys is made in favour of the commission over real or personal property or any interest therein, and also includes a contract of sale under this Act where payment to the commission of the unpaid purchase money is secured in whole or in part on the property the subject of such contract of sale.

“**mortgagor**” means the person liable to payment of moneys secured by mortgage, and also includes a purchaser under a contract of sale.

“**secretary**” means the secretary or person for the time being performing the duties of secretary.

“**standard fixed interest rate**”, for a period, means the standard fixed interest rate for the period declared by the Minister under section 32AA(1).

“**standard interest rate**” means—

- (a) the standard fixed interest rate for a period; or
- (b) the standard variable interest rate.

“**standard interest rate policy**” see section 32AA(2).

“**standard variable interest rate**” means the standard variable interest rate declared by the Minister under section 32AA(1).

### **Remedy against land includes improvements**

(2) Where by this Act any remedy is given to the commission against or with respect to any land, “land” includes not only the land but also all improvements thereon.

(3) Wherever appearing in this Act—

“**house**” or “**home**” shall have the meaning assigned by this section to the term ‘dwelling house’.

### **4A Application of Act regarding Building Units and Group Titles Act 1980**

(1) The provisions of this Act which apply to or with respect to and all things that may be done under this Act in respect of land held in fee simple shall apply to or with respect to and may be done in respect of—

- (a) land subdivided or resubdivided into lots and common property by the registration of a plan pursuant to the *Building Units and Group Titles Act 1980*; and
- (b) any lot shown on a plan referred to in paragraph (a).

(2) Any provision of this Act authorising the subdivision, replan or resubdivision of land shall be construed, in the case of land held in fee simple, as including authority to subdivide and resubdivide that land into lots and common property by the registration of a plan pursuant to and subject to the *Building Units and Group Titles Act 1980*.

#### **4B Application of Act for BCCM Act**

(1) This Act applies to land that, under the BCCM Act, is scheme land for a community titles scheme in the same way as to other land held in fee simple.

(2) A reference in this Act to ‘subdivision’ or ‘resubdivision’ of land extends to subdivision or resubdivision of land by registration or amendment of a plan under the *Land Title Act 1994* for the establishment or amendment of a community titles scheme under the BCCM Act.

#### **5 Repeal of State Advances Act 1916**

(1) Subject to this Act and without prejudice to the provisions of the Acts Shortening Acts, the *State Advances Act 1916* (as amended by the *Commonwealth Bank Agreement Ratification and State Advances Act 1920*, the *State Advances Act and Other Acts Relief Amendment Act 1934*, and orders in council made thereunder) is repealed (the “repealed Acts”).

#### **Savings in respect of other Acts**

(2) The provisions of—

- (a) the *State Housing Relief Act 1930*;
- (b) the *State Advances Act and Other Acts Relief Amendment Act 1934*;
- (c) the *State Advances Acts and Other Acts (Rate of Interest) Act 1943*;
- (d) the *State Advances Corporation Building Improvement Act 1932*;

and all orders in council in force at the commencement of this Act made thereunder shall continue in full force and effect, and without limiting the generality of this provision to the intent that all the powers, authorities, rights, title, interest, duties and obligations of the corporation and, as the case may be, of any such mortgagor shall be unaffected and shall enure accordingly to the full extent as if this Act had not been passed.

(3) However, any reference in such Acts to the State Advances Corporation shall be a reference to the Queensland Housing Commission constituted under this Act.

(4) In addition, with respect to any advance referred to in the *Agricultural Bank Act 1923*, section 9(3), any part of which advance remains unpaid at the commencement of this Act, all of the applicable

provisions of the repealed Acts or any of them shall, notwithstanding the repeal thereof, continue in force while any part of such advance remains unpaid.

## **6 Dissolution of State Advances Corporation**

(1) Upon the commencement of this Act the corporation constituted by the repealed Acts by the name of the State Advances Corporation is hereby dissolved and the State Advances Fund created by the repealed Acts shall be closed.

(2) Such corporation so dissolved may be referred to as the “**dissolved corporation**”.

## **TRANSFER OF ASSETS ETC. TO THE COMMISSION**

### **7 Vesting of assets and liabilities in the commission**

(1) Forthwith upon the commencement of this Act—

- (a) all moneys, debentures, and treasury bills, and securities for money, and all interest thereon, and all books, documents, and other property held by or on behalf of the dissolved corporation; and
- (b) all the assets and liabilities of the dissolved corporation; and
- (c) all powers, authorities, rights, title, interest, and obligation in or with respect to such assets and liabilities or any of them;

under or pursuant to the repealed Acts or any other Act shall forthwith by virtue of this Act, and without any transfer or assignment whatever, pass to and become vested in and imposed upon the Queensland Housing Commission constituted under this Act as hereinafter provided (the “**commission**”) and be divested and discharged from the dissolved corporation.

(1A) However, nothing in this Act shall prejudice or affect the agreement between the Governor of the Commonwealth Bank of Australia and the Treasurer as set forth in the *Commonwealth Bank Agreement Ratification and State Advances Act 1920*, schedule 1.

**Rights of action and under contracts**

(2) Any right of action or other remedy accrued to or against and any power or authority vested in or exercisable by and any agreement, undertaking, mortgage, debenture, bond, lease, deed, guarantee, covenant, or obligation made, given, or entered into by, to or with the dissolved corporation (other than such of them as by the aforesaid agreement are transferred to, vested in or imposed upon the said Commonwealth Bank) may be prosecuted and enforced by or against the commission as if the right of action or remedy had originally accrued to or against or the power or authority had originally been vested in or exercisable by or the agreement, undertaking, mortgage, debenture, bond, lease, deed, guarantee, covenant, or obligation had been made, given, or entered into by, to, or with the commission.

**Existing advances**

(3) The following provisions shall apply in respect of advances made or purporting to be made under or pursuant to the repealed Acts or any other Act or law before the commencement of this Act by the dissolved corporation, and whether made by the dissolved corporation as principal or as attorney or as agent or on behalf of any Minister, any part of which advance or the interest thereon remains unpaid at the commencement of this Act—

- (a) such advances shall be repaid, and interest thereon shall be paid to the commission at the times and in the amounts prescribed by the Act under or pursuant to which the advance was made or by any regulation or instrument thereunder;
- (b) the commission may take any proceeding or exercise any right or remedy which under such Act might have been taken or exercised by the dissolved corporation;
- (c) the land and other property mortgaged as security for the advances aforesaid shall continue to be charged with the repayment of such advances with interest thereon.

**Operation of securities for advances and further advances**

(4) All mortgages and other securities executed by way of security for any advance (including, if it be so, any further advances) under or pursuant to any of the repealed Acts or any other Act or law, as the case may require, shall for all purposes, including any further advances that may be made under this Act, be construed as if the commission were party thereto instead

of the dissolved corporation, and this Act shall apply to all such advances or further advances.

### **Adjustments**

(5) All accounts, documents, books, and papers relating to any such advance shall be transferred to and be kept by the commission; and such adjustments of account shall be made in the books of the dissolved corporation as may be necessary to give effect to this section.

### **Agreements for management of certain advances**

(6) Where under the provisions of any Act any Minister or body corporate is empowered to enter into any arrangement or agreement with the dissolved corporation whereby the dissolved corporation is to manage on behalf of such Minister or body corporate the whole or any part of his, her or its business so far as consists of the making and regulation of advances under such Act, such Minister or body corporate may enter into a like arrangement or agreement with the commission for the like purposes, and the same shall be given effect to; or where such Minister or body corporate has already entered into such arrangement or agreement as aforesaid with the dissolved corporation and the same is subsisting at the commencement of this Act, then by virtue of this Act the commission shall as and from the commencement of this Act be deemed to be the party to every such arrangement or agreement in lieu of the dissolved corporation, and every such arrangement or agreement shall be read and construed and have effect accordingly.

### **Pending applications**

(7) Applications by any person to the dissolved corporation for any advances pending at the commencement of this Act, and whether or not any advance or instalment has been made, may be dealt with and completed by the commission as if such applications were respectively made for advances under this Act.

### **Closure of State Advances Fund**

(8) All moneys to the credit at the Treasury of the State Advances Fund constituted under the repealed Acts shall by virtue of this Act be transferred to the Queensland Housing Commission Fund constituted under this Act.

### **Proceedings**

(9) All actions and proceedings and things lawfully had and done by the dissolved corporation shall be and continue to be in full force and effect to all intents and purposes as if the same had been had and done by the

commission constituted under this Act, and if the same are not completed may be continued and completed by the commission constituted under this Act; and no such action or proceeding shall abate or be discontinued or prejudicially affected by anything in this Act contained.

### **Penalties**

(10) All penalties, fees, fines, and forfeitures which at the commencement of this Act may be enforceable or recoverable by the dissolved corporation shall and may be enforced and recovered by the commission constituted under this Act.

### **Proclamations, orders in council, regulations etc. continued**

(12) All proclamations, orders in council, and regulations made under the repealed Acts and in force at the commencement of the amendments to this Act made by the *Public Service (Administrative Arrangements) Act 1990 (No. 2)* shall continue in force until the same or any of them are amended or superseded by proclamations, orders in council or regulations under this Act; and in the construction of such proclamations, orders in council, or regulations references to the expression 'State Advances Corporation' or 'corporation' shall be deemed to be references to the commission constituted under this Act; and references to the expression 'manager' of the dissolved corporation shall be deemed to be references to the commission or, as the case may require, to the chief executive or secretary thereof, as the case may be, constituted and appointed under this Act; and references to any officer of the dissolved corporation shall be deemed to be references to the officers of the commission constituted under this Act authorised or appointed in like behalf.

### **Records**

(13) All instruments, documents, records, plans, correspondence, and all books and writings the property of the dissolved corporation shall be and are by virtue of this Act hereby handed over to the commission constituted under this Act, and shall and hereby become the property of such lastmentioned commission.

### **References in other Acts**

(14) Where in any Act or in any regulation, proclamation, or order in council a reference is made to the dissolved corporation or to the manager thereof, as the case may be, such reference shall, on and after the commencement of the amendments to this Act made by the *Public Service (Administrative Arrangements) Act 1990 (No. 2)*, and subject as may be otherwise provided in this Act, be deemed to be a reference to the



commission constituted under this Act or to the chief executive or secretary thereof, as the case may require.

## **PART 2—ADMINISTRATION OF ACT AND CONSTITUTION AND POWERS OF THE QUEENSLAND HOUSING COMMISSION**

### **8 Administration of Act**

This Act shall be administered by the Minister; and under the Minister the commission, by the chief executive and other officers appointed or deputed in that behalf, is hereby authorised to carry out the provisions of this Act.

### **9 Constitution of Queensland Housing Commission**

(1) For the purposes of this Act there shall be a housing authority called the Queensland Housing Commission (the “**commission**”) constituted as hereinafter provided.

(2) The chief executive representing the Crown is hereby constituted a corporation sole under the name and style of the Queensland Housing Commission and by that name shall have perpetual succession and an official seal and shall be capable in law of suing and being sued, and shall, subject to this Act, have power to take, purchase, take on lease, sell, exchange, lease, assign, transfer, surrender to the Crown and hold lands, goods, chattels, securities and other property.

(3) All courts, judges, justices and persons acting judicially shall take judicial notice of the constitution of the Queensland Housing Commission and of the appointment of the chief executive or secretary thereof, and of their respective signatures and of the seal of the commission affixed to any document or notice, and until the contrary is proved shall presume that any such signature or such seal, as the case may be, was duly affixed to any document or notice concerned.

#### **Crown agency**

(4) For all the purposes of this Act—

- (a) the commission shall have and may exercise all the powers, privileges, rights, and remedies of the Crown;
- (b) the commission shall have and may exercise all such powers, authorities, and discretions, and may do all such acts and things, as a private person in Queensland has or may exercise or do, and the commission generally may do whatever it deems necessary in connection with or incident to any business carried on by it.

### **These powers additional to others**

(5) The powers conferred by this section shall be in addition to any other powers conferred upon the commission by this Act.

## **10 General powers and duties of chief executive**

The chief executive shall—

- (a) advise the Minister on matters connected with this Act generally;
- (b) make or cause to be made any inquiry or investigation required by this Act or any inquiry or investigation which the Minister may think necessary or expedient so to make.

### **10A Delegation of chief executive's powers**

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person.

(2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified person.

(3) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

A person's classification level in a department.

### **10B District offices and agents of the commission**

A regulation may—

- (a) establish a district office of the commission; or
- (b) appoint an agent of the commission.

## **11 Officers and employees employed under Public Service Act**

(1) The secretary to the commission (the “**secretary**”), an officer in charge of a district office of the commission (a “**district officer**”), and other officers and employees necessary for this Act are to be employed under the *Public Service Act 1996*.

### **Secretary to have custody of seal**

(5) The secretary shall be charged with the custody of the official seal of the commission, and shall have power to execute documents on behalf of the commission and to affix the official seal of the commission, and shall also have such other powers and perform such other duties as are from time to time prescribed or, subject as so prescribed, delegated to the secretary by the commission.

### **Duplicate seal**

(5A) The commission may authorise the making of duplicates of the official seal and may authorise in writing, any person, either generally or in a specific case, to affix a duplicate of the official seal to any document or writing which that person is authorised in writing to seal on behalf of the commission.

### **Cooperation by other State departments etc.**

(6) Every department, every Crown corporation or instrumentality, or corporation or instrumentality representing the Crown, every local government and every local body within the meaning of the *Local Bodies' Loans Guarantee Act 1923*, or any other relevant body which may hereafter be constituted shall, subject to approval by the Minister and agreement in that behalf between the Minister as defined in this Act and the other Minister of the Crown (if any) for the time being administering such other department, corporation, instrumentality, local government, or local body or other body, cooperate with the commission in the carrying out of this Act.

(7) Without limit to the generality of the preceding provisions of this section, the commission shall, subject to ministerial approval and agreement as hereinbefore mentioned in this section, have power and authority to consult with and use the services in his or her official capacity of any officer of any department, Crown corporation or instrumentality, or corporation or instrumentality representing the Crown, local government or local body, or other body, for the purposes of any act, matter, or thing arising out of or in connection with the purposes of this Act.

(8) Subject to ministerial approval and agreement as hereinbefore mentioned in this section, every officer of any department, Crown corporation or instrumentality, or corporation or instrumentality representing the Crown, local government or local body shall make himself or herself available for consultation or service as required by the commission for the purposes of any act, matter, or thing arising out of or in connection with this Act, including the furnishing by such officer of statistical, technical, financial, or other information in the possession of or available to or obtainable by such officer in the officer's official capacity and which in the opinion of the commission is or may be material to or in respect of any such purpose.

(9) Nothing in this Act shall prejudice or affect the powers, functions, and authorities of the coordinator-general constituted under the *State Development and Public Works Organization Act 1971*.<sup>1</sup>

## **12 Salaries payable out of the fund**

Subject to this Act, the salaries, wages, or allowances of the chief executive and all other officers and employees of the commission shall be paid out of the fund.

## **13 Commission may manage business**

The commission may, subject to the Minister, arrange with any Crown instrumentality or Crown corporation or Minister representing the Crown to manage, and such commission shall thereupon, as the fully constituted deputy and attorney of and for such Crown instrumentality or Crown corporation or Minister representing the Crown, be authorised to manage the whole or any part of the business of the Crown instrumentality or Crown corporation or Minister representing the Crown, and for so doing the commission shall be entitled to receive such annual management fee or commission as is mutually agreed upon between the commission and the Crown instrumentality, or Crown corporation or Minister concerned.

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<sup>1</sup> Now see *Acts Interpretation Act 1954*, section 14I and *State Development and Public Works Organisation Amendment Act 1999*, section 2, schedule.

#### **14 Validation of certain action**

(1) All acts, matters and things done or executed by the State Advances Corporation in aid of State housing prior to the passing of this Act or subsequent to its passing prior to its commencement, which if done or executed by the commission or by the chief executive subsequent to such commencement would be valid and lawful, are and shall always have been lawful, and are hereby authorised, approved, ratified, confirmed, and validated accordingly.

(2) This section shall take effect on the passing of this Act.

#### **15 Application of administrative provisions of sch to commission**

The provisions of the schedule apply to the commission in the exercise of its powers under this Act.

#### **16 Queensland Housing Commission Fund**

(1) The Queensland Housing Commission Fund (the “fund”) is continued in existence subject to the *Financial Administration and Audit Act 1977*, part 8, division 2.<sup>2</sup>

(1A) Accounts for the fund must be kept as part of the departmental accounts of the department.

(2) Amounts received for the fund must be deposited in a departmental financial-institution account of the commission but may be deposited in an account used for depositing other amounts of the commission.

(3) Amounts received for the fund include—

- (a) amounts paid to the department as part of the department’s departmental vote under the *Financial Administration and Audit Act 1977* and made available by the department to the commission for the fund; and
- (b) all moneys repaid to the commission for advances and interest on advances made under this Act or another Act; and
- (c) all other moneys received by the commission.

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<sup>2</sup> *Financial Administration and Audit Act 1977*, part 8 (Transitional provisions), division 2 (Transitional provisions for *Financial Administration Legislation Amendment Act 1999*)

(4) Subject to this Act all advances by the commission made under this Act shall be payable out of the fund.

(5) Subject to this Act all moneys expended in pursuance of this Act in respect of costs of any land and buildings purchased or acquired under this Act, costs of subdivision and preparation of lands for the purposes of the Act, and all other costs, charges and expenses incurred in the administration of this Act shall be payable out of the fund.

(6) Until applied for the purpose for which paid into the fund the commission shall pay on deposit or other trust moneys such interest as would be payable thereon were such moneys deposited in the Commonwealth Savings Bank.

(7) In this section—

“**departmental accounts**”, of a department, means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

“**departmental financial-institution account**”, of a department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

“**other amounts**”, of a department, means amounts received by the department other than amounts received for the fund.

## **17 Loans by Government to commission**

The Governor in Council may by warrant under the hand of the Treasurer direct and authorise loans to be made to the said commission out of the consolidated fund.

## **17A Commission is statutory body**

(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the commission is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the commission’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **18 Power to vest other lands**

(1) The Governor in Council may at any time, by order in council, vest in fee simple in, or place under the permanent or temporary control of, the commission any Crown land to be used for the purposes of the business of the commission.

(1A) An order in council under subsection (1) is not subordinate legislation.

(2) The value of any land vested in fee simple in the commission under this section shall be fixed by the Governor in Council, and the amount thereof shall be debited against the fund, and deemed to be an investment.

### **Setting apart Crown land for the purposes of this Act**

(3) The Governor in Council may from time to time, by notification in the gazette, set apart any vacant Crown land to be used for the purposes of this Act; and thereupon such land shall become and be available for the purposes of this Act.

## **19 Exemption from rating**

Land, including any lot shown on a plan registered pursuant to the *Building Units and Group Titles Act 1980* or that, under the BCCM Act, is a lot included in a community titles scheme, for the time being vested in fee simple in the commission or occupied by it for the purpose of carrying on the business of the commission shall not be deemed to be rateable land within the meaning of the Local Government Acts.

## **20 General duty of the commission**

(1) Subject to the Minister it shall be the general duty of the commission to attain, so far as may be, the general improvement of the housing conditions of the citizens of this State, and without limiting the generality of this duty, to provide for adequate and suitable housing accommodation for persons of limited means and for persons not otherwise adequately housed.

(2) For the purposes of this Act the commission may—

- (a) carry out all such surveys and investigations as may be necessary or expedient for the purposes of this Act, or for the purpose of ascertaining the housing conditions in any locality; and
- (b) recommend making of local laws by local governments.

**21 Functions of the commission**

(1) The commission shall, in addition to the duties as above prescribed, be entrusted with the duty of dealing with applications made under—

- (a) this Act; or
- (b) any other Act or law in relation to housing, the administration whereof is or may be entrusted to the commission.

(2) For the purpose of exercising such duties as aforesaid, the commission shall have power and authority—

- (i) to inquire into and consider applications as herein provided;
- (ii) to require any further or other information in respect of any such application;
- (iii) to approve of any such application (either wholly or in part);
- (iv) to refuse any such application.

(3) The commission shall also have such advisory powers as may from time to time be prescribed, and such other powers as may be imposed by the Minister on the commission.

**Further functions of commission**

(4) In addition to the powers, authorities, and functions of the commission as otherwise provided in this Act, it shall be the duty of the commission, subject to the Minister—

- (a) to formulate generally proposals for improving the housing conditions generally of the State and to make recommendations to the Minister in regard thereto;
- (b) to ensure the effective administration of this Act, and for the effective organisation and performance of the work involved in dealing expeditiously with applications and the commission's administration;
- (c) to cooperate and consult with a local government or any other town planning body in respect of any planning scheme of the local government or body concerned or to make recommendations to the local government or body concerned as to the formulation by such local government or body of any such planning scheme;
- (d) to cooperate and consult with a local government in respect of any scheme within the powers and jurisdiction of the local



government concerned with the object of preventing or remedying conditions usually referred to as 'slumming' conditions, or to make recommendations to the local government concerned as to the formulation by it of any such scheme;

- (e) to cooperate and consult with a local government in the direction of the promulgating by the local government of uniform building regulations in the area of the local government concerned;
- (f) to perform such other duties as the Minister may direct.

## **22 Special powers of commission**

(1) Subject to this Act, the commission may from time to time exercise the following powers—

- (a) —

### **Power to acquire land**

- (i) with the approval of the Minister, take, purchase, contract for the use of, or otherwise provide any land which may be required for the purposes of this Act;
- (ii) with the consent of the Governor in Council, and on the recommendation of the Secretary for Public Lands, purchase or acquire any Crown land (and notwithstanding anything in any Act the Governor in Council is hereby empowered to grant any such land to the commission at such price (if any) and on such terms and conditions as the Governor in Council thinks fit);
- (iii) with the consent of the Governor in Council purchase or acquire from a local government any land (not being land set apart or reserved under the Land Act) vested in the local government and (notwithstanding anything in any Act) the local government is hereby empowered to sell or dispose of any such land to the commission;
- (iv) replan and resubdivide any area in which the commission has purchased or acquired land, and subject to this part and to any provisions in the Land Act secure the closing of any street or the extinguishment of any easement or restrictive covenant for that purpose.

However, regard may be given to any recommendation herein of a local government concerned;

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- (b) with the approval of the Minister erect buildings and repair, equip, furnish, and maintain the same; let offices or other accommodation in any building or premises for such rent as it thinks proper, and generally control and manage any buildings the property of the commission;
- (c) hold, until the same can be advantageously disposed of, any property, real or personal, taken by it as security for or in satisfaction, liquidation, or discharge of any debt owing to the commission;
- (d) with the approval of the Minister, as occasion may require, sell, lease, convey, assign, and assure any lands, buildings, securities, or property whatsoever vested in the commission or any estate or interest in the same;
- (e) with the approval of the Minister, carry out any improvements to the land and erect dwelling houses or erect buildings for subdivision into lots by the registration of a plan pursuant to the *Building Units and Group Titles Act 1980*, or the registration of a plan under the *Land Title Act 1994* for the establishment of a community titles scheme under the BCCM Act, for the purpose of sale or for letting as dwelling houses to, eligible persons as provided in this Act, on or lay out and construct as streets—
  - (i) any land or any part thereof purchased, acquired, or set apart pursuant to this Act, as aforesaid; or
  - (ii) any other land or any part thereof acquired by the commission;
- (f) set apart with the consent of the Minister any such land or any part thereof for open spaces or places of recreation, or erect on any such land any buildings which in the opinion of the commission will serve a beneficial purpose in connection with the requirements of the persons to whom such houses are sold, let, or leased under this Act.

However, regard may be given to any recommendation of a local government concerned;

- (g) with the consent of the Governor in Council surrender to Her Majesty for the purpose of a garden, park, open space or place of recreation any land set apart for such purpose pursuant to this subsection;

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- (h) with the approval of the Minister, at such price and on such terms and conditions as the commission thinks fit lease any land purchased or acquired by or vested in it under this Act or set apart to be used for the purposes of this Act.

However, the Minister shall not approve such lease unless the Minister is satisfied that the land is not immediately required for the purposes of this Act or that the lease will serve a beneficial purpose with regard to the community in the locality of the land;

- (i) with the approval of the Minister, on such terms and conditions and subject to such restrictions, exceptions and reservations as the commission thinks fit, sell any land vested in or purchased or acquired by it under this Act, or set apart to be used for the purposes of this Act.

However, the Minister shall not approve such sale unless the Minister is satisfied that such land is not now required for the purposes of this Act or that such sale will serve a beneficial purpose with regard to the community in the locality of such land;

- (j) with the consent of the Governor in Council upon such terms and conditions and subject to such restrictions, exceptions, and reservations as the commission thinks fit exchange any land vested in or purchased or acquired by the commission under this Act or set apart to be used for the purposes of this Act for any other land and give or receive consideration for equality of exchange;

- (k) with the approval of the Minister, enter into an arrangement with the appropriate Crown or other instrumentality or other authority—

(i) for the making of roads or other facilities affording access to dwelling houses acquired, erected, or to be erected in pursuance of this Act; and

(ii) for connecting any such dwelling houses with sewerage, drainage, water, gas, and electric power and lighting systems; and

(iii) for establishing or extending such systems to connect with any such dwelling houses;

and may allot to each dwelling house having the benefit of the arrangement such proportion of the cost incurred by the

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commission under the arrangement as the commission deems just;

- (l) do all matters and things incidental to any of the abovementioned matters herein in this subsection mentioned;
- (m) upon the completion of a sale made pursuant to paragraph (i) or an exchange pursuant to paragraph (j) of land set apart the commission shall certify in writing such completion to the Minister for submission to the Governor in Council who shall thereupon, in the name of Her Majesty, grant in fee simple such land to the person to whom the land is sold or as the case may be, with whom the land is exchanged and cause a deed of grant thereof to issue in the person's name accordingly.

**(1A)** The commission or a person authorised either generally or specially by it may enter and re-enter from time to time upon any land, with such assistants as are required, for the purpose of inspecting that land or of making any survey thereof and may affix or set up thereon trigonometrical stations, survey pegs, marks, or poles and from time to time alter, remove, inspect, reinstate, and repair the same.

**(1B)** When practicable reasonable notice shall be given to the occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered shall, if required by the owner or occupier, be produced and shown.

**(1C)** A person who obstructs or attempts to obstruct a person acting under the authority of subsection (1A) or who, without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up under the authority of subsection (1A) shall be guilty of an offence and liable to a penalty of not more than \$100.

**(2)** The commission shall be a constructing authority within the meaning of the *Acquisition of Land Act 1967*, for the purposes of exercising its powers and authorities under this Act.

**(2A)** As well as land granted in fee simple the commission as a constructing authority under the *Acquisition of Land Act 1967*, may take for the purpose of exercising its powers and authorities under this Act land which is held from the Crown for a lesser estate or interest than fee simple.

**(2B)** Any land referred to in subsection (2A) shall, if vested in the commission by the proclamation taking it, be vested in it for an estate in fee simple.

(2C) The Governor in Council is hereby authorised to so vest and grant in fee simple the land subject to such reservations and conditions as are authorised or prescribed by the *Land Act 1994*.

(2D) Any land taken by the commission which has been vested in the Crown by the proclamation taking the land shall be and remain Crown land until the same is according to the purpose for which the land shall have been taken, dealt with as prescribed.

(3) The *Acquisition of Land Act 1967*, shall be read with and subject to all such modifications and adaptations thereof as are necessary to give operation and effect to subsections (2A) to (2C) including, as respects any land in question, by reading any reference therein to the registrar of titles as referring to the person or authority charged with registering instruments evidencing the title to the estate or interest in that land held from the Crown.

### **Regulations for management etc. of houses**

(4) The Governor in Council may make regulations for or with respect to the management, use, control, regulation and inspection of houses, buildings and land maintained or caused to be maintained by the commission.

(5) The foregoing powers shall be in addition to any other powers conferred upon the commission by this Act.

### **22A Provision for payment upon erection of 1 of several dwelling houses under contract**

(1) Where the commission has contracted with any person (in this section called the “**contractor**”) for the erection by him of a group of 2 or more dwelling houses, and the contractor has completed the erection of any such dwelling house in accordance with the contract to the satisfaction of the commission, and has handed over such dwelling house to the commission, the commission may, make to the contractor such payment as in its opinion would not exceed the sum which would be payable in respect of such dwelling house if the total money payable under the contract were apportioned amongst all of the dwelling houses included in the contract.

(2) This section shall be read and applied so as to give the commission power to pay at its discretion, but so that the provisions hereof shall not give, or be deemed to give, to a contractor any greater right to recover payment of money from the commission than the contractor would have if this section had not been passed.

**22B Provision of land for industry, trade or business**

(1) If the commission satisfies the Governor in Council that it is desirable to make land vested in the commission under this Act available to a person or body corporate for any purpose of or connected with the establishment or carrying on by him, her or it of an industry, trade, or business, including but without limit to the foregoing provisions of this subsection the provision of housing for his, her or its employees, the Governor in Council may, upon the recommendation of the commission, authorise the commission to surrender to Her Majesty and, subject to authority as aforesaid, the commission may so surrender that land.

(2) Where land is surrendered by the commission to Her Majesty as aforesaid or where the commission satisfies the Governor in Council that it is desirable to make Crown land that is set apart to be used for the purposes of this Act available as prescribed by subsection (1), then, subject to this subsection, the Governor in Council may, in the name of Her Majesty, demise by a lease in perpetuity or for a term of years that land to the person or body corporate to whom or which the commission has satisfied the Governor in Council it is desirable to make that land available.

(2A) The capital value of land demised under subsection (2) shall be such sum as the Governor in Council upon the recommendation of the commission shall fix.

(2B) The provisions of the *Land Act 1962* shall, with and subject to all necessary adaptations, apply and, it is hereby declared, always did apply from the commencement of that Act to demises of lands pursuant to subsection (2) whether demised before or after that commencement, save that—

- (a) any provision of that Act which is inconsistent with a provision of subsection (2) to the extent of such inconsistency shall not so apply; and
- (b) all coal, petroleum, helium, and minerals are hereby expressly declared to remain the property of the Crown; and
- (c) all rents payable in respect of lands so demised shall be paid to the commission; and
- (d) the lease may be granted subject to such covenants binding upon the lessee (with liability to forfeiture of the lease for a breach thereof) as the Governor in Council deems necessary to secure the performance by the lessee of the purpose for which the land was made available to the lessee.

(3) Subject to this section, each rental period of a lease demised pursuant to subsection (2) shall be 1 year.

(3A) The first rental period of a lease demised after 31 December 1983 shall be from the date of the grant of the lease to 30 June next occurring after the expiration of 12 months from the date of grant.

(3B) Where a lease granted pursuant to subsection (2) subsists on 31 December 1983—

- (a) notwithstanding subsection (3), the rental period then current shall continue as the rental period; and
- (b) upon the expiration of the rental period referred to in paragraph (a), the rental period shall be from the day after the date of that expiration to 30 June next following; and
- (c) each rental period subsequent to the rental period referred to in paragraph (b) shall be 1 year.

(4) For each rental period of 1 year (other than the first rental period of a lease) commencing after 31 December 1983, the annual rental shall be a sum equal to—

- (a) the prescribed percentage of the unimproved value of the land the subject of the lease at the date of commencement of the period in question; or
- (b) \$30;

whichever is the greater.

(5) For the purposes of subsection (4)—

**“prescribed percentage”** means the percentage prescribed under a regulation and effective at the date of commencement of the relevant rental period.

(7) In respect of a rental period being—

- (a) a rental period referred to in subsection (3A); or
- (b) a rental period referred to in subsection (3B)(b);

the rental shall be an amount that bears to the amount that would have been the rental had the period been a rental period referred to in subsection (4) the same proportion that the actual rental period expressed in weeks (in which expression a part of a week shall be taken to be a whole week) bears to 52.

(8) For the purposes of subsection (4) the unimproved value of land shall be—

- (a) in respect of the first rental period of a lease—the capital value of the land demised fixed pursuant to subsection (2)(a);
- (b) in the case where a valuation of the unimproved value of the land made by the chief executive (valuations) under the *Valuation of Land Act 1944* is in force at the date of commencement of the rental period in question—the amount of that valuation or that amount as varied by the Land Court, on appeal by the lessee under subsection (9);
- (c) in any other case—the amount that the Governor in Council determines in the particular case to be the unimproved value of the land.

(9) If the lessee is dissatisfied with the valuation of the chief executive (valuations) of the unimproved value of the land, the lessee may, within 42 days after receipt by the lessee of notification in writing by the commission of the amount of the valuation, appeal against the valuation to the Land Court.

(10) Such appeal shall be instituted by lodging in the Land Court registry written notice of the lessee's grounds of appeal and serving a copy of that notice on the commission.

(11) Upon hearing an appeal under subsection (9) the Land Court may—

- (a) vary the amount of the valuation in such way as it thinks just; or
- (b) disallow the appeal and confirm the amount of the valuation;

and may make such order as to the costs of the appeal as it thinks fit.

(12) The unimproved value of land shall be determined by the Land Court in accordance with the provisions of the *Valuation of Land Act 1944* as if the Land Court were the chief executive (valuations).

(13) The determination of the Land Court on appeal shall be final and conclusive.

## **22C Commission may make grants**

(1) The commission may on such terms and conditions as it thinks fit—

- (a) give grants of money;
- (b) give a house and the land on which it is erected;



to any local government or association for the purpose of enabling that local government or association to provide housing to any person.

(2) In subsection (1)—

**“association”** means an incorporated association, society, institution, body or cooperative which by its governing rules howsoever described—

- (a) prohibits the distribution of any of its profits or assets among its members; and
- (b) provides, to the satisfaction of the commission, for the general improvement of the housing conditions of the citizens of this State.

## **22D Commission may enter into joint ventures**

(1) The commission, may with the prior approval of the Governor in Council and on the recommendation of the Minister, enter into or participate in a joint venture with any person or local government which joint venture provides for the carrying out, control, or management, either jointly or by one party on behalf of any other, or otherwise as may be agreed in the common interest, of a project involving—

- (a) the erection of houses;
- (b) the subdivision, or acquisition and subdivision, and development of land for housing and related purposes;
- (c) the provision of services in relation to houses or subdivided land;
- (d) the marketing of houses or subdivided land.

(1A) The Minister shall not recommend that the Governor in Council approves of the commission entering into and participating in a joint venture relating to a project unless the commission has submitted to the Minister details that the Minister considers to be adequate, of the proposed project and arrangements relating thereto, and the Minister is satisfied that the joint venture will contribute to the general improvement of the housing condition of the citizens of this State and approves of the project.

(2) For the purpose of performing its obligations under a joint venture, and without limiting any power already conferred on the commission under this Act, the commission may—

- (a) join in the formation of any company to be incorporated;

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- (b) purchase, hold, dispose of or deal with shares in or subscribe to the issue of shares by, any company;
- (c) seek and maintain appropriate representation on any board or other body having responsibility in the carrying out, management, or control of the project;
- (d) subject to any contract relating to the project, receive contributions or other moneys relating to the project and disburse or distribute or arrange for the disbursement or distribution of those contributions or other moneys;
- (e) make advances of money or provide financial accommodation to any person acting in furtherance of the joint venture;
- (f) guarantee the due performance of any covenants, promises, obligations or liabilities (including the repayment of loans, bank overdrafts or other financial accommodation and the payment of interest thereon) undertaken by any person acting in furtherance of the joint venture;
- (g) transfer any land the fee simple of which is vested in it to any person acting in furtherance of the joint venture;
- (h) require any person acting in furtherance of the joint venture to give the commission any mortgage, security, encumbrance or charge over any real or personal property or to give personal guarantees to the commission;
- (i) provide any service, expertise or skills which it may possess to any person acting in furtherance of the joint venture;
- (j) construct improvements and services of whatever nature on any land being developed for the purpose of the joint venture;
- (k) without limiting the generality of the foregoing, do all such things as may be necessary or incidental to the performance of its obligations under a joint venture or which the Minister may by writing direct it to do to give effect to its obligations under a joint venture.

## **PART 3—ADVANCES FOR HOUSING PURPOSES**

### **23 Power to commission to make advances to eligible persons for erection of dwelling houses etc.**

(1) Subject to this Act, in order to assist a person—

- (a) to erect a dwelling house on land owned or being acquired by the person;
- (b) to enlarge, alter, repair, improve, or paint a house on land owned by the person;

the commission may, upon application in writing, make an advance to such person either by instalments or otherwise upon the security of the land on which the dwelling house is erected or will be erected or upon such other security over real or personal property with or without any collateral guarantee as the commission thinks fit.

**(1A)** In the application for an advance under subsection (1)(a) the applicant may apply for the commission to utilise and the commission may utilise part of the amount to be advanced for the purpose of liquidating the liability of the applicant arising as a consequence of the applicant purchasing or acquiring or agreeing to purchase or acquire the land upon which the dwelling house is intended to be erected.

**(1B)** It shall be a condition of an advance any part of which is utilised as provided in subsection (1A) that the applicant, within the period of 3 months of that utilisation or such longer period as the commission in the particular case approves, shall execute an agreement approved by the commission for the erection of a dwelling house on the land the subject of the application for the advance.

(2) An advance shall not be made under this section to a person unless the commission is satisfied that—

- (a) the applicant is the owner of or is purchasing or acquiring or has agreed to purchase or acquire any land whether freehold, leasehold or an estate or interest in land that the commission accepts as being of a sufficiently permanent nature and as suitable for the purposes of this section; and
- (b) the dwelling house in respect of which the advance is made is intended to be used by the borrower as the borrower's home and for no other purpose; and

- (c) except in circumstances approved by the commission, neither the borrower nor the wife or husband (if any) of the borrower is the owner of any other dwelling house within Queensland or elsewhere.

(2A) Except as provided in subsection (1A), an advance shall only be made under this section if the applicant for the advance is the owner of the land the subject of the application.

### **Limit of rate of advance**

(3) Subject as herein provided no such advance shall exceed the fair estimated value of such dwelling house and of the land whereon it is or is to be erected.

### **Total limit of advance**

(4) A regulation may fix the maximum amount that may be advanced under this part.

(4AA) No advance under this part of this Act shall exceed the maximum amount therefor determined for the time being by or under subsection (4).

### **Power of the Minister to approve of advance exceeding the prescribed limit**

(4A) The Minister may, upon the recommendation of the chief executive, approve in a particular case of an advance exceeding the limit imposed by subsection (4AA) and the commission may make, under and in accordance with the provisions of this Act, any advance so approved.

(5) However, an advance exceeding the limit imposed by subsection (3) shall not be approved or made in pursuance of subsection (4A).

(6) Whenever any question arises whether any applicant is the owner of a dwelling house within Queensland or elsewhere, or as to the amount of the applicant's income or as to the fair estimated value of the dwelling house and of the land, the decision of the commission upon such question shall be final and conclusive for all purposes, and shall not be questioned in any proceedings whatsoever.

**Miner's homestead leases**

(7) For the purposes of making advances on the security of a miner's homestead lease, as defined by the *Mining Act 1898*<sup>3</sup> such leasehold shall be considered as if it were held in fee simple by the lessee thereof.

**Advances where home unfit for habitation**

(9) The commission may make an advance to any person whose home has been condemned by any local government, pursuant to its powers, authorities, and jurisdiction under the *Building Act 1975*, as unfit for habitation, with a view to enabling such person to repair or rebuild the person's home so that such home may conform to the local laws or regulations of the local government concerned.

(10) Such advance may be made on such terms, provisions, conditions, and stipulations as the commission may deem fit, or as may be prescribed.

(11) However, the local government shall acquaint the commission with any order made by it condemning the house concerned or ordering same to be demolished or repaired, as the case may be.

**23A Advances for the purchase of dwelling houses**

(1) Subject to this section the commission may make an advance to any person for the purpose of assisting the person to purchase a dwelling house and its appurtenant land, including any dwelling house for assisting in the erection whereof the commission has made an advance under this Act, or any dwelling house sold by the commission under this Act.

(2) An advance shall not be made to a person under this section in respect of a house unless the commission is satisfied that—

- (a) the house is intended to be used by the person as the person's home and for no other purpose; and
- (b) except in circumstances approved by the commission, neither the person nor his or her spouse (if any) is the owner of any other house in Queensland or elsewhere.

(3) The amount of an advance under this section shall not exceed the maximum amount which the commission could advance under this part of

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3 For references to *Mining Act 1898* in this Act, now see *Mineral Resources Act 1989*, section 418.

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this Act if the advance were made in order to assist the person concerned to erect the dwelling house in question.

(4) The commission shall not make to a person an advance or advances under this section the amount of which exceeds—

- (a) the purchasing price; or
- (b) the fair estimated value of the house and its appurtenant land;

whichever is the less.

(5) Subsections (3) and (4) apply so that neither authorises the commission to make under this section to any person an advance the amount whereof exceeds the maximum imposed by the other.

(6) The provisions of section 25B—

- (a) shall apply to and with respect to an advance made to a person under this section in respect of a house which the commission is satisfied has been erected within the period of 5 years next preceding the date when the application in writing for the advance was received by the commission;
- (b) shall not apply to or with respect to an advance made to a person under this section in respect of a house which the commission is satisfied has been erected more than 5 years before the date when the application in writing for the advance was received by the commission.

(8) Subject to the provisions of subsections (1) to (6)—

- (a) any and every provision of this Act which applies to or with respect to an advance under section 23 shall, with and subject to all necessary adaptations thereof, apply and extend to and with respect to advances under this section and borrowers to whom those advances are or are proposed to be made; and
- (b) any and every power, function, right or remedy had by the chief executive, the commission, or any officer of the commission under this Act or under any mortgage or other security given or entered into under or in pursuance of this Act in relation to an advance under section 23 (including the rights and remedies of the commission against a borrower of an advance under that section who has made default in observing or performing any provision of this Act or any covenant or condition binding upon the borrower of a mortgage or other security given or entered into by that borrower under or in pursuance of this Act) shall be had

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and may be exercised by the chief executive, the commission or, as the case may be, that officer in relation to an advance under this section; and

- (c) any and every obligation, liability or responsibility which, in relation to an advance under section 23, is or may be imposed upon a borrower under this Act or under any mortgage or other security given or entered into under or in pursuance of this Act in relation to an advance under section 23 (including the obligations, liabilities and responsibilities of a borrower of an advance under section 23 who has made default in observing or performing any provision of this Act or any covenant or condition binding upon the borrower of a mortgage or other security given or entered into by that borrower under this Act) shall or, as the case may be, may be imposed upon a borrower in relation to an advance under this section; and
- (d) the power to make regulations under this Act shall include power to make all such regulations as the Governor in Council deems necessary or convenient, whether generally or to meet a particular case, to administer or to carry out the objects and purposes of this section.

**(8A)** Where under this Act a regulation may be made for a specified purpose a regulation for that purpose may be limited in its application so as to apply and extend only in relation to advances under this section, and any subsisting regulation made for a specified purpose may be amended, altered, varied or otherwise modified so as to extend its application to and with respect to advances under this section.

**(9)** On and from the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3, all mortgages and other securities to which the commission is a party for a purpose of this section and all releases thereof shall be exempt from stamp duty but subject thereto, nothing in this Act shall exempt from stamp duty any transfer or other document or instrument whatever to which the commission is a party for a purpose of this section.

**(10)** All stamp duty payable in respect of any such transfer or other document or other instrument whatsoever shall be payable by the person with whom the commission has entered into the same, or, as the case may be, who is a party with the commission to the same, and such person shall also pay all fees and charges (if any) payable under the *Land Title Act 1994*, the *Land Act 1994* or this Act in respect of the transaction.

## PART 4—SALE OF HOUSES

### **23B Sale of lots under Building Units and Group Titles Act or BCCM Act to pensioners**

(1) The Minister may by notification published in the gazette declare that land held in fee simple by the commission and specified in the notification shall be reserved for sale as provided in this section.

(2) The commission shall forward a copy of the gazette containing a notification referred to in subsection (1) to the registrar of titles.

(3) The registrar of titles, upon production to the registrar of the relevant deed of grant or certificate of title, shall, without fee and without any request record on the register in respect of the land specified in the notification the fact of the reservation and make on the deed or, as the case may be, certificate the following endorsement—

‘Attention is directed to the provisions of the *State Housing Act 1945*, section 23B relating to change of registered proprietors.’

(4) Where the land specified in the notification becomes the subject of a plan registered pursuant to the *Building Units and Group Titles Act 1980*, or a plan registered under the *Land Title Act 1994* for establishing a community titles scheme under the BCCM Act, the registrar of titles shall without fee and without any request record in the register the fact of the reservation and make the endorsement prescribed by subsection (3) upon each certificate of title issued in respect of the lots created by that registration.

(5) Where the commission sells land reserved pursuant to subsection (1), it shall be sold by the commission as lots on a plan pursuant to the *Building Units and Group Titles Act 1980* or as lots included in a community titles scheme under the BCCM Act.

(6) The commission may upon such terms and conditions as the commission thinks fit sell a lot that is the subject of a reservation referred to in subsection (1) to a person if the commission is satisfied that—

- (a) that person is of limited means; and
- (b) that person is a pensioner or the spouse of a pensioner; and
- (c) that person has attained the age of 55 years; and
- (d) that person intends to use the lot as a home for—



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- (i) himself or herself; or
  - (ii) himself or herself and his or her spouse; or
  - (iii) himself or herself and 1 other person;
- and for no other person; and

(e) except in circumstances approved by the commission, none of the persons for whom the lot is intended to be used as a home owns any other dwelling house in Queensland or elsewhere.

**(6A)** The commission may sell a lot that is the subject of a reservation referred to in subsection (1) to 2 persons.

**(6B)** However, each person is eligible in accordance with subsection (6) (other than paragraphs (b) and (c)) to purchase such a lot if at least 1 of them is a pensioner and at least 1 of them has attained the age of 55 years.

**(6C)** For the purposes of subsections (6) to (6B) a person is a pensioner if that person is in receipt—

- (a) pursuant to the *Social Security Act 1947* (Cwlth),<sup>4</sup> or any Act in substitution for that Act, of—
  - (i) an age pension; or
  - (ii) an invalid pension; or
  - (iii) a widow's pension; or
- (b) pursuant to the *Repatriation Act 1920* (Cwlth),<sup>5</sup> part 3, or any Act in substitution for that Act, of a pension;

or will be entitled to receive such a pension upon completion of the purchase by that person of a lot referred to in this section.

**(7)** Notwithstanding the provisions of subsection (6), where special circumstances exist, the commission, with the Minister's approval, may sell any lot vested in the commission, which is subject to a reservation referred to in subsection (1), to any person.

**(8)** Where a lot is the subject of a reservation referred to in subsection (1), the registrar of titles shall not register a change of registered proprietor, other than the recording of the death of a joint tenant or the

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4 Now see *Acts Interpretation Act 1954*, section 14H and *Social Security Act 1991* (Cwlth).

5 Now see *Acts Interpretation Act 1954*, section 14H and *Veterans' Entitlement Act 1986* (Cwlth).

transmission by death to a personal representative of a registered proprietor, of that lot unless—

- (a) the change is by way of memorandum of transfer and the transferor is the commission; or
- (b) the documents lodged in the land registry are accompanied by a form of consent of the commission.

**(8A)** The commission may consent to a change of registered proprietor for the purposes of subsection (8)(b)—

- (a) where, if the lot had been vested in the commission, the commission would have been entitled under this section to sell the lot to the person or persons who is or are to become the registered proprietor or proprietors, of the lot; or
- (b) where special circumstances exist and the Minister approves the change.

**(9)** Nothing in this section shall prevent the commission from acquiring land or a lot subject to a reservation referred to in subsection (1) and the registrar of titles may register the commission as proprietor of that land or lot notwithstanding that subsection (8) is not complied with.

**(10)** The Minister may by notification published in the gazette declare that a reservation affecting land specified in the notification shall be cancelled in respect of that land.

**(11)** Upon receipt of a copy of the gazette, the registrar of titles shall record on the register the fact of the cancellation and thereupon the reservation shall have no further force or effect in respect of that land.

## **24 Power to commission to sell houses to eligible persons**

**(1)** Subject to this part of this Act the commission may sell to a person eligible under this part of this Act a house and land which has been or is being acquired by the commission or a house erected, or in the course of erection, or to be erected in pursuance of this Act.

**(1AA)** Where the fee simple of the land whereon the house is erected, or in the course of erection, or to be erected is vested in the commission, the commission shall sell the land for that estate together with the dwelling house.

**(1AB)** Where the fee simple of the land whereon the house is erected, or in the course of erection, or to be erected is not vested in the commission,

the commission may, according as agreed upon between it and the purchaser—

- (a) sell the land for a freeholding lease tenure therein together with the house; or
- (b) sell the house only and arrange for the grant to the purchaser of a perpetual town lease or perpetual suburban lease of the land.

**(1A)** Where—

- (a) the commission acquires a house and land pursuant to this Act and is or becomes the registered proprietor of that land;
- (b) the fee simple of the land whereon a house is erected or in the course of erection, or to be erected pursuant to this Act is vested in the commission;

the power conferred on the commission by subsections (1) to (1AB) includes the power to sell a share in the house and land and any reference to ‘house’, ‘dwelling house’ and ‘land’ in this section, section 25 or other section applicable or which becomes applicable subsequent to the sale of a house, dwelling house, or land shall be read and construed to include a share of a house, dwelling house or land.

### **Sale of house only to person not already an owner**

**(2)** A house shall not be sold in pursuance of this part to any person unless the commission is satisfied that—

- (a) the house is intended to be used by the person as the person’s home and for no other purpose; and
- (b) except in circumstances approved by the commission, neither the person, nor the wife or husband (if any) of that person, is the owner of any other house in Queensland or elsewhere.

### **Terms and conditions of sale**

**(3)** A sale under this section must be on terms acceptable to the commission.

### **Purchasing price**

**(3A)** Subject to subsections (3B) to (3D), the purchasing price shall be agreed upon between the commission and the purchaser.

**(3B)** In determining the purchasing price to which it will agree, the commission shall have regard to the improved value of the land

appurtenant to the house, namely, the capital sum the land might be expected to realise if offered for sale for an estate in fee simple on such reasonable terms and conditions as a bona fide seller would require having regard to the added value given to the land by the house and other improvements (if any) at the time as at which the contract of sale is entered into, irrespective of the cost of the house and other improvements (if any).

(3C) Except with the prior consent in writing of the Minister, the commission shall not sell at a purchasing price less than the capital cost to it of the house and other improvements (if any) upon the land appurtenant to the house, and of that land if it is sold together with the house reduced by such amount as the commission deems a reasonable allowance for wear and tear.

(3D) In the case of a sale of a house in the course of erection, or a house to be erected, the commission may agree to sell at a price to be determined according to the provisions of subsections (3A) to (3C) upon the completion of erection, and may in such case further agree that the price to be so determined shall not exceed a specified sum.

### **Instalments**

(3E) The purchaser must pay interest on the balance of the purchasing price at a rate determined by the Governor in Council.

(3EA) The purchaser must make monthly payments to the commission of—

- (a) the balance of the purchasing price payable; and
- (b) interest payable under subsection (3E).

(3EB) The amount of a monthly payment under subsection (3EA)(a) and (b) is the amount decided by the commission.

(3F) The provisions of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, section 10(a) shall not apply to any contract of sale entered into pursuant to this section application for which was received by the commission before the commencement of that Act nor to advances made by the commission pursuant to subsection (7) where the relevant contract was entered into before such commencement.

### **Improvements etc. after contract of sale entered into**

(4) Any alteration, enlargement, or improvement effected by the commission of or to a home which is the subject of a contract of sale upon the application of the purchaser thereof shall not prejudicially affect such

contract; but the capital cost of such alteration, enlargement, or improvement, or so much thereof, as the commission deems fit, shall be added to the unpaid purchase money of the home and become part thereof, and the monthly instalment on the home shall be so increased as will permit of the liquidation of the increased purchase money together with interest not later than the date of the expiration of the original term of the contract of sale, and the contract of sale shall be deemed to be amended accordingly.

**(4A)** The necessary amendments of the contract of sale shall be endorsed upon the instrument, and when signed by the proper officer shall be deemed to be included in and shall become part of the contract of sale and binding on the parties.

**(5)** The costs and expenses (if any) of any transfer, mortgage or release executed in pursuance of this part shall be borne by the purchaser.

**(6)** The Minister on the recommendation of the commission, may from time to time, cause any Crown land or land acquired for the purposes of this Act to be open for lease at a capital value approved by the Governor in Council as perpetual town leases or perpetual suburban leases or as freeholding leases, or alternatively as perpetual town leases or perpetual suburban leases, as the case may be, or as freeholding leases for the purposes of this Act.

**(6A)** However, such leases for the purposes of homes shall not be offered at auction, and the only persons authorised or permitted to apply for or hold such leases shall be purchasers of homes erected on such lands and their transferees respectively.

**(6B)** The capital value of the land shall be exclusive of any improvements thereon.

**(6C)** Every freeholding lease shall contain a covenant that the Governor in Council shall, in the name of Her Majesty, grant in fee simple to the lessee the land comprised in the lease—

- (a) upon payment of all moneys, including interest thereon, payable in respect of the purchase of the land comprised in the freeholding lease and of the home erected thereon; and
- (b) upon the due performance by the lessee of the terms and conditions of the contract of sale of the home erected on the land; and

- (c) upon the due performance by the lessee of all other covenants, conditions, stipulations and provisions binding upon the lessee of the lease.

**(6D)** Upon a lessee becoming entitled to performance of the covenant referred to in subsection (6C), the commission shall surrender to the Crown any estate or interest of the commission in the land concerned.

**(6E)** The Governor in Council shall, in the name of Her Majesty, grant in fee simple any land to a person thereunto entitled under this part of this Act.

**(6F)** The *Land Act 1962*, section 285 applies to a deed of grant issued under this part.

**(6G)** Any lease under subsection (6) may contain such special covenants, conditions, stipulations, and provisions as may be deemed necessary or requisite for carrying into effect the provisions of this Act.

**(6H)** The rents in respect of all perpetual leases under subsection (6) shall be payable monthly in advance on the first day of each month to the commission, and all such rents from time to time received by it shall be paid into the fund.

**(6I)** Except as herein otherwise provided, every such perpetual lease shall be and be deemed to be a perpetual town lease or perpetual suburban lease, as the case may require, under the Land Act; and the provisions of the *Land Act 1962* (save as herein modified) shall apply and, it is hereby declared, always did apply from the commencement of that Act to every such lease so far as the same are applicable.

**(6J)** However, wherever reference is made in any of the said provisions to the Minister the reference shall, for the purposes of such leases under this Act, be deemed to be to the Minister charged with the administration of this Act instead of to the Minister for Public Lands.

**(6K)** The provisions of the *Land Act 1962*, section 188 do not apply to leases referred to in subsection (6I).

**(6L)** All rents payable in respect of every perpetual town lease and every perpetual suburban lease demised pursuant to this section shall be paid to the commission.

**(6M)** The term of a freeholding lease shall commence on the commencing date of, and be of the same duration as, the term of the contract of sale of the home erected on the land comprised in the lease.

(6N) Subject to the provisions of this Act, the provisions of the *Land Act 1962* which apply to leases deemed pursuant to part 7, division 3 of that Act to be leases for terms of years shall, with and subject to all necessary adaptations apply and, it is hereby declared, always did apply from the commencement of that Act to a freeholding lease and for that purpose—

- (a) a reference to the Minister in that Act shall be read and construed as a reference to the Minister charged with the administration of this Act;
- (b) a reference to the Department of Lands or to the Department in that Act shall be read and construed as a reference to the commission.

**Payment of purchasing price may be secured by mortgage**

(7) Where the fee simple of land upon which a house is erected, in the course of erection or to be erected is vested in the commission and a person—

- (a) is eligible under this section to purchase that house and the provisions of subsections (3) to (3D) have been complied with; or
- (b) is a purchaser of that house under a contract of sale entered into pursuant to this section (whether before or after the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3), has complied with or substantially complied with the terms and conditions of the contract and desires to borrow moneys, other than from the commission, upon the security of a mortgage;

the commission may, at the commission's discretion upon the written application by that person and, in the case of a purchaser referred to in paragraph (b), upon the payment of the prescribed fee transfer the fee simple of the land to that person and secure the payment of the balance of the purchase money by way of mortgage whereupon the commission shall be deemed to have made an advance to that person pursuant to this Act of the balance of the purchase money and, in the case of a purchaser referred to in paragraph (b), the purchaser shall be deemed to have paid all moneys payable to the commission pursuant to the terms and conditions of the contract of sale.

(8) An advance deemed to have been made by the commission pursuant to subsection (7) shall be, as near as may be practicable, subject to the same terms and conditions to which—

- (a) in the case of an advance to a person referred to in subsection (7)(a)—would be applicable to the sale of the house had it been purchased under contract of sale pursuant to this section;
- (b) in the case of an advance to a person referred to in subsection (7)(b) the sale of the house was subject;

and subject to all necessary adaptations the provisions of this Act, other than section 23A(9), which are not inconsistent with this section which apply to or with respect to an advance under section 23A shall apply and extend to and with respect to advances under this subsection and borrowers to whom those advances are, are proposed or are deemed to be made.

(9) The transfer by the commission of the fee simple of land to a purchaser pursuant to subsection (7)(b) shall not be taken to be consent by the commission to the giving of a second mortgage or charge of the land or any part thereof.

## **24A Power of commission to provide home sites**

(1) Subject to this section, in order to assist a person to obtain land on which to erect a dwelling house, the commission with the approval of the Minister may—

- (a) enter into an agreement to sell to any person for an estate in fee simple any land which is vested in the commission for an estate in fee simple or any vacant Crown land which, having been set apart by the Governor in Council, by notification in the gazette, for the purposes of this Act, has become and is available for the purposes of this Act; or
- (b) enter into arrangements with any person for the grant to such person of a perpetual town lease or perpetual suburban lease of any vacant Crown land which, having been set apart by the Governor in Council, by notification in the gazette, for the purposes of this Act, has become and is available for the purposes of this Act.

(2) The commission shall not, in respect of any land, enter into any agreement mentioned in subsection (1)(a) or arrangements mentioned in subsection (1)(b) with any person unless the commission is satisfied—



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- (a) that such person intends to use the land for the purpose of erecting the person's home thereon and for no other purpose; and
- (b) that, except in circumstances approved by the commission, neither such person nor his or her spouse (if any) is the owner of, or holds from the Crown for a lesser estate than freehold, any land in Queensland or elsewhere on which a dwelling house may be erected; and
- (c) that, except in circumstances approved by the commission, neither such person nor his or her spouse (if any) is the owner of a dwelling house in Queensland or elsewhere.

(3) The purchasing price of any land agreed to be sold by the commission pursuant to this section shall be agreed upon between the commission and the purchaser.

(3A) The commission shall fix the capital value of any land the subject of arrangements mentioned in subsection (1)(b) entered into by it.

(3B) Such capital value shall be exclusive of the value of any improvements, upon such land, but the commission shall also fix the value of such improvements (if any).

(3C) In the case of arrangements with respect to a perpetual town lease or perpetual suburban lease of any improved land, the person who is a party thereto shall, within the period of 18 months next following the date of entry by the parties into the arrangements, pay to the commission the capital value, as fixed by the commission, of the improvements, and the making of such payment in full shall be a condition of the arrangements and such condition shall be binding upon such person and shall be performed by the person.

(4) Every agreement to sell any land entered into by the commission with any person pursuant to this section after the commencement of the *State Housing Act and Another Act Amendment Act 1979* shall contain the following conditions which shall be binding upon such person and be performed by the person—

- (a) that such person shall have paid a deposit of not less than that per centum (if any) determined by the Minister from time to time, of the purchasing price before the entry by the commission into the agreement;
- (b) that such person will pay interest at the rate determined by the Governor in Council, calculated at monthly rests, upon the unpaid balance of the purchasing price;

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- (c) that such person will pay the balance of the purchasing price with interest thereon, within the period of 3 years next following the date of entry by the parties into the agreement, by payment on the day in each month specified in the agreement of monthly instalments of such amount, or of such amounts respectively, as is or are specified in the agreement;
- (d) that such person will, as from the date of entry by the parties into the agreement, pay all rates, taxes and other charges on the land concerned.

(5) In every case arrangements for the grant of a perpetual town lease or a perpetual suburban lease entered into by the commission with any person pursuant to this section shall contain the conditions set out in subsection (4)(d), which conditions shall be binding upon such person and be performed by the person.

(5A) For the purposes of subsection (5), subsection (4)(d) shall be read as if the term ‘arrangements’ were substituted for the term ‘agreement’ therein.

(6) If and when the commission is satisfied that any person to whom the commission has agreed in pursuance of this section to sell any land has complied in every respect with the conditions of the agreement specified in subsection (4) the commission shall—

- (a) if such land is vested in the commission for an estate in fee simple—execute and give to such person an instrument of transfer capable of registration under the *Land Title Act 1994* and transferring such land to such person for an estate in fee simple; or
- (b) in any other case—certify in writing such compliance to the Minister for submission to the Governor in Council who shall thereupon, in the name of Her Majesty, grant in fee simple such land to such person and cause a deed of grant thereof to issue in the person’s name accordingly.

(6A) Every such grant shall be subject to the several conditions and reservations contained in and declared by the *Land Act*, the *Mining on Private Land Act 1909*, and the *Petroleum Act 1923*.

(7) If and when the commission is satisfied that any person with whom the commission has made arrangements in pursuance of this section for the grant to the person of a perpetual town lease or a perpetual suburban lease of any land has complied in full with the conditions of such arrangements

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specified in subsections (3C) and (5), the commission shall certify in writing such compliance to the Minister who thereupon shall cause such land to be open for lease as a perpetual town lease or, accordingly as arranged, a perpetual suburban lease.

**(7A)** The capital value of the land shall be the amount fixed by the commission under subsections (3A) and (3B).

**(7B)** Such lease shall not be offered at auction, and the only person authorised or permitted to apply for or hold such lease shall be the person with whom the commission entered into the arrangements in question.

**(7C)** Every such lease shall be a perpetual town lease or, accordingly as arranged, a perpetual suburban lease and, subject to and except as otherwise provided in this section, the provisions of the *Land Act 1994* shall apply and, it is hereby declared, always did apply from the commencement of that Act to every such lease accordingly.

**(7D)** The provisions of the *Land Act 1962*, section 188 do not apply to leases referred to in subsection (7).

**(7E)** In so applying those provisions reference therein to the Minister, wherever appearing, shall be construed as referring to the Minister charged for the time being with the administration of this Act.

**(7F)** All rents payable in respect of every perpetual town lease and every perpetual suburban lease demised pursuant to this section shall be paid to the commission.

**(8)** Every agreement to sell any land entered into by the commission with any person pursuant to this section shall contain a covenant by the commission that if and when the commission is satisfied that such person has complied in every respect with the conditions of the agreement specified in subsection (4), the commission will—

- (a) if such land is vested in it for an estate in fee simple—execute and give to such person an instrument of transfer capable of registration under the *Land Title Act 1994* and transferring such land to such person for an estate in fee simple; or
- (b) in any other case—certify such compliance in writing to the Minister and take and do all such other steps and things as are necessary to be done or may be done by it for the purpose of obtaining a grant in fee simple of such land to such person and the issue of a deed of grant therefor in the person's name accordingly.

(9) All arrangements for the grant of a perpetual town lease or a perpetual suburban lease entered into by the commission with any person pursuant to this section shall contain a covenant by the commission that, if and when the commission is satisfied that such person has complied in every respect with the conditions of the arrangements specified in subsections (3C) and (5), it will certify in writing such compliance to the Minister and will take and do all such other steps and things as are necessary to be taken or done or may be taken or done by it for the purpose of obtaining the grant of a perpetual town lease or, according to such arrangements, a perpetual suburban lease in the name of such person.

(10) If any person who has entered into an agreement with the commission pursuant to this section for the sale to such person of any land makes default in the payment of any sum payable by the person to the commission or commits any breach of any other condition of the agreement specified in subsection (4), the commission may rescind the agreement and enter upon and take possession of the land.

(10A) Any person may, with the consent of the commission and subject to giving up possession to the commission of the land in question, rescind an agreement entered into by the person with the commission pursuant to this section.

(10B) Upon the rescission of any agreement entered into pursuant to this section, whether by the commission pursuant to subsection (10) or by the person who is the other party thereto with the consent of the commission pursuant to subsection (10A), the commission shall—

- (a) firstly apply the moneys (if any) paid to it under the agreement in respect of the purchasing price (exclusive of so much thereof as is attributable to interest on the purchasing price) in payment of any stamp duty, or other fees or charges in respect of the transaction or any instrument in relation thereto, or any rates, taxes or other charges upon the land in question, which being payable is or are then unpaid; and
- (b) secondly, repay the remainder (if any) of such moneys, less so much thereof as is attributable to interest on the purchasing price, to the person who is the other party to the agreement in question.

(10C) If the aggregate of the payments specified in subsection (10B)(a) exceeds the moneys to be applied in making such payments, the commission may, in respect of the making of such payments or any of them either wholly or partly, apply such moneys as it deems fit.

**(10D)** Nothing in subsections (10) to (10C) shall affect the liability of the person who was the other party to the agreement in question to make any such payment to the extent to which it is not made by the commission.

**(11)** If any person who has entered into any arrangements with the commission pursuant to this section for the grant to such person of a perpetual town lease or a perpetual suburban lease commits any breach of the conditions of such arrangements specified in subsection (3C) or (5), the commission may rescind the arrangements and enter upon and take possession of the land.

**(11A)** Any person may, with the consent of the commission, and subject to giving up possession to the commission of the land in question, rescind any arrangements entered into by the person with the commission pursuant to this section.

**(11B)** The rescission of any arrangements entered into pursuant to this section, whether by the commission pursuant to subsection (11), or by the person who is the other party thereto with the consent of the commission pursuant to subsection (11A), shall not affect the liability of the person who was the other party to such arrangements to pay any stamp duty or other fees or charges in respect of the transaction or any instrument in relation thereto, or any rates, taxes or other charges upon the land in question, which being payable is or are unpaid at the date of the rescission.

**(11C)** The commission shall repay to the person who is the other party to the rescinded arrangements the amount (if any) paid by the person to it in respect of the capital value of improvements upon the land in question less, (if any) loss of, or depreciation in value of, such improvements occurred whilst the arrangements were in force, the amount of such loss or depreciation.

**(12)** Nothing in this Act shall exempt from stamp duty any agreement or arrangements entered into by the commission with any person pursuant to this section or any memorandum of transfer, receipt or other instrument executed or given by the commission or such person for any purpose of such agreement or arrangements.

**(13)** All stamp duty in respect of such instruments or any of them shall be payable by the person with whom the commission has entered into the agreement, or as the case may be, arrangements, and such person shall also pay all fees and other charges payable under the *Land Title Act 1994* or, in the case of a grant of a deed the *Land Act* or, in the case of a grant of a lease, this Act.

**24B Application of Act to workers' homes perpetual town leases**

(1) Notwithstanding the provisions of the *Workers' Homes Acts Repeal Act 1961*, each perpetual town lease—

- (a) granted under the *Workers' Homes Act 1919* or deemed to be so granted; and
- (b) current at the date of commencement of the *State Housing Act and Another Act Amendment Act 1983*;

shall be deemed to be and, it is hereby declared, always has been on and from the date of commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978* a perpetual town lease granted under section 24 and the provisions of this Act and of any other Act or law that apply to or in respect of perpetual town leases granted under section 24 shall and, it is hereby declared, always did from the date of that commencement apply accordingly.

(2) Nothing in subsection (1) shall invalidate any thing validly done in pursuance of any provision of the *Workers' Homes Acts Repeal Act 1961* relating to perpetual town leases prior to the date of commencement of this section which thing shall be deemed to have been validly done under the corresponding Act or law that applied to perpetual town leases granted under section 24.

(3) The provisions of the *Workers' Homes Acts Repeal Act 1961*, section 10(6) and (7) shall continue to apply notwithstanding the repeal of that Act by the *State Housing Act and Another Act Amendment Act 1983*.

**24C Rental provisions regarding perpetual leases**

(1) This section applies to all perpetual leases granted or deemed to have been granted, whether before or after the commencement of the *State Housing Act and Another Act Amendment Act 1983*, pursuant to this part.

(2) Subject to this section, each rental period of perpetual leases granted or deemed to have been granted pursuant to this part shall be 1 year.

(3) The first rental period of a perpetual lease granted after 31 December 1983 shall be from the date of grant of the lease to 30 June next occurring after the expiration of 12 months from the date of grant.

(4) Where a perpetual lease granted or deemed to have been granted pursuant to this part subsists on 31 December 1983—

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- (a) notwithstanding subsection (2), the rental period subsisting at 31 December 1983 shall continue as the rental period; and
- (b) upon the expiration of the rental period referred to in paragraph (a), the rental period shall be from the day after the date of that expiration to 30 June next following; and
- (c) each rental period subsequent to the rental period prescribed in paragraph (b) shall be 1 year.

(5) For each rental period of 1 year (other than the first rental period of a perpetual lease) commencing after 31 December 1983 the annual rental shall be a sum equal to—

- (a) the prescribed percentage of the unimproved value of the land the subject of the lease at the date of commencement of the period in question; or
- (b) \$30;

whichever is the greater.

(5A) For the purposes of subsection (5)—

**“prescribed percentage”** means 3% or such other percentage prescribed under a regulation and effective at the date of commencement of the relevant rental period.

(6) In respect of a rental period being—

- (a) a rental period referred to in subsection (4)(b); or
- (b) the first rental period referred to in subsection (3);

the rental shall be an amount that bears to the amount that would have been the rental had the period been a rental period referred to in subsection (5) the same proportion that the actual rental period expressed in weeks (in which expression a part of a week shall be taken to be a whole week) bears to 52.

(7) For the purposes of this section, the unimproved value of land shall be—

- (a) in respect of the first rental period of a lease—
  - (i) in the case of a perpetual lease granted pursuant to section 24—the capital value of the land approved by the Governor in Council under that section;

- (ii) in the case of a perpetual lease granted pursuant to section 24A—the capital value of the land fixed by the commission under that section;
- (b) in the case where a valuation of the unimproved value of the land made by the chief executive (valuations) under the *Valuation of Land Act 1944* is in force at the date of commencement of the rental period in question—the amount of that valuation or that amount as varied by the Land Court, on appeal by the lessee under subsection (8);
- (c) in any other case—the amount that the Governor in Council determines in the particular case to be the unimproved value of the land.

(8) If the lessee is dissatisfied with the valuation of the chief executive (valuations) of the unimproved value of the land, the lessee may, within 42 days after receipt by the lessee of notification in writing by the commission of the amount of the valuation, appeal against the valuation to the Land Court.

(9) Such appeal shall be instituted by lodging in the Land Court registry written notice of the lessee's grounds of appeal and serving a copy of that notice on the commission.

(10) Upon hearing an appeal under subsection (8) the Land Court may—

- (a) vary the amount of the valuation in such way as it thinks just; or
- (b) disallow the appeal and confirm the amount of the valuation;

and may make such order as to the costs of the appeal as it thinks fit.

(11) The unimproved value of land shall be determined by the Land Court in accordance with the provisions of the *Valuation of Land Act 1944* as if the Land Court were the chief executive (valuations).

(12) The determination of the Land Court on appeal shall be final and conclusive.

## **25 Discretion of commission as to making of contract of sale**

(1) The commission may, at its discretion, refuse to enter into a contract for the sale of any land and dwelling house to any person, unless it is satisfied that the person has a reasonable prospect of carrying out the terms of the contract of sale, or in any case where in its opinion, it is undesirable to enter into the contract.



**Sale or advance may be made to husband and wife jointly**

(2) A contract of sale may be made jointly with a qualified person and the husband or wife thereof.

**Commission may purchase and dispose of purchaser's interest**

(3) In the event of a purchaser being desirous of disposing of his or her interest in any property in respect of which a contract of sale has been entered into under this Act before the purchaser has made payment in full to the commission, the commission may purchase the interest at such price as is agreed upon, and may, subject to this Act, dispose of the property to any eligible person.

**Application of schedule**

(4) Subject as is herein expressly provided the provisions of the schedule shall, mutatis mutandis, apply in respect of a purchaser under a contract of sale, and to the intent that where the terms 'mortgagor' or 'mortgage' are referred to therein, such terms shall mean for the purposes of this part 'purchaser' and 'contract of sale' respectively.

(5) And where reference is made to the payment of the balance of any advance such reference shall also mean and include a reference to the payment of the unpaid balance of the purchase moneys secured under contract of sale.

**PART 4A—ENCOURAGEMENT AND AID IN BUILDING HOUSES****25B Home builders' insurance**

(1) Subject to this section and to section 12 of the schedule the commission shall be deemed to insure and to keep insured as prescribed by subsection (3) every person who, on or after 1 July 1966—

- (a) obtains from the commission, for the purpose of assisting him, her or them to erect a dwelling house, an advance under this Act repayable before the expiration of a period not exceeding 30 years (exclusive of the period of 6 months during which interest only is payable in respect of the advance);

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- (b) contracts under this Act to purchase from the commission a dwelling house pursuant to a contract whereunder the purchasing price is payable before the expiration of a period not exceeding 30 years;

and who—

- (c) is under the age of 40 years at the date when—
- (i) the person first occupies the dwelling house in question; or
  - (ii) in the case of a contract as hereinbefore mentioned in this section made in respect of a dwelling house then occupied by the person or by another person who is jointly with the person a party to the contract—the contract is made;

or at such earlier date as may be determined by the commission (which earlier date shall be not more than 2 months prior to the date when the person first occupies the dwelling house or, in a case whereto subparagraph (ii) applies, the contract is made); and

- (d) satisfies the commission that the net income, ascertained as prescribed by subsection (1A), derived by the person for the financial year next preceding the date when—
- (i) the person first occupies the dwelling house in question; or
  - (ii) in the case of a contract as hereinbefore mentioned in this subsection made in respect of a dwelling house then occupied by the person or by another person who is jointly with the person a party to the contract—the contract was made;

was not greater than \$3 640; and

- (e) at the date when—
- (i) the person first occupies the dwelling house in question; or
  - (ii) in the case of a contract hereinbefore mentioned in this section made in respect of a dwelling house then occupied by the person or by another person who is jointly with the person a party to the contract—the contract is made;

or at such subsequent date not later than 9 months after the person first occupies the dwelling house in question or, in a case whereto subparagraph (ii) applies, the contract is made as is determined by the commission, produces to the commission medical evidence of good health which satisfies the commission

that the person's expectancy of life, apart from any occupational hazard, is such that the person would not be required to pay a loading or higher rate of premium in order to obtain any insurance on the person's life in accordance with the accepted practices in relation to life insurance business at the time in question.

**(1A)** In subsection (1AB)—

**“concessional deductions”** means the concessional deductions under and within the meaning of the *Income Tax Assessment Act 1936* (Cwlth) (or any Act substituted for that Act) which were allowable thereunder in respect of the financial year in question.

**(1AB)** For the purposes of subsection (1)(d) the net income derived by any person for a financial year shall be the amount remaining after deducting from the gross income derived by that person for that financial year all concessional deductions to which that person is entitled for that financial year.

**(1B)** Where in respect of a financial year for which the net income of any person is required to be ascertained for the purposes of subsection (1)(d), the commission is satisfied—

- (a) in the case of a person who is married at the date when the person first occupies the dwelling house the subject of the advance or contracts to purchase the dwelling house as mentioned in subsection (1)—that such person was not entitled in full to the concessional deduction in respect of a spouse for the reason that the person was not married, or that the person was married for part only of that financial year, or that the person's spouse derived for that financial year income from employment which, in the opinion of the chief executive, was of a non-permanent nature; or
- (b) in the case of a person upon whom any child (including any invalid child or student child) is dependent at the date when the person first occupies the dwelling house the subject of the advance or contracts to purchase the dwelling house as mentioned in subsection (1)—that such person was not entitled in full to the concessional deduction in respect of such a child for the reason that such child was not dependent upon the person for the whole of that financial year or was dependent upon the person for part only of that financial year; or

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- (c) in the case of a person who is not married at the date when the person first occupies the dwelling house the subject of the advance or contracts to purchase the dwelling house as mentioned in subsection (1)—that such person, in respect of that financial year, was entitled, whether in full or in part, to the concessional deduction in respect of a spouse; or
- (d) in the case of a person who, in respect of that financial year, was entitled, whether in full or in part, to the concessional deduction in respect of a child (including an invalid or student child) that, in respect of such child such person ceased to be so entitled before the date when the person first occupies the dwelling house the subject of the advance or contracts to purchase the dwelling house as mentioned in subsection (1);

the commission may adjust the amount which, except for this subsection, would be the net income, as ascertained under subsection (1A), of the person concerned for the financial year in question by—

- (e) in any case mentioned in paragraph (a) or (b)—reducing; or
- (f) in any case mentioned in paragraph (c) or (d)—increasing;

that amount by such sum as the commission deems just, and such adjusted amount shall be the net income for the purposes of subsection (1)(d).

(2) In applying subsection (1) to any case the circumstances whereof are exceptional, the earlier date referred to in subsection (1)(c) may be determined by the commission, with the approval of the Minister, at a date not more than 6 months prior to the date when the dwelling house is first occupied, or, if subsection (1)(c)(i) applies, the contract is made.

(3) Subject to subsection (5) such insurance shall cover such person and any other person who is jointly a party with the person to the transaction in question with the commission against the risk of the death of such person, leaving the person surviving a widow, a child or children under the age of 18 years, or a dependent mother or, where the life covered is that of a female person, leaving her surviving a child or children under the age of 18 years, or a dependent mother, but not leaving her surviving a widower, before he, she or they has or have completed the repayment or, as the case requires, payment in full of all principal moneys and interest payable by him, her or them in respect of—

- (a) the advance obtained by him, her or them from the commission under this Act; or

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- (b) the purchasing price of the dwelling house purchased by him, her or them from the commission under this Act;

and the benefit obtainable under the insurance cover in the event of the death of such person, leaving the person surviving a widow, a child or children under the age of 18 years, or a dependent mother or leaving her surviving a child or children under the age of 18 years, or a dependent mother, but not leaving her surviving a widower, shall be the aggregate up to but not exceeding \$5 000 of the balance of the aforesaid principal moneys lawfully becoming due and payable on and after the date of the person's death and not paid before that date and of all interest payable in respect of that balance and the commission shall apply such benefit in payment of such balance and interest payable in respect thereof accordingly.

**(3A)** If the aggregate of the balance of the aforesaid principal moneys lawfully becoming due and payable after the date of death and of all interest payable in respect of that balance exceeds \$5 000 the commission may agree with the personal representative of the deceased person in question as to the manner in which it will apply the benefit in part payment of such balance and interest or, failing such agreement, the commission may so apply the benefit as it deems just having regard to the circumstances of the particular case.

**(4)** Subsection (3) applies subject to subsection (4AA).

**(4AA)** In the case of—

- (a) an advance obtained from the commission; or  
(b) a contract to purchase a dwelling house from the commission entered into;

on or after 1 January 1959, but before the date of the passing of the *State Housing Acts Amendment Act 1961*, subject to subsections (5) to (5D), the cover under such insurance and the benefit payable in respect of such cover shall be as prescribed by the *State Housing Act 1945*, section 25B(2), as in force immediately prior to the repeal of such section by the *State Housing Acts Amendment Act 1961*.

**(4A)** Subsection (3) applies subject to subsection (4B).

**(4B)** In the case of an advance obtained from the commission, or a contract to purchase a dwelling house from the commission entered into, on or after the date of the passing of the *State Housing Act Amendment Act 1961* and before the coming into operation of the

*Age of Majority Act 1974*,<sup>6</sup> subject to subsection (5) the cover under such insurance and the benefit payable in respect of such cover shall be as prescribed by subsection (3) as in force immediately before the coming into operation of the said *Age of Majority Act 1974*.

(5) In the event of—

- (a) the periodical payments to be made in repayment of capital and payment of interest in respect of any advance or contract to which this section applies becoming in arrears to an amount not less than the aggregate of such periodical payments for a period of 2 months or, in any case where the Minister approves on the ground of exceptional circumstances, 6 months; or
- (b) the commission completing before the death of the person concerned any power of entry into possession or any power of sale given to it under any security or contract or by this Act;

the insurance cover under this section in respect of the advance or contract in question shall by virtue of that fact cease and determine, and, unless and until it is revived as prescribed by subsection (5A), neither the person whose life is covered nor any other person whomsoever shall have any right or claim to any benefit under such insurance cover.

(5A) Such insurance cover shall be revived by the making of all payments specified in subsection (5)(a) which have become due and payable, including all arrears thereof and all amounts thereof becoming due after the determination of the insurance cover.

(5B) Provided that such payments are made before the commission has completed any power of entry or any power of sale referred to in subsection (5)(b) and that, in the case of the third or any subsequent such determination, the chief executive shall have recommended to the Minister that the Minister consent to the revival, and the Minister shall have so consented in writing.

(5C) Arrears mentioned in subsection (5)(a) which arose before the date of the passing of the *State Housing Acts Amendment Act 1961*, shall not be taken into account for the purposes of subsection (5), unless such arrears are unpaid at such date and the borrower or purchaser fails to pay them within 30 days after the commission notifies the borrower or purchaser in writing that the insurance cover under this section in respect of his or her

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<sup>6</sup> Now see *Acts Interpretation Act 1954*, section 14H and *Law Reform Act 1995*, part 6.

advance or contract will cease and determine unless the borrower or purchaser makes such payment.

**(5D)** For the purposes of subsections (5) to (5B) the exercise of a power of sale shall be deemed to be completed when the commission becomes bound by an agreement to sell or a contract of sale.

**(6)** For the purposes of the provisions, other than subsections (5) to (5D), any provision of any mortgage, contract, or other security or agreement whereby the payment of the balance of any principal moneys owing thereunder becomes due and payable either forthwith or immediately or is otherwise accelerated in the event of any default in compliance with the covenants, terms or conditions thereof shall be inoperative.

**(7)** The Treasurer shall pay to the Queensland Housing Commission Fund and the Commonwealth-State Housing Fund all such moneys as may from time to time be appropriated by Parliament for payment to those funds respectively for the purposes of this section.

**(8)** In the case of co-owners or co-purchasers the provisions of this section apply but to the extent that the life of only such 1 of them as the commissioner determines shall be covered.

**(9)** Where, subject to the production to the commission of medical evidence of good health as prescribed by subsection (1)(e), the commission is satisfied that a person is entitled to the insurance cover provided by this section, the commission shall defray the cost of the medical examination of such person by a medical practitioner nominated by the commission where the person undergoes such examination for the purpose of obtaining such medical evidence.

**(10)** Where a person whom the commission is satisfied would be entitled to the insurance cover provided by this section upon the production to the commission of medical evidence of good health as prescribed by subsection (1)(e) dies before the expiration of the period allowed by that paragraph for the production to the commission of such medical evidence and without having so produced such evidence, nevertheless the commission may, having regard to such medical evidence of the health of such person as is available to it, make a recommendation to the Minister who may grant or refuse to grant in respect of the person concerned the insurance cover provided by this section.

**(11)** The decision of the Minister shall be final and conclusive of the matter of whether or not the person concerned is entitled to the insurance cover provided by this section, and such decision shall not be called in question in any proceedings whatsoever.

## PART 5—LETTING OR LEASING OF HOUSES

### 25C Power of commission to let or lease houses to employers for housing employees

(1) The commission may, with the prior approval of the Minister and upon such terms and conditions as are approved by the Minister, let or lease to any person dwelling houses (including the lands appurtenant thereto) the property of the commission for the purpose of assisting that person to provide housing for employees of that person.

(2) The powers of the commission under this section include power, with the prior approval of the Minister, to enter into arrangements with any person for the erection by the commission of dwelling houses or buildings for subdivision into lots by the registration of a plan under the *Building Units and Group Titles Act 1980*, or under the *Land Title Act 1994* for establishing a community titles scheme under the BCCM Act, for letting or leasing to such person.

(2A) Such arrangements may provide for the terms and conditions on which any dwelling house or building the subject thereof, and its appurtenant land, will be let or leased by the commission to the person concerned upon the completion of the erection thereof and may stipulate a sum payable to the commission by the person concerned as damages for any failure, refusal or neglect by such person to rent or take on lease any dwelling house or building in accordance with the arrangements.

(3) In and for the purpose of any proceedings arising out of the failure, neglect or refusal of a person to rent or take on lease any dwelling house (and its appurtenant land) pursuant to arrangements in that behalf under this section, evidence shall not be led or admitted proving or tending to prove that any sum stipulated by the arrangements to be payable to the commission in respect of such failure, neglect or refusal is a penalty or penal damages, or unreasonable or extravagant, or not intended to be by way of liquidated damages, or that the actual damage suffered by the commission by the failure, neglect or refusal in question was less than the stipulated sum.

(4) In and for the purposes of this section—

“person” includes—

- (a) a department of Government in right of the Commonwealth or this State;



- (b) a corporation or instrumentality created under an Act of the Commonwealth or of this State which is limited in its operation to such corporation or instrumentality;
- (c) a local government, an electric authority, a fire brigade board or a committee of an ambulance brigade;
- (d) a natural person or a corporation other than a corporation mentioned in paragraph (b) or (c).

## **26 Letting or leasing of houses to eligible persons**

(1) The commission may let or lease a house to a person who is an eligible person on terms acceptable to the commission.

(1A) A person is an eligible person if—

- (a) the house is intended to be used by the person as a home for himself or herself and the person's dependants (if any) and for no other purpose; and
- (b)—
  - (i) neither the person, nor the wife or husband (if any) of that person, is the owner of any house in Queensland or elsewhere; or
  - (ii) if the person or the wife or husband (if any) of that person is the owner of any house in Queensland or elsewhere, the person has a sufficient reason for not residing in that house.

(2) The commission, in letting or leasing any house and land, shall give preference to those persons who, in its opinion, are in greatest need of accommodation as a home.

(3) The Governor in Council may make regulations for or with respect to determining the amount of rent to be paid by tenants under this part having regard to—

- (a) the overall costs of providing and maintaining housing for the purposes of this part (including administration costs); and
- (b) the income of the tenant (including the husband or wife of the tenant who is or will be residing with the tenant) and other occupants.

(4) The regulations may provide for rebates of rent to be paid by tenants under this part in such circumstances and subject to such conditions as are prescribed.

(5) The provisions of the schedule shall, so far as may be necessary or applicable, *mutatis mutandis*, apply in respect of a tenant or lessee under this part.

## **PART 5A—ADVANCES FOR HOUSING FOR EMPLOYEES**

### **26A Power of commission to make advances for housing for employees**

(1) Subject to this part the commission may, with the prior approval of the Governor in Council, make advances to a person or body corporate specified in subsection (2) for the purpose of assisting that person or body corporate to provide housing for his, her or its employees.

(2) The Governor in Council shall not approve of an advance under this part to a person or body corporate unless and until the Governor in Council is satisfied—

- (a) that such person or body corporate is engaged or will engage in Queensland in an industry calculated to develop the State and in particular to provide employment; and
- (b) that having regard to the nature, location and circumstances of that industry, the provision of housing by that person or body corporate for his, her or its employees is desirable.

(3) An advance under this part shall be made upon the security of the land and improvements thereon on which the dwelling houses to assist in providing which that advance is made will be erected and upon such other securities (if any) over other assets of the person or body corporate concerned as the commission may, subject to any direction by the Governor in Council, require.

(3A) However, an advance as aforesaid shall not be made to a person or body corporate upon the security of land until the commission is satisfied that that person or body corporate holds that land for a freehold estate in possession or for a leasehold estate from the Crown.

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(4) An advance under this part shall not exceed 90c in the dollar of the fair estimated value of the dwelling houses to assist in providing which that advance is made and of the land whereon those dwelling houses are to be erected, nor exceed in respect of each dwelling house to be erected \$6 000.

(5) A person or body corporate who or which obtains an advance under this part shall if thereunto required by an employee housed in a dwelling house provided with the assistance of that advance and eligible under this Act to purchase a dwelling house from the commission sell to that employee that dwelling house and its appurtenant land at a price and upon terms and conditions not less favourable than that employee could obtain if the transaction were a sale under this Act of that dwelling house and its appurtenant land by the commission to the employee.

(5A) There shall be implied in every mortgage securing an advance under this part a condition binding upon the mortgagor that the mortgagor will at the request of an employee housed in a dwelling house the subject of that mortgage and eligible under this Act to purchase a dwelling house from the commission sell to that employee that dwelling house and its appurtenant land at a price and upon terms and conditions not less favourable than that employee could obtain if the transaction were a sale under this Act of that dwelling house and its appurtenant land by the commission to the employee.

(5B) Every such mortgage may contain provisions stipulating the method of determining the sale price and other terms and conditions of sale as aforesaid, and every such provision shall be binding upon the mortgagor.

(6) Where a dwelling house is sold to an employee in pursuance of subsections (5) to (5B)—

- (a) the deposit (if any) paid to the borrower under this part in respect of that sale; and
- (b) the excess of other payments in respect of the purchase price made to that borrower during any and every period of 6 months ending on 30 June or 31 December over a proportion specified in subsection (6A) of the instalments payable by that borrower to the commission for that period in respect of the borrower's advance under this part;

shall be remitted by that borrower to the commission and credited in reduction of the borrower's advance.

**(6A)** For the purposes of subsection (6) every instalment payable to the commission in respect of an advance under this part made to assist in providing 2 or more dwelling houses shall be apportioned between those dwelling houses respectively on the basis of capital cost of the dwelling house and value of its appurtenant land.

**(6B)** There shall be implied in every mortgage securing an advance under this part a condition binding upon the mortgagor that the mortgagor will not fail to remit to the commission any moneys required by subsection (6) to be so remitted.

**(7)** A person or body corporate who or which obtains an advance under this part shall not, before the person or body corporate has repaid to the commission the amount of that advance, together with all interest payable in respect thereof, without the prior consent in writing of the commission—

- (a) let or sublet or agree to let or sublet or create or agree to create a licence to occupy any dwelling house or part of any dwelling house provided with the assistance of that advance except to or in favour of a person who is his, her or its employee; or
- (b) sell, transfer, or assign, or agree to sell, transfer, or assign, any dwelling house provided with the assistance of that advance except to a person who is both his, her or its employee and eligible under this Act to purchase a dwelling house from the commission.

**(8)** There shall be implied in every mortgage securing an advance under this part a condition binding upon the mortgagor that the mortgagor will not contravene any provision of subsection (7).

## **26B Act to apply with respect to advances under this part**

**(1)** Subject to section 26A—

- (a) any and every provision of this Act (excepting section 25B) which applies to or with respect to an advance under part 3 shall, subject to all necessary adaptations thereof, apply and extend to and with respect to advances under this part and the borrowers to whom or which those advances are proposed to be or are made; and
- (b) any and every power, function, right or remedy had by the chief executive, the commission, or any officer of the commission under this Act or under any mortgage or other security given or entered into under or in pursuance of this Act in relation to an

advance under part 3 (including the rights and remedies of the commission against a borrower of an advance under part 3 who has made default in observing or performing any provision of this Act or any covenant or condition binding upon the borrower of a mortgage or other security given or entered into by that borrower under or in pursuance of this Act) shall be had and may be exercised by the chief executive, the commission or, as the case may be, that officer in relation to an advance under this part; and

- (c) any and every obligation, liability or responsibility which, in relation to an advance under part 3, is or may be imposed upon a borrower under this Act or under any mortgage or other security given or entered into under or in pursuance of this Act in relation to an advance under part 3 (including the obligations, liabilities and responsibilities of a borrower of an advance under part 3 who has made default in observing or performing any provision of this Act or any covenant or condition binding upon the borrower of a mortgage or other security given or entered into by that borrower under this Act) shall or, as the case may be, may be imposed upon a borrower in relation to an advance under this part; and
- (d) the power to make regulations under this Act shall include power to make all such regulations as the Governor in Council deems necessary or convenient, whether generally or to meet a particular case, to administer or to carry out the objects and purposes of this part.

(2) Where under this Act a regulation may be made for a specified purpose a regulation for that purpose may be limited in its application so as to apply and extend only in relation to advances under this part, and any subsisting regulation made for a specified purpose may be amended, altered, varied or otherwise modified so as to extend its application to and with respect to advances under this part.

### **26C Powers of body corporate with respect to borrowing under this part**

Every body corporate which obtains an advance under this part to assist in providing housing for its employees shall, notwithstanding any Act, or law, or rule of law, be deemed to be and to have at all material times been incorporated with powers—

- (a) to provide for its employees the housing in relation to which it borrowed that advance; and
- (b) to borrow moneys for the purpose for which it obtained that advance; and
- (c) to give and enter into all such mortgages and other securities over the lands together with improvements thereon and other assets of that body corporate which it has mortgaged or otherwise pledged as a security or securities for that advance; and
- (d) generally to do and execute or to empower or cause to be done or executed all those contracts, engagements, acts, matters or things which that body corporate has done or executed or caused or empowered to be done or executed for any purpose of, or connected with, or relating to that advance;

and the incorporation of that body corporate with those powers shall be presumed in the trial of any action brought by the commission against it, or by it against the commission, and evidence proving or tending to prove that at a material time it was not incorporated with or had exceeded those powers or any of them shall not be led or admitted.

## **PART 5B—SALE OF EMPLOYEE HOUSING**

### **26D Sales of houses let or leased by employers**

(1) Where, pursuant to section 25C, the commission has let or leased a dwelling house to a person for the purpose of assisting that person to provide housing for employees of that person, and notwithstanding the lease, agreement for lease or tenancy of that dwelling house, the commission may where the Governor in Council so approves and upon such terms and conditions and subject to such restrictions, exceptions and reservations as are specified in the approval, sell that dwelling house (including the land appurtenant thereto) to any person specified in the approval.

(2) Upon delivery of possession of a dwelling house in accordance with the terms and conditions approved by the Governor in Council in respect of the sale of a dwelling house sold pursuant to this section, any lease, agreement for lease or tenancy agreement entered into under section 25C shall terminate in so far as it relates to that dwelling house.

(2A) No action shall lie against the commission or any person in respect of that termination.

(3) Nothing in this Act shall exempt from stamp duty any agreement entered into by the commission with any person pursuant to this section or any memorandum of transfer, receipt or other instrument executed or given by the commission or such person for any purpose of such agreement.

(3A) All such stamp duty in respect of such instruments or any of them shall be payable by the person with whom the commission has entered into the agreement and that person shall also pay all fees and other charges payable under the *Land Title Act 1994*, or, in the case of a grant of a deed, the Land Act.

(4) Where the fee simple of land whereon a dwelling house is erected is not vested in the commission, the commission, upon the due performance by the purchaser of the terms and conditions and compliance with all restrictions, exceptions and reservations binding upon the purchaser in respect of the purchase by the purchaser of that dwelling house pursuant to subsection (1), shall surrender to the Crown any estate or interest of the commission in the land.

(4A) The Governor in Council shall, in the name of Her Majesty grant in fee simple the land to the purchaser of the dwelling house.

(5) Every grant in fee simple by the Governor in Council pursuant to this section and every deed of grant issued accordingly shall be deemed to have been granted and issued under the *Land Act 1994* the provisions whereof relating to deeds of grant apply thereto.

(6) In this section—

“person” has the meaning assigned to it in section 25C.

## **PART 6—ARRANGEMENTS WITH THE COMMONWEALTH**

### **27 Commission to manage business of Commonwealth-State Housing Scheme**

(1) The commission, with the approval of the Governor in Council, shall take over and assume the management and control and the business of any scheme or arrangement made and entered into between the Commonwealth

Government and the State Government for the betterment of housing conditions and for the promotion of social welfare in relation to housing within the State as provided for in this Act or in any manner whatsoever pursuant to such arrangement.

### **Application of Act**

(2) For the purposes of carrying out the objects and purposes of this part, all the powers, functions, duties, authorities, and responsibilities of the commission as provided in this Act (and without limiting the generality of the above provisions, the provisions of parts 4 and 5) shall apply and extend to the commission and the same shall enure and have effect accordingly.

(2A) Additionally to the powers, functions, and authorities conferred upon the commission by this Act, the commission may, subject to such directions (if any) as may be given to it by the Minister from time to time, exercise, perform, do and take all such powers, functions, authorities, things and steps as are necessary or convenient to be exercised, performed, done or taken for carrying out the objects and purposes of this part and, in particular, for or with respect to administering and giving full operation and effect to the Commonwealth and State Housing Agreement as authorised and approved by the *Commonwealth and State Housing Agreement Act 1945*, the agreement relating to housing authorised and approved by the *Commonwealth and State Housing Agreement Act 1956*, as varied for the time being by the agreement authorised by the *Commonwealth and State Housing Agreement Act 1961*, or any other Act, and any other agreement relating to housing made between the Commonwealth and this State which is authorised and approved by any other Act.

### **Coordination of housing projects**

(3) Power and authority is also granted to the commission for the purposes of carrying this part into effect, of coordinating housing projects submitted by housing bodies or housing authorities within the State; and any necessary regulations may be made herein accordingly.

## **28 Prior arrangements**

(1) The commission shall with like approval in reference to any such Commonwealth and State housing scheme or arrangement take over and assume the management and control and business, and all acts, matters and



things which, prior to the commencement of this Act, were done or executed by or on behalf of the Minister.

(2) All property real or personal which has, prior to the commencement of this Act, been acquired by the Minister out of funds provided by the Treasurer, and all powers, authorities, and obligations in relation thereto shall, by virtue of this Act and without any transfer or assignment whatever, pass to and become vested in and imposed upon the commission and be discharged from the Minister.

(3) All land purchased or acquired by the coordinator-general of public works, on behalf or for the purposes of the State Advances Corporation pursuant to the powers and authorities imposed and vested in the coordinator-general under the *State Development and Public Works Organisation Act 1938*, before the commencement of this Act, shall without any transfer or assignment whatever other than this Act be divested from the coordinator-general and shall pass to and become vested in the commission.

(4) All acts, matters and things made and performed prior to the commencement of this Act and referred to in this section are hereby approved, validated, and confirmed.

## **29 Financial arrangements in respect of Commonwealth-State Housing Scheme**

(1) The moneys standing at credit to the fund called the Commonwealth-State Housing Fund created pursuant to the *State Housing Act 1945*, section 29 as at 1 July 1973 shall be paid into the fund.

(2) All moneys received by the commission on and after 1 July 1973 in respect of repayments, rents and other moneys with respect to the business of the commission under this part shall be paid into the fund.

(3) All moneys to be expended pursuant to this part on and after 1 July 1973 in respect of costs of land and buildings purchased or acquired under this part and all other costs, charges and expenses incurred in the administration of this part shall be paid out of moneys standing at credit to the fund and available to be duly applied to the purposes of this part.

(4) Any financial or other adjustment that may be necessary in regard to the fund or in regard to any other loan fund or trust fund or other fund at the Treasury or otherwise for the purpose of giving effect to this section may be made and is hereby authorised.

(5) The Commonwealth-State Housing Fund referred to in subsection (1) shall be discontinued and closed on 1 July 1973.

## **PART 6A—ADVANCES TO APPROVED HOUSING INSTITUTIONS**

### **29A Interpretation**

In this part—

“**approved housing institution**” means a society approved by the Minister and registered under the *Co-operative Housing Societies Act 1958*<sup>7</sup> or the *Building Societies Act 1886* and includes the commission in the performance by it of functions referred to in section 29B(3)(a).

“**the account**” means the approved housing institutions advances account created by this part.

### **29B Approved housing institutions advances account**

(1) There is hereby created at the Treasury an account called the approved housing institutions advances account.

(2) There shall be paid into the account—

- (a) all moneys appropriated by Parliament for the purposes of the account;
- (b) all moneys repaid or paid by approved housing institutions in respect of advances from the account or in respect of interest thereon;
- (c) such amounts of Commonwealth housing assistance grants as are determined by the Treasurer.

(3) Moneys standing to the credit of the account shall not be expended except for or in relation to—

- (a) the making of loans to approved housing institutions for the purpose of providing finance to assist persons to have dwelling

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<sup>7</sup> Now see *Co-operative Housing Societies Act 1958*, section 83.

houses erected or to purchase new or previously occupied dwelling houses for themselves and their families, provided that approved housing institutions shall not provide finance to assist any person who is the owner, or whose spouse (if any) is the owner, wholly or in part, of a dwelling house in the State or elsewhere;

- (b) the repayment of moneys appropriated by Parliament and credited to the account and the payment of interest in respect of those moneys;
- (c) the expenses of maintaining the account.

### **29C Approval of loans from the account**

(1) The Treasurer, on the recommendation of the Minister, may approve loans from the account to approved housing institutions for the purposes of section 29B(3)(a).

(2) Every loan shall be subject to the execution by the approved housing institution of a deed in form acceptable to the Treasurer securing to the Treasurer the repayment of the loan and interest thereon and setting out the terms, conditions and requirements attaching to the loan and its repayment.

(3) Terms, conditions and requirements in relation to the manner of repayment of the loan and the payment of interest, including the rate or rates of interest and the times for its payment, shall be determined by the Treasurer.

(4) Subject to subsections (2) and (3), every loan shall be subject to such terms, conditions and requirements as are determined by the Minister from time to time and either generally or in any particular case.

### **29D Approved housing institutions authorised to receive loans**

Notwithstanding anything contained in any Act whereunder an approved housing institution is constituted, incorporated or registered or in the constitution and rules thereof, the approved housing institution is authorised to accept any loan from the account for the purposes of section 29B(3)(a) and to enter into and execute any deed pursuant to section 29C, and the borrowing powers of the approved housing institution are extended accordingly.

**29E Loan from the account charged on property and assets of borrower**

Where a loan is made to an approved housing institution pursuant to section 29C, the Treasurer has in respect of all capital and interest moneys payable by that institution in respect of the loan a first charge upon the property and assets of the institution in priority to all other charges thereover or encumbrances thereon, whether they arose or were created before or arise or are created after the commencement of the *State Housing Act Amendment Act 1971*, save a prior charge created by the *Commonwealth and State Housing Agreement Act 1956*, section 8, the *Commonwealth and State Housing Agreement Act 1961*, section 7 or the *Commonwealth and State Housing Agreement Act 1966*, section 7.

**PART 6B—APPLICATION OF RESIDENTIAL TENANCIES ACT 1994****29F Definition**

In this part—

**“residential tenancy agreement”** means an agreement to which the *Residential Tenancies Act 1994* applies.

**29G Application of pt 6B**

This part applies to an agreement entered into under this Act between the commission and another person that is a residential tenancy agreement.

**29H Application of Residential Tenancies Act 1994**

(1) For applying this Act to a residential tenancy agreement—

- (a) a provision of this Act that is inconsistent with the *Residential Tenancies Act 1994* does not apply to the agreement to the extent of the inconsistency; and
- (b) the commission may exercise a power under this Act only to the extent the exercise of the power is consistent with the *Residential Tenancies Act 1994*.

(2) Without limiting subsection (1), sections 43 and 43A of this Act do not apply to a residential tenancy agreement.

## **PART 6C—TERMINATION OF HOUSING TRUSTS**

### **29I Definitions for pt 6C**

In this part—

**“housing trusts”** means the following trusts—

- (a) the Home Trust established by a deed, dated 27 June 1991, entered into by the commission and public trustee;
- (b) the Home Shared Trust established by a deed, dated 27 June 1991, entered into by the commission and public trustee;
- (c) the Queensland Housing Trust.

**“public trustee”** means The Public Trustee of Queensland.

**“Queensland Housing Trust”** means the trust established by a deed dated 30 June 1992, that amended a deed dated 28 June 1990 establishing the Queensland Housing Trust No. 2, entered into by the commission and public trustee.

**“transfer time”** means the time immediately before midnight on 31 October 2000.

**“trust assets”** means the assets held, at the transfer time, by the public trustee under the housing trusts.

**“trust liabilities”** means the liabilities, at the transfer time, of the public trustee under the housing trusts.

### **29J Termination**

The housing trusts are terminated at the transfer time.

### **29K Transfer of assets and liabilities to commission**

(1) At the transfer time—

- (a) the trust assets are transferred to the commission and become assets of the commission; and
- (b) the trust liabilities are transferred to the commission and are assumed by the commission.

(2) Without limiting subsection (1) and despite the *Land Title Act 1994*, all the rights, powers, privileges and liabilities of the public trustee in relation to the trust assets vest in the commission at the transfer time.

### **29L References in documents to public trustee**

(1) This section applies after the transfer time.

(2) A reference in a document, relating to the trust assets or trust liabilities, to the public trustee may, if the context permits, be taken as a reference to the commission.

### **29M Recording of transfer of assets**

(1) A certificate signed by the chief executive is evidence of a trust asset having become an asset of the commission at the transfer time if the certificate—

- (a) identifies the trust asset; and
- (b) states the trust asset became an asset of the commission under section 29K.

(2) If the certificate is given to an entity with registration functions for assets of that kind under a law of the State, the entity must give effect to the certificate.

*Example of an ‘entity with registration functions’—*

- the registrar of titles.

(3) However, the entity is not required under subsection (2) to register the transfer of the trust assets.

(4) No fee or charge, under an Act, is payable to the entity for performing the act mentioned in subsection (2).

**29N Powers of commission under certain transferred mortgages**

(1) This section applies to QHC mortgages transferred in equity by the commission to the public trustee under the trust deed for the Queensland Housing Trust (the “**transferred mortgages**”).

(2) To remove doubt, it is declared that on the termination of the Queensland Housing Trust, under section 29J, the commission has the rights, powers, privileges and liabilities, in relation to the transferred mortgages, the commission had under the Act before the transfer of the mortgages.

(3) In this section—

“**QHC mortgages**” means mortgages securing advances made by the commission under this Act.

**29O Proceedings**

(1) A proceeding by or against the public trustee, relating to the housing trusts, that is not finished at the transfer time may be continued or discontinued by or against the commission.

(2) A proceeding that could have been started by or against the public trustee before the transfer time, relating to the housing trusts, may be started, continued and finished by or against the commission.

**29P Unpaid remuneration or expenses of trustee under trusts**

(1) This section applies if, at the transfer time, there is any outstanding remuneration or expenses payable to the public trustee under a housing trust.

(2) The commission must pay the public trustee the outstanding remuneration or expenses as soon as practicable after the transfer time.

**29Q Costs of termination of trusts**

(1) The public trustee must pay, from money held by the public trustee under a housing trust, the expenses relating to the termination of the trust under section 29J.

(2) Subsection (3) applies after the termination of a housing trust under section 29J.

(3) The commission is liable for any expenses, relating to the termination of the trust, not paid under subsection (1).

### **29R Part applies despite other laws, instruments etc.**

(1) This part applies despite another Act, an instrument or oral agreement.

(2) Nothing done under this part—

(a) makes a person liable for—

(i) a civil wrong or contravention of a law of the State; or

(ii) a breach of a confidence or contract; or

(b) releases a surety's obligations, wholly or in part.

(3) If apart from this section a person's consent would be necessary to give effect to this part, the consent is taken to have been given.

## **PART 7—MISCELLANEOUS**

### **30 Advances to be secured by mortgage**

(1) Save as by this Act is otherwise expressly provided and subject also to any relaxation of those provisions provided in the regulations to meet particular cases or classes of cases, no advance under this Act shall be made—

(a) except upon the security of a mortgage or mortgages to the commission over the lands and improvements with respect to which such advance is made and upon such other security over real or personal property as to the commission seems fit;

(b) with respect to any land which is encumbered by any previous mortgage or charge other than—

(i) a mortgage or security under this Act; or

(ii) by reason of arrears of rates due to any local government; or

(iii) a charge in favour of the Crown under the laws in force relating to Crown land or to marsupial-proof fencing or rabbit-proof fencing; or



- (iv) a mortgage to the Treasurer or any person or corporation representing the Crown under the *Sugar Works Guarantee Act 1893*, or under any law relating to the construction and control of sugar works.

(1A) However, in respect of subsection (1)(b) if the commission, upon due inquiry, shall consider that the security offering by an applicant for an advance is satisfactory, and there is no undue risk, the commission may with the approval of the Minister make an advance of such amount as it deems fit and proper under the circumstances notwithstanding that the land is encumbered by any previous mortgage or charge.

(2) Any owner or occupier of land may, notwithstanding any enactment or law to the contrary, lawfully execute any such mortgage or other security.

(3) In all cases where a special form of mortgage is prescribed by any Act, the fact that a mortgage or security under this Act is not in such form shall not in any way hinder its registration (where necessary) or limit its effect as a valid mortgage.

### **30AA Criminal Code does not apply in certain circumstances**

A person does not commit an offence against the Criminal Code, section 89,<sup>8</sup> merely because the person—

- (a) is a public service employee who is employed by the department or commission; and
- (b) enters into a contract or agreement with the commission under parts 3, 4, 4A or 5 of this Act.

### **30A Discretion as to requirement re ownership of dwelling house**

Notwithstanding any provision of this Act whereby it is a requirement as to eligibility for any purpose that the applicant or the wife or husband of the applicant, as the case may be, is not the owner of a dwelling house in Queensland or elsewhere the commission, in cases where it is satisfied that the applicant and the wife or husband of the applicant, as the case may be, are not living together as husband and wife and that it is unlikely that they will so live together in the future, may determine that the requirement shall apply to the applicant only, and upon such a determination the material

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<sup>8</sup> Criminal Code, section 89 (Public officers interested in contracts)

provision of this Act shall, in relation to that applicant, be construed accordingly.

### **31 Special conditions as to borrowing may be imposed**

Every advance to a borrower and every contract of sale or lease under this Act shall, in addition to the conditions and stipulations in this Act contained, be subject to such further conditions and stipulations as to the commission may seem fit, or as may be prescribed.

### **32 Restricted application of certain Acts**

(1) The provisions of the *Bills of Sale Act 1891*, or any Act in substitution for that Act, shall not apply to any mortgage, contract of sale, or other security executed under this Act, or affect the validity or operation of any such mortgage, contract of sale, or security in respect of any chattels comprised therein.

(2) The provisions of the *Mercantile Act 1867*, requiring the registration of mortgages of live stock or liens on wool shall not apply to any mortgage of live stock or liens of wool executed in favour of the commission.

#### **Exemption from stamp duty**

(3) No mortgage, contract of sale, or other security executed under this Act, or any release of such mortgage, contract of sale, or security, or any other document or instrument executed for the purposes of this Act, shall be liable to stamp duty (excepting stamp duty on receipts in respect of payments made by the commission and on building agreements), any enactment to the contrary notwithstanding.

### **32AA Declaration of standard interest rates**

(1) The Minister may, by publishing a notice in a newspaper circulating generally throughout Queensland, declare from time to time the standard fixed interest rate for a period or the standard variable interest rate.

(2) The declaration must be consistent with the policy (the “**standard interest rate policy**”) about setting standard interest rates prescribed under a regulation.

**32AB Interest rates for certain advances and contracts of sale**

(1) This section applies to—

- (a) an advance, the application for which was made to the commission on or after the commencement of the *State Housing Amendment Act 2000*; or
- (b) a contract of sale, the application for which was made to the commission on or after the commencement of the *State Housing Amendment Act 2000*.

(2) For the advance, interest is payable on the unpaid balance at the rate stated in the document executed by the commission and the borrower that states the terms of the advance.

(3) For the contract of sale, interest is payable on the unpaid balance at the rate stated in the contract of sale.

(4) The rate must be expressed—

- (a) by reference to a standard interest rate; or
- (b) as a formula that refers to a standard interest rate.

*Examples for subsection (4)—*

**Example 1—**

The document executed by the commission and the borrower states that—

- (a) for the first year of the advance, interest is payable on the unpaid balance at the standard fixed interest rate for a 1 year period applicable on the day the document is executed; and
- (b) after the first year of the advance, interest is payable on the unpaid balance at the standard variable interest rate.

**Example 2—**

The document executed by the commission and the borrower states that—

- (a) subject to paragraph (b), for the first year of the advance, interest is payable on the unpaid balance of the loan at the standard variable interest rate; and
- (b) despite any increase in the standard variable interest rate during that year the rate payable by the borrower will not be more than a rate equal to the standard variable interest rate applying on the day the document is executed plus 2%; and
- (c) after the first year of the advance, interest is payable on the unpaid balance of the advance at the standard variable interest rate.

(5) To remove doubt, it is declared that a change in a standard interest rate does not affect an advance made before the change or a contract of sale entered into before the change to the extent that—

- (a) for the advance, the change is inconsistent with the terms of the advance stated in the document executed by the commission and the borrower; or
- (b) for the contract of sale, the change is inconsistent with the terms of the contract of sale agreed to between the commission and the borrower.

### **32AC Interest rates for advances under transferred mortgages**

(1) This section applies to an advance made under a transferred mortgage.

(2) If the terms of the advance state that interest is payable on the unpaid balance of the advance at a variable interest rate, the rate is the standard variable interest rate.

(3) In this section—

“**transferred mortgage**” means a mortgage, securing an advance made by The Public Trustee of Queensland, transferred to the commission under section 29K.<sup>9</sup>

“**variable interest rate**” includes an interest rate that is, under the terms of the advance, to be notified by the mortgagee under the mortgage to the mortgagor under the mortgage.

### **32A Interest rates payable by borrowers and purchasers in respect of certain advances and contracts of sale**

(1) Notwithstanding any provision of this Act, in respect of—

- (a) every advance under this Act made by the commission; and
- (b) the purchasing price payable under every contract of sale under the Act entered into by the commission;

whereof an application was received by the commission on or after the commencement of the *State Housing Act Amendment Act 1990*, but before the commencement of the *State Housing Amendment Act 2000*, interest

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9 Section 29K (Transfer of assets and liabilities to commission)

shall be payable to the commission by the borrower or purchaser at the interest rate stated in subsection (2).

(2) The interest rate is—

- (a) if the terms of the advance or contract of sale state that the interest is payable at a fixed interest rate—the fixed interest rate; or
- (b) otherwise—the standard variable interest rate.

### **33 Rate of interest payable by borrowers and purchasers of homes**

(1) The *State Housing Acts and Other Acts (Rate of Interest) Act 1948* shall not apply with respect to the rate per centum per annum of the interest payable in respect of—

- (a) advances under this Act or any of the other Acts specified in that Act made by the commission (and either as such or as the deputy, agent or attorney of or for the Crown or a Minister in right of this State) on or after the date of the passing of the *State Housing Acts and Another Act Amendment Act 1953*, pursuant to applications in writing received by the commission on or after that date; and
- (b) contracts of sale under this Act entered into by the commission on or after the date of the passing of the *State Housing Acts and Another Act Amendment Act 1953*, pursuant to applications in writing to purchase a house received by the commission on or after that date;

but the *State Housing Acts and Other Acts (Rate of Interest) Act 1948* shall continue to apply to all advances and contracts of sale under this Act or any of the other Acts specified in that Act made or entered into before the date of the passing of the *State Housing Acts and Another Act Amendment Act 1953*, and, as well as so continuing shall, notwithstanding that the advance shall have been made, or the contract of sale shall have been entered into, by the commission on or after that date, apply with respect to every advance under this Act or any of the other Acts specified in the *State Housing Acts and Other Acts (Rate of Interest) Act 1948*, and every contract of sale under this Act in respect whereof an application in writing was received by the commission before that date.

(2) Subject to this subsection, in respect of—

- (a) every advance under this Act made by the commission; and

- (b) the purchasing price payable under every contract of sale under this Act entered into by the commission;

whereof an application was received by the commission on or after the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3, interest shall be payable to the commission by the borrower or purchaser at the rate determined by the Governor in Council.

**(2A)** The Governor in Council may determine different rates per centum per annum of the interest payable—

- (a) in respect of advances made or the purchasing price payable under contracts of sale entered into for the different purposes of this Act;
- (b) in respect of advances made or the purchasing price payable under contracts of sale entered into for the same purposes of this Act;
- (c) in respect of particular advances made, or the purchasing price payable under particular contracts of sale entered into for the purposes of this Act.

**(2B)** In any particular case where the Minister considers that special circumstances of need or welfare exist, the Minister may fix a rate or rates per centum per annum of interest payable in respect of any advance made or purchasing price payable under a contract of sale entered into pursuant to this Act below the rate determined for the purpose.

**(2C)** The Minister may at any time vary the rate per centum per annum of the interest fixed in respect of that advance or purchasing price.

**(2D)** Where immediately prior to the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3 a prescribed rate of interest per centum per annum is in force in respect of advances made or the purchasing price under a contract of sale entered into for the purposes of this Act, that rate shall continue in force until varied as provided for in subsection (2B) or (2C).

**(2E)** The provisions of subsections (2) to (2D) do not apply to—

- (a) the purchasing price payable under agreements to sell land pursuant to section 24A;
- (b) advances made or the purchasing price payable in respect of the sale of any land pursuant to section 22.

*State Housing Act 1945*

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(3) Every borrower of an advance or purchaser under a contract of sale to which subsection (2) applies shall pay to the commission, in compliance in every respect with the conditions of the advance or contract thereunto binding the borrower, interest in respect of the advance or purchasing price payable under the contract at the rate determined by the Governor in Council.

(4) The Governor in Council may reduce the rate of interest applicable to an advance or contract of sale under subsection (1).

(5) The provisions of subsections (1) to (4) and of the *State Housing Acts and Other Acts (Rate of Interest) Act 1948*, apply subject to subsections (6) to (10).

(6) Subject to subsection (7), the provisions of the *State Housing Act 1945*, section 33(2) to (5) shall continue to apply to advances and purchases referred to therein and to advances deemed to have been made pursuant to section 24(7)(b) other than to advances and purchases in respect of which—

- (a) in the case of advances deemed to have been made pursuant to section 24(7)(b)—the application for the purchase of the house the subject of the advance;
- (b) in any other case—an application therefor;

was received by the commission on or after the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3 as if those provisions had not been varied by that part.

(7) When, at any time after the commencement of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, part 3, the borrower for the time being of an advance or the purchaser for the time being under a contract of sale (the application for which advance or purchase having been received prior to the commencement of that part) transfers or assigns or agrees to transfer or assign—

- (a) in the case of an advance—the land in respect whereof the advance was made subject to the mortgage securing the advance;  
or
- (b) in the case of a purchase—the contract of sale;

to another person, that person shall on and from the date of the transfer or assignment or agreement to transfer or assign, be deemed to be a borrower

of an advance or, as the case may be, a purchaser under a contract of sale application for which advance or purchase shall be deemed to have been received by the commission on that date and the provisions of this Act applying to such an advance or purchase shall apply thereto.

(8) The rate of interest payable pursuant to subsections (6) and (7) in respect of any advance or purchase shall not be, or be deemed to be, reduced under subsection (4) unless the Governor in Council makes specific provision for such reduction.

(9) For the purposes of subsections (7) and (10)—

**“borrower”** and **“purchaser”** include respectively the original borrower or purchaser and any other person to whom the land in respect whereof the advance was made or, as the case may be, contract of sale is for the time being transferred or assigned or agreed to be transferred or assigned.

(10) Subsections (5) to (9) do not apply to a transfer or assignment of, or to an agreement to transfer or assign, land in respect whereof an advance has been made subject to the mortgage securing the advance or a contract of sale—

- (a) where each person who is a party to the transaction is the husband, wife, father, mother, child, stepchild, adopted child, brother or sister of the other person or other persons respectively who is or are also a party or parties to the agreement; or
- (b) consequent on the death, bankruptcy or mental sickness of the borrower or purchaser (but subject, in the case of joint borrowers or purchasers to the transaction relating only to the interest of the deceased, bankrupt or mentally sick borrower or purchaser); or
- (c) where the rate at which the transferee or assignee would be required by virtue of subsection (6), to pay interest is less than the rate at which the borrower or purchaser referred to in that subsection was required to pay interest.

### **33A Priority of amounts added to principal under mortgage**

Where, pursuant to the terms and conditions under which moneys secured by a mortgage are advanced by the commission, an amount is added to and becomes part of the principal then outstanding by the mortgagor, that amount shall rank in priority to any mortgage entered into by the mortgagor with another mortgagee (whether or not the commission



has notice of or consents to that mortgage) subsequent to the firstmentioned mortgage.

### **34 Money due by borrower is a debt to Crown**

(1) In addition to any other remedy provided by this Act for the recovery of any sum of money payable under any provision of this Act to the commission by a borrower or a purchaser or lessee, it is hereby declared that every such sum shall be and remain until payment a debt due by such borrower, purchaser, or lessee to the Crown, and shall be recoverable, in the case of a borrower or purchaser, with interest, by the commission accordingly.

### **Remedies of Crown cumulative**

(2) The provisions of this Act for securing to the commission the repayment to it of all advances and payments under this Act shall be in addition to any other remedy which the commission has against the borrower or purchaser or lessee as a creditor, and the commission may enforce any such remedy.

### **35 Penalty for procuration fees**

(1) It shall not be lawful to charge, recover, or receive any moneys for or in respect of the procuring, negotiating, or obtaining any advance to a borrower or for entering into a contract of sale under this Act, or under any Act or law in pursuance of which the commission acts as attorney or agent.

(2) Any person, firm, company, or association which charges or receives or attempts to charge or receive any moneys for or in respect of the procuring, negotiating, or obtaining any such advance or entering into such contract of sale as aforesaid shall be guilty of an offence and liable to a penalty of not less than \$100 or more than \$400.

### **36 Judgment of court not to affect security**

No judgment, order, or decree of any court of law, and in the case of land held under miner's homestead lease or as a residence area no act or default on the part of the borrower or any other person whereby a forfeiture might result, shall in any way affect the security for any advance made under this Act; and until all instalments and interest payable in respect of the advance have been paid, no process of law or provision of any law in force relating

to Crown land or mining or any declaration of forfeiture shall interfere with the security for the same.

### **37 Construction of the Co-ordination of Rural Advances and Agricultural Bank Act 1944, s 37**

In construing the *Co-ordination of Rural Advances and Agricultural Bank Act 1938*,<sup>10</sup> section 37(9) for the words ‘Corporation constituted under the provisions of the *State Advances Act 1916*,’ the words ‘Queensland Housing Commission, being the corporation constituted under the *State Housing Act 1945*,’ are substituted and section 37 of such Act is read and construed accordingly, and any reference therein to a mortgage or a mortgagor shall so far as this Act and the commission is concerned also include a purchaser under a contract of sale and a contract of sale under this Act accordingly.

### **38 Perfecting security over holdings when freehold acquired subsequent to mortgage**

(1) In every case where an advance has been made under this Act upon the security of a mortgage of a holding the freehold whereof may be acquired from the Crown—

(a) the *Land Act 1962*, section 285 shall apply:

All costs and expenses occasioned in giving effect to this paragraph shall be borne by the mortgagor, and may, if the commission thinks fit, be added to and become part of the mortgage debt;

(b) the commission may, at any time and notwithstanding the provisions of any Act, acquire the freehold of the holding in the name and on behalf of the mortgagor or the mortgagor’s successor in interest, and for that purpose may make all such payments to the Crown as are necessary.

(2) All payments so made by the commission shall be added to and become part of the mortgage debt, notwithstanding that the amount of the advance is thereby increased to more than the amount prescribed under this Act.

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<sup>10</sup> Now see *Rural Adjustment Authority Act 1994*, section 47.

(3) The deed of grant of the holding shall be delivered to the commission, and thereupon the provisions of subsection (1)(a) shall be observed.

### **38A Land Act applies to deeds of grant**

Every grant in fee simple by the Governor in Council pursuant to this Act and every deed of grant issued accordingly whether before or after the commencement of the *State Housing Act and Another Act Amendment Act 1979* shall be and, it is hereby declared, always was deemed to have been issued under the Land Act the provisions whereof relating to deeds of grant apply thereto.

### **39 Protection of commission and officers from personal liability**

(1) No contract entered into by or on behalf of the commission and no matter or thing done by the chief executive or by any officer of the commission or by any other person whomsoever acting under the direction or authority of the commission or of this Act shall (if the matter or thing was done or the contract was entered into bona fide for the purposes of this Act) subject them or any of them personally to any action, liability or claim or demand whatsoever.

### **Expenses**

(2) Any expense incurred by the chief executive or any such officer or other person acting as aforesaid shall be deemed to be an expense authorised by this Act.

### **41 Person taking fee or reward**

(1) Any person who—

- (a) directly or indirectly unlawfully takes any fee or reward from any applicant under this Act; or

### **Acting when interested**

(b)—

- (i) having any pecuniary interest in any land tendered as security, or interest in any land acquired or to be acquired by the commission under this Act; or
- (ii) being a partner of the applicant;

acts as valuer or adviser to the commission in connection with such land; or

**Bribing officer**

- (c) in respect of any advance or application for any advance, or application for a purchase under a contract of sale or application to rent a house, or application for a rebate of rent, bribes or attempts to bribe or corruptly influence any person appointed or acting under this Act; or
- (d) furnishes to the commission a declaration or statement in writing which to the person's knowledge is false in a material particular; or
- (e) makes or alters an entry in a passbook, rent card, receipt or other document made for a purpose of this Act with intent to make it appear that an amount has been paid to the commission when such amount has not been so paid;

shall be liable to a penalty of not less than \$100 nor more than \$400.

**42 Secretary of commission etc. to be auctioneer**

(1) Notwithstanding anything in any Act to the contrary, the secretary or other officers of the commission or other person appointed by the commission in that behalf shall, in respect of any sales made by or under the authority of the commission pursuant to this Act, be deemed to be a licensed auctioneer, and shall have the powers and authorities to conduct sales of property by public auction and perform other acts and things in the same manner and with the like powers and authorities as an auctioneer who holds a licence pursuant to the provisions of the *Property Agents and Motor Dealers Act 2000*.

(2) However, the secretary or other person shall not be required to take out an auctioneer's licence.

**43 Lessee or tenant wrongfully holding over**

(1) Without prejudice to any other right, power, or remedy of the commission, when the commission, in the exercise of its powers under any mortgage thereunder, has entered into and taken possession of the mortgaged land and improvements, and has leased such land and improvements to a lessee on such tenancy as is comprised in the agreement for the lease of the land and improvements concerned, or has placed any

tenant in possession, whether on a weekly or any other tenancy, and the term or interest of such lessee or tenant in such land and improvements shall have expired by effluxion of time or shall have been determined by notice to quit or demand of possession, and such lessee or any person claiming under the lessee or tenant who shall actually occupy such land and improvements or any part thereof shall neglect to quit and deliver up possession of such land and improvements or of such part thereof, it shall be lawful for the commission, by its secretary or any inspector thereof or person authorised in that behalf by the secretary, to make a complaint before a stipendiary magistrate or any 2 justices of the peace, who shall hear and determine the matter in a summary way.

(1A) And on being satisfied of the truth of the complaint such stipendiary magistrate or justices may issue a warrant addressed to the secretary or inspector or person authorised as aforesaid or to a police officer requiring and authorising him or her, within a period to be therein named, and not being less than 7 nor more than 30 clear days from the date of the warrant, to enter (by force if needful) into such land and improvements and to remove such lessee or person claiming under the lessee or tenant as aforesaid, and to give possession of the same to the commission, and such warrant shall be a sufficient authority to such secretary, inspector, authorised person, or police officer to enter upon such land and improvements with such assistants as he or she shall deem necessary to remove such lessee or person claiming under the lessee or tenant as aforesaid and to give possession to the commission accordingly.

(1B) However, no entry upon any such warrant shall be made on a Sunday, Good Friday, Christmas Day, or Anzac Day, or at any time except between the hours of 9 a.m. and 4 p.m.

(1C) In this section—

“**commission**”, without limiting the expression, includes the commission when acting as agent or attorney for and on behalf of the Crown or Minister.

“**mortgage**” shall include a contract of sale.

### **Penalty**

(2) Any person who shall have been removed from any such lands and improvements pursuant to the provisions of this section and who shall, without the permission of the commission having been obtained in that behalf, subsequently re-enter such lands and improvements, shall be guilty of an offence, and shall be liable to a penalty not exceeding \$100, to be recovered in a summary way by complaint under the *Justices Act 1886*.

**43A Justice to issue warrant for possession**

(1) Without prejudice to any other right, power, or remedy of the commission, a justice being a stipendiary magistrate, acting stipendiary magistrate, clerk of a magistrates court or acting clerk of a magistrates court, shall, upon a complaint in writing and on oath by the chief executive or by any other person duly authorised in that behalf under the hand of the chief executive that—

- (a) the commission in the exercise of its powers under this Act has leased or let to a person named in the complaint land described in the complaint; and
- (b) the term or interest of such lessee or tenant in such land has been duly determined by notice to quit or demand for possession served on the lessee, or person claiming under the lessee, or tenant, requiring him or her within the period named in the notice or demand (being not less than 14 days from the date of service thereof) to deliver up possession of the land; and
- (c) such lessee, or person claiming under the lessee, or tenant, has neglected to quit and deliver up possession of such land and remains in actual occupation thereof; and
- (d) such lessee, or person claiming under the lessee, or tenant, has failed to pay the rent reserved by the lease or tenancy in respect of a period of not less than 28 days;

issue a warrant addressed to the person nominated in that behalf under the hand of the chief executive or person authorised as aforesaid or to a police officer requiring and authorising him or her, within a period to be therein named, and not being less than 7 or more than 30 clear days from the date of the warrant, to enter (by force if needful) into such land and to remove such lessee, or person claiming under the lessee, or tenant, as aforesaid, and to give possession of the same to the commission, and such warrant shall be sufficient authority to such person, or police officer, to enter upon such land, with such assistants as he or she shall deem necessary, to remove such lessee, or person claiming under the lessee, or tenant, as aforesaid, and to give possession to the commission accordingly.

(1A) The payment to and acceptance by the commission of any rent accrued due after the expiration of the notice to quit or demand for possession shall not operate as a waiver of such notice or demand or create any tenancy or other interest in the land in question, unless the commission shall have agreed in writing to waive such notice or demand in consideration for such payment.

(2) A warrant issued under this section in relation to a building, or a unit or part of a multiple dwelling house or other building, shall authorise the person or police officer to whom it is addressed to pass (by force if needful) through, along, across, over or under any land (including in the case of any such unit or part, any other part of the multiple dwelling house or other building in which it is comprised) ordinarily used as a means of access to such building, or unit or part.

(3) Where a warrant has been issued under this section the justice who issued the warrant or any justice who is competent to issue such a warrant shall forthwith, upon receipt of a request in writing under the hand of the chief executive or of any other person duly authorised in that behalf under the hand of the chief executive, extend or further extend the time for the execution of such warrant.

(3A) Such an extension or further extension shall be for the period, not being more than 30 clear days from the day of the receipt of the request, stated in the request.

(4) No entry upon a warrant issued under this section shall be made on a Sunday, Good Friday, Christmas Day, or Anzac Day, or at any time except between the hours of 9 a.m. and 4 p.m.

(5) For the purposes of this section, a notice to quit or a demand for possession may, without prejudice to any other mode of service be effected by—

- (a) delivery personally to the lessee or tenant; or
- (b) delivery personally to some person apparently over the age of 18 years and apparently residing in or in occupation of the land; or
- (c) delivery personally to the person by whom the rent is usually paid, if that person is apparently over the age of 18 years; or
- (d) affixing to a conspicuous place upon some part of the dwelling house; or
- (e) sending by post to the lessee or tenant at the place of his or her residence or business last known to the commission.

(5A) Where a lessee or tenant has died and probate or letters of administration of his or her estate have not been granted, a notice to quit that might have been given to the legal personal representative of the deceased lessee or tenant had probate or letters of administration of his or her estate been granted shall be sufficiently given if—

- (a) where any person is or persons are apparently residing in or in occupation of the land—it is delivered to any of those persons apparently over the age of 18 years;
- (b) in any other case—it is advertised twice in a newspaper circulating in the locality in which the land is situated.

(5B) Where a proceeding for the recovery of possession of land is taken in reliance on a notice to quit given in the manner provided in subsection (5A)(a), any occupier of the land or other person claiming an interest in the land shall be entitled to be heard in the proceeding and the contesting of the proceeding shall not of itself be regarded as an act of administration or as intermeddling in the estate of the deceased lessee or tenant or as constituting the person so contesting the proceeding an executor de son tort of the deceased lessee or tenant.

(6) Without in any wise limiting the meanings assigned to the terms “commission” and “land” by this Act, for the purposes of this section—

“**commission**” includes the commission when acting as agent or attorney for or on behalf of the Crown or any Minister.

“**land**” includes buildings or units or parts of multiple dwelling houses or other buildings (whether the division is horizontal, vertical or made in any other way).

#### **44 Audit of accounts**

The accounts of the commission shall be audited by the auditor-general who shall have, with respect to such audit and accounts, all the powers and authorities conferred on the auditor-general by the *Financial Administration and Audit Act 1977* (or any Act in substitution of the same).

#### **45 Annual report to Parliament**

(1) The chief executive shall, as soon as may be after the last day of each financial year, submit to the Minister for transmission to Parliament, a report upon the administration by the commission of this Act and the operations hereunder by the commission during such financial year.

(2) The report shall include such statements of account and other financial and relevant information as may be prescribed, together with a report of the auditor-general as to whether the statements of account—

- (a) are in agreement with the account; and



- (b) in the auditor-general's opinion fairly set out the financial transactions for the period to which they relate and show a true and fair view of the state of affairs at the close of that period on a basis consistent with that applied in respect of the financial year last preceding.

#### **47 Penalties**

All penalties imposed by or under this Act may be recovered in a summary way under the *Justices Act 1886*, upon the complaint of the secretary or authorised officer of the commission, and when so recovered shall be paid into the fund.

#### **47A Approval of forms**

The commission may approve forms for use under this Act.

#### **48 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), regulations may be made about—

- (a) regulating applications by persons for advances, contract of sale or leases and the particulars, instruments, undertakings, and documents to be furnished with any such applications and the making of advances, contracts of sale or leases by the commission;
- (b) prescribing the deposits or fees payable to the commission in respect of such applications and advances, contracts of sale or leases and other matters arising under this Act;
- (c) empowering the commission to charge, at such rates as may be prescribed, commission in respect of sales effected by the commission;
- (d) prescribing what works shall be improvements for the purposes of this Act;
- (e) the mode in which the value of lands and dwelling houses and other improvements or capital or rental shall be determined;
- (f) forms to be used for the purposes of this Act;

- (g) provisions and conditions of and forms of mortgage, contract of sale, or lease, or security and of insurance policies and contracts of sale, and the conditions and covenants to be inserted therein;
- (h) modifying any provisions of this Act relating to the security to be taken for advances;
- (i) prescribing that certain covenants on the part of the mortgagor or purchaser under contract of sale shall be deemed to be inserted in mortgages, contracts of sale and securities to be used for the purposes of this Act. Whereupon the mortgagor or purchaser shall be bound by such covenants as if such covenants were inserted in and formed part of any mortgage, contract of sale or security executed by the mortgagor or purchaser;
- (j) all matters necessary or expedient for enabling the commission to undertake its investigations under this Act;
- (k) keeping the accounts of the commission;

**Officers**

- (l) the functions and duties of inspectors, valuers, and other officers;
- (la) keeping a register of contracts under the Act, including providing for—
  - (i) the type of information to be kept in, and type of documents forming part of, the register; and
  - (ii) the form of the register and the documents forming part of the register; and
  - (iii) requirements for registration, registration and the effect of registration; and
  - (iv) an entitlement to search, and obtain copies of documents forming part of, the register; and
  - (v) a fee to be paid to the commission, including a fee for—
    - (A) searching the register; and
    - (B) obtaining copies of documents forming part of the register; and
    - (C) registration of information or documents in the register; and
- (lb) providing for a fee to be paid for—

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- (i) an application made, or a consent sought, under the Act; and
  - (ii) a consent sought under a mortgage or contract under the Act; and
  - (iii) producing a document to another person; and
  - (iv) a statement of account; and
  - (v) a dishonoured payment required under the Act or an instrument made under the Act; and
- (lc) providing for a fee or another amount to be paid by a person under a mortgage or contract under the Act; and
- (ld) providing for a fee payable for, and the effect of, the commission certifying a copy of a document; and

**Generally**

- (m) all matters necessary or expedient for enabling the commission to undertake and carry on business or any part or class of its business under this Act;
  - (n) regulating the duties and responsibilities of the commission, practice and procedure in relation to the powers and duties of the commission with respect to the matters and things under its jurisdiction or referred to it, and such other administrative matters as may be necessary to give full effect to this Act.
- (2A)** The regulations may provide for the commission in its discretion or in such circumstances as may be prescribed to waive the whole or part of any fees or charges payable under this Act.

## **SCHEDULE**

sections 15, 25, 25B and 26

### **1 Delivery of matters in possession of employee at removal**

(1) If any officer is dismissed or is suspended, or resigns, or dies, absconds, or absents himself or herself, and if the officer or the officer's wife, husband, widow or widower, or any of the officer's family or representatives refuses or neglects, after 7 days' notice in writing, to deliver to the commission or its agent any property as herein defined in the possession or custody of such officer at the occurrence of any such event as aforesaid, then any justice of the peace, upon application by the commission or its agent may order any police officer with proper assistance to enter and take possession of such property, and deliver the same to the commission or its agent, and, if necessary, to remove any person.

#### **Officers to account on demand**

(2) Every officer shall from time to time, when required by the commission, make and deliver to it or to its agent a true account in signed writing of all moneys received by the officer on behalf of the commission.

(2A) Such account shall state how and to whom and for what purpose such moneys have been disposed of.

(2B) Together with such account, the officer shall deliver the vouchers and receipts for such payments.

(2C) The officer shall pay to the commission or to its agent all moneys which appear to be owing from the officer upon the balance of such account.

#### **Summary remedy**

(2D) If the officer fails to render such account, or to deliver all such vouchers and receipts in the officer's possession or power, or to pay the balance thereof when required, or if for 3 days after being required the officer fails to deliver to the commission or its agent all property in the officer's possession or power, then, upon a complaint made as for a breach of duty, a Magistrates Court may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer, and make such other orders as appear to the court to be just.

## SCHEDULE (continued)

(2E) If it appears, either upon the officer's confession or upon evidence or upon inspection of the account, that any moneys which should be paid over to the commission are in the officer's hands or owing by the officer, such court may order the officer to pay the same.

(2F) If the officer refuses to make such account in writing, or to produce and deliver to such court the vouchers and receipts relating thereto, or to deliver up any property, the court may commit the officer to prison, there to remain until the officer has complied with such order, or for 2 years whichever is the shorter period.

**Bankruptcy etc. of officer**

(3) If any officer or agent having in his or her possession or power any property as herein defined—

- (a) becomes bankrupt or insolvent; or
- (b) makes an assignment for the benefit of his or her creditors; or
- (c) has any execution, attachment, or other process issued against his or her land, goods, chattels, or effects;

the commission may apply to such officer or agent, or his or her assignee or trustee, or to the sheriff or other person executing such process, or to his or her executors or administrators, or to any other person having legal right, as the case may be, and may demand that all such property be paid over or delivered up to the commission or such person as it may appoint.

(3A) The party so applied to and having the same shall on such demand deliver over to the commission all such property as aforesaid.

**When warrant may issue**

(4) If the chief executive or the chief executive's agent makes oath that he or she has good reason to believe, upon grounds to be stated in a deposition, and does believe, that it is the intention of any officer or agent to abscond or that the officer or agent has absconded, any justice of the peace may, if the justice thinks fit, issue a warrant in the first instance for the bringing of such officer or agent before such court as aforesaid.

**Meaning of "property"**

(5) For the purposes of this section—

**"property"** includes any building or any part thereof or any appurtenance thereof, or any books, papers, securities, documents, or property

## SCHEDULE (continued)

whatsoever relating to the execution of this Act or the business of the commission or belonging to the commission.

**Sureties not to be discharged**

(6) No such proceeding against or dealing with any such officer or agent shall deprive the commission of any remedy which it might otherwise have against such officer or agent or any surety.

**RESERVE FUND****2 Reserve fund**

The commission may, out of the net profits earned during any year, set apart such sum as it thinks proper towards a reserve fund for the redemption of debentures, for meeting losses and depreciation, and for such other purposes as it deems necessary.

**APPLICATIONS****7 Applications**

Every application under this Act shall, if the form has been prescribed therefor, be made in that form and shall contain such particulars as may be prescribed.

**9 Advance to be deemed a loan until repaid in full and at prescribed rate of interest**

The amount of every advance under this Act shall be deemed to be a loan by the commission to the borrower until the full amount has been repaid together with interest at the rate determined under this Act.

## SCHEDULE (continued)

**10 Advances by lump sum or instalments**

An advance under this Act may be made at the discretion of the commission in a lump sum or by instalments.

**11 Inspectors**

(1) It shall be the duty of inspectors to report upon applications for advances under this Act and to inspect from time to time the improvements which are in course of being made by means of such advances.

(1A) If the commission so thinks fit, any such advance may be made by instalments upon the report of an inspector as the work is being done.

**When commission may withhold payments**

(2) At any time upon the report of an inspector that any money advanced has not been applied for the purpose for which it was advanced or has been expended in a careless or wasteful manner, the commission may refuse to pay any further instalment of the proposed advance, and may at once call in the whole amount already advanced, whereupon the borrower shall forthwith repay the same, and in default the commission shall have the same remedies for the recovery of the same as are provided by this Act for the recovery of sums payable by the borrower.

**12 Repayment of advance for dwelling houses**

(1) Save where otherwise expressed in this section, the following provisions apply to all advances by the commission for dwelling houses—

- (a) until the first day of the month next following the date of payment to the contractor of the final instalment of the advance for the erection of the dwelling house, there shall be paid to the commission by the borrower interest on the advance;
- (b) where, pursuant to section 24(7)(b) an advance is deemed to have been made to a purchaser, this provision does not apply to such advance;
- (c) interest is payable on the day the commission decides;
- (d) if any advance is made by instalments, interest shall be calculated on the actual amount of the several instalments of such advance from the date when such instalments are advanced;

## SCHEDULE (continued)

- (e) upon the first day of the month next following the date of payment to the contractor of the final instalment of the advance for the erection of the dwelling house or, in the case of an advance deemed to have been made pursuant to section 24(7)(b), from the date on which the advance is made, the advance with interest shall be repaid by the borrower to the commission by monthly payments—
  - (i) due on a day decided by the commission; and
  - (ii) of an amount decided by the commission;
- (f) in respect of an advance made by the commission under the provisions of section 23A the borrower shall pay to the commission interest on the advance from the date on which the advance is made up to and including the last day of the month in which it is so made and that advance together with interest shall be repaid by the borrower to the commission commencing from the first day of the month next succeeding that in which the advance is made by monthly payments—
  - (i) due on a day decided by the commission; and
  - (ii) of an amount decided by the commission.

(2) The purchase money under a contract of sale shall be paid by the purchaser together with interest on the outstanding balance of the purchase money at the beginning of each month to the commission by payment on the prescribed day of each month in each year of such monthly instalment as the commission may determine from time to time until the whole of the purchase money with interest has been paid.

(3) There shall be payable with and additional to each monthly instalment, where the tenure of the land is perpetual leasehold, one-twelfth of the annual rental of the appurtenant land.

(4) Where the period for—

- (a) repayment of an advance by a borrower; or
- (b) the payment of the purchasing price under a contract of sale;

exceeds 30 years, the borrower or purchaser and any joint borrower or purchaser shall not be eligible to take the insurance cover provided under section 25B.



## SCHEDULE (continued)

**13 Prepayment of unpaid balance of advance**

(1) The unpaid balance of any advance under this Act may at the option of the borrower be repaid at any time sooner or in larger instalments than is herein provided but payment of any such larger instalments shall not, unless the commission otherwise determines, affect the calculation of the amount of the instalment payable.

(2) Where the unpaid balance of any advance made under this Act after the commencement of the *State Housing Act Amendment Act 1990* is repaid in full by a single payment prior to the full term of the advance, the commission may charge the borrower an amount not exceeding 3 months interest on the amount of the advance outstanding immediately prior to its repayment.

**13A**

(1) If pursuant to the provisions of the agreement executed by the Government and the Commonwealth Savings Bank of Australia (being the agreement set forth in the schedule to an Act entitled the *Commonwealth Savings Bank of Australia Agreement Act 1966*) the moneys paid to the commission by the said bank on behalf of a mortgagor whose land is the subject of a mortgage to the commission or on behalf of a purchaser from the commission of a dwelling house and appurtenant land under a contract of sale are insufficient to liquidate in full the liability to the commission of such mortgagor or purchaser, or if a mortgagor or purchaser receives from the bank pursuant to the provisions of the said agreement an advance to liquidate in full his or her liability to the commission but is unable to meet the amount of increase in the monthly instalment of principal and interest which the repayment of the advance to the bank over a shorter term will require, and the commission agrees with such mortgagor or purchaser to pay to the bank on his or her behalf the amount of the increase in the monthly instalment to enable the mortgagor or purchaser to meet his or her repayments to the bank from time to time then and in any such case the commission may—

- (a) release its mortgage to enable the mortgagor to give a first mortgage over the land to the bank; or
- (b) discharge the contract for sale and transfer the land to the purchaser to enable the purchaser to give a first mortgage over the land to the bank; and

## SCHEDULE (continued)

- (c) take from the mortgagor or the purchaser, as the case may be, a second mortgage over the land to secure repayment to the commission of the balance of the moneys then remaining owing to it by the mortgagor or purchaser or to secure repayment to the commission of the moneys paid or to be paid to the bank by the commission on behalf of the mortgagor or purchaser as aforesaid; and
- (d) arrange for the registration of such second mortgage subject to the first mortgage to be registered in favour of the bank over the said land.

(2) A second mortgage under subsection (1)(c) must be on terms acceptable to the commission.

**14 Additional advances may be added to principal of loan**

Any additional advances made to a borrower under the same section of this Act shall, unless the commission otherwise determines, be added to and become part of the then outstanding balance of the original advance, and bear interest at the rate or rates provided for in that section at the time of the additional advance and where such section provides for variation of that rate at the rate as varied from time to time.

**15 Remedies of the commission**

(1) If default is made by the borrower in the payment of any sum payable by the borrower to the commission, or if the borrower commits any breach of any covenant or condition to be observed by the borrower under any mortgage or under this Act, the whole of the debt then remaining unpaid shall forthwith become due and payable, and shall be recoverable, with interest at the rate determined by the Governor in Council, by the commission accordingly.

(2) If default is made by the borrower in the payment of any sum of money payable by the borrower to the commission, then without prejudice to any other remedy, and although no legal demand has been made for the payment thereof, the commission may enter upon and take possession (for that purpose using such force as may be necessary to eject any occupant) and sell the whole or any part of the land with respect to which the advance has been made, with all improvements thereon (or as deemed expedient all

## SCHEDULE (continued)

or any of such improvements apart from the land and authorising the removal of the same when sold and with or without a subsequent sale of the whole or any part of the land), either by private sale or public auction, and subject to such terms and conditions of sale as it thinks expedient, and after such notice of the time, place, terms, and conditions of sale as it thinks expedient, with power to give time for payment of purchase money (including interest thereon), or to allow the purchase money to remain on mortgage at the risk of the borrower, and to vary or rescind any contract for sale, and to buy in at any auction, and to resell without being answerable for any loss, and may transfer or convey such land to the purchaser, and give a valid title thereto.

**(2A)** However, before the commission sells land by private sale under this section, the land must first be offered for sale by public auction.

**(2B)** Before selling land by public auction under this section, the commission must publish a notice in a daily newspaper circulating generally in the locality where the land is situated.

**(2C)** A notice under subsection (2B) must—

- (a) identify the land; and
- (b) state the land is to be sold by public auction; and
- (c) state the time and place of the auction.

**(3)** After the commission has taken possession of any land under this provision, it shall debit to the account of the borrower or purchaser an administration charge of \$20 per annum for each year or part of a year until the property is sold or the borrower or purchaser is reinstated as such and any occupant who is permitted by the commission to be or remain in occupation of the said property shall pay to the commission such occupation rent as the commission may fix.

**Application of proceeds of sale**

**(4)** The commission shall apply the proceeds derived from such sale in payment, in the first instance, of all moneys due in respect of such land, and in redemption of any amount charged thereon in favour of the commission, or of so much thereof as remains unpaid, and of all expenses incurred by the commission in relation to such sale or otherwise with respect to such land, and shall pay the balance (if any) to the person appearing to the commission to be entitled to receive the same.

## SCHEDULE (continued)

(5) As against mortgagors, the commission shall not be responsible for involuntary losses or the default of agents or auctioneers.

**16 Power to capitalise arrears of interest**

The amount of any interest due and unpaid under a mortgage may from time to time at the option of the commission be capitalised and added to the amount of advance notwithstanding that the capital amount of the advance is, or is thereby increased to, more than the prescribed maximum amount of the advance in question, and every mortgage to secure an advance shall be deemed to provide for such capitalisation.

**17 In event of no purchaser land to vest in commission**

(1) As an additional remedy and power, and without modification or abatement of the provisions of sections 15 and 16 whenever land authorised to be sold by the commission under this Act is offered for sale by public auction and the amount of the highest bidding at such sale is not sufficient to satisfy the moneys due to the commission, together with the costs and expenses of and occasioned by such attempted sale, or there is no bid, the commission shall advertise the land for private sale, in at least 1 newspaper circulating in the district where such land is situated, once at least in each of 3 successive weeks, and shall in such advertisement name a day and time, not less than 1 month from the date of the first of such advertisements, upon or after which the land shall vest in the commission, together with all improvements thereon, unless in the interval a sufficient amount has been obtained by the sale of such land to satisfy the moneys due to the commission and all costs and expenses of and occasioned by such sale and proceedings, and thereupon if such amount has not been so obtained the land shall vest in the commission for the whole estate of the borrower, free from any encumbrance.

**Removal of improvements**

(2) However, in any case where the commission may think it desirable so to do, the commission may remove from the land in question any dwelling house and any other improvements or fixtures thereon to some other land either vested in it, or in respect of which it may become a mortgagee or owner under this Act.

## SCHEDULE (continued)

**18 Provisions for cases of hardship**

(1) In cases of hardship the commission may extend for such period on such terms and conditions as it thinks fit the time for making a repayment of any instalment in respect of an advance or, as the case may be, a repayment of any payment by way of instalment in respect of a contract of sale or, as the case may be, of rent.

(2) When the time for making any such payment in respect of an advance or, as the case may be, of a contract of sale has been so extended the payment shall bear interest for the time so extended at the same rate per centum per annum as that which is payable under the mortgage or, as the case may be, under the contract of sale.

(3) A lessee of a perpetual lease for the purposes of this Act used exclusively for the lessee's own residential use may apply to the commission for relief on the ground of hardship from the liability to pay in full the annual rent for the second or subsequent rental period.

(4) The application shall be in writing, shall state the grounds of hardship relied upon, and shall contain or be accompanied by full information and particulars of the property and income of the lessee and his or her spouse respectively, and of the circumstances of any hardship relied upon.

(5) All such information and particulars shall be verified by statutory declaration.

(6) The commission shall investigate the application and may require the lessee concerned to furnish to it all such further information and particulars as it deems fit.

(7) For the purpose of investigating the application the commission may require the lessee to appear in person or before an officer of the commission named by it.

(8) If upon investigation and consideration of the application the commission is satisfied that the liability to pay in full the annual rent in question imposes upon the lessee a hardship which should be alleviated, then notwithstanding anything in this Act, the commission may remit, to the extent it deems necessary to effect such alleviation, the annual rent in question.

(9) In the case of a lease in respect of the annual rent whereof a remission is granted by the commission pursuant to subsection (8)—

## SCHEDULE (continued)

- (a) the annual rent shall be reduced by the amount of the remission; and
- (b) in respect of the rental period in question—such reduced annual rent shall be payable, and shall be the annual rent, on and from the first day of the month preceding the date of the receipt by the commission of the application for the remission which is the anniversary next preceding the date on which the lease in question commenced.

**(10)** Subsection (9) applies subject to subsections (12) to (14).

**(11)** The commission may at any time and from time to time require any lessee to whom it has granted a remission in annual rent pursuant to subsection (8) to inform it in writing, verified by statutory declaration, within a time specified by it whether or not there has been since the application was made or during any period subsequent to the making of the application specified by the commission any, and if so what, alteration in the financial circumstances of the lessee or his or her spouse or in the circumstances of any hardship on the ground whereof the remission was granted.

**(12)** If a lease is transferred, whether by operation of law or otherwise, any remission in the annual rent thereof by the commission pursuant to subsection (8) shall be determined thereby.

**(13)** The commission may determine or reduce or increase any remission in the annual rent of any lease granted by it pursuant to subsection (8) if in its opinion the determination, reduction or increase is warranted by change in circumstances of any hardship on the ground whereof the remission was granted (or, in the case of an increase in the remission, by further hardship) or if at any time when the lessee is required by the commission to inform it on any of the matters mentioned in subsection (11), the lessee fails so to do within the time specified by the commission.

**(14)** Any determination, reduction or increase referred to in subsection (12) or (13) of a remission in the annual rent of a lease shall take effect on and from the first day of the month following the date of the transfer of the lease in question or, as the case may be, the making by the commission of such determination, reduction or increase, which is the anniversary next following the date on which the lease commenced.

## SCHEDULE (continued)

**19 Mortgages of miner's homesteads**

In case of a mortgage to the commission of a miner's homestead—

- (a) the commission on exercising its powers, may retain possession for any period in its discretion;
- (b) it shall not be necessary to furnish the proof required by the *Mining Act 1898*, section 85 so long as the rent has been paid for a period of not less than 30 years;
- (c) the *Mining Act 1898*, section 98T shall not apply.

**20 Mortgagor to effect necessary repairs**

(1) Every person who has given a mortgage or other security to the commission shall, during the continuance of the same, to the satisfaction of the commission or other person authorised in that behalf—

- (a) keep the land comprised in such mortgage or other security free from all noxious weeds and plants, particularly prickly-pear, china apple, noogoora burr, and bathurst burr; and
- (b) keep in good and tenable repair all buildings, fences, fixtures, and improvements upon the land; and
- (c) insure and keep insured all buildings upon the land; and
- (d) pay all rates and taxes, and perform all the lawful requisitions of any local government or other authority with respect to the land; and
- (e) perform the conditions of any lease and observe the provisions of any Act under which the land is held.

(2) For the purposes of this section—

“**repair**” includes painting in accordance with the conditions in that behalf contained in the mortgage.

(3) If, after the expiration of 2 months' notice in writing by the commission, such person has not complied with the requirements of this section—

- (a) the like consequences shall follow as are hereinbefore provided in case of default made in the payment of any sum of money payable under this Act; or

## SCHEDULE (continued)

- (b) the commission or some person authorised in that behalf may comply with all such requirements and, if necessary for that purpose, enter upon the land, and the expense thereby incurred with interest at the rate per centum per annum applicable for the time being in respect of advances by the commission shall be repaid to the commission by the borrower on demand, and if not so paid the commission may, at its option, either forthwith exercise the powers conferred upon it as aforesaid in case of default made in the payment of any sum of money or add the amount of such expense and interest to the mortgage debt, whereupon the same shall be deemed to be part thereof.

**21 Conditions annexed to land whilst subject to advances**

(1) As between the commission and the owner or occupier for the time being of any land with respect to which in advance has been made, the following conditions shall be imposed so long as such land is subject to any charge in respect of any periodical payment in favour of the commission, namely—

- (a) such land or any part thereof shall not be transferred, mortgaged, subdivided, or let, or abandoned by such owner or occupier or agreed to be so transferred, mortgaged, subdivided, or let without the written consent of the commission.

Every agreement for transfer or letting or mortgage contrary to this subsection shall be void and of no effect.

If the owner or occupier transfers, mortgages, subdivides, or lets such land or any part thereof, or abandons such land, in contravention of this subsection, the commission may cause the land to be sold.

- (b) when on the death of the owner or occupier the land would by reason of any demise, bequest, intestacy, or otherwise become subdivided, the commission may require the land to be sold within 12 months after the death of the owner or occupier to some one person, and if default is made in selling the same the commission may cause the same to be sold.

(2) The provisions of this Act, as to sale and application of the proceeds of sale, shall apply to every sale made under this section.



## SCHEDULE (continued)

(3) Nothing in this Act or any other enactment shall require the commission to consent to the transfer, subdivision, letting, mortgaging or abandonment of any land to which this section applies.

**22 Power to lease in lieu of selling etc.**

(1) Whenever under this Act power is conferred upon the commission to cause any land to be sold by reason of any default or breach of covenant or condition or otherwise, the commission may, if it thinks fit, from time to time previous to exercising such power of sale, lease such land or any part thereof for any term not exceeding 30 years.

(2) Every such lease shall contain a covenant to pay such rent and observe such conditions as the commission in each case thinks fit.

(3) The rents and profits from time to time derived from any such lease shall be applied—

- (a) in payment of the costs and expenses from time to time incurred in connection with the lease;
- (b) in payment of the instalments and other payments (if any) due under this Act;
- (c) in payment of the balance (if any) to the borrower.

**23 Abandoned dwelling houses**

In any case where the commission is satisfied that any dwelling house in respect of which any advance under this Act is outstanding has been abandoned by the borrower and is without a lawful occupant, the commission may enter upon and take possession of such dwelling house and the land whereon it is built and retain possession of the same, and may let the same, and shall apply the rents and profits in payment of the costs and expenses from time to time incurred in connection with the land and of the instalments and other payments (if any) due under this Act, and shall hold the balance (if any) in trust for the borrower.

**24 Transfer of land**

(1) Where the consent of the commission is sought to the transfer of any land with respect to which an advance has been made, the commission may

## SCHEDULE (continued)

require as a condition to its consent that the transferee shall enter into and execute, in favour of the commission, such mortgage, bonds, covenants, and other instruments and securities as will effectually secure the payment by the transferee of all sums of money payable by the transferor, and upon the entering into and execution of the same the transferee shall be equally bound thereby as if the advance made to the transferor had been made to the transferee in the first instance.

**Letting of land**

(2) Where the consent of the commission is sought to the letting of any land with respect to which an advance has been made, the commission may require as a condition to its consent that the lessee shall enter into and execute in favour of the commission such agreement as will secure to the commission, when so demanded, all the rents and profits of the land and the attornment of such lessee to the commission.

**25 Powers of commission as lessor**

In addition to any other powers and authorities vested in the commission under and pursuant to this Act the commission shall in respect to letting or leasing houses have and may exercise all the powers, rights and authorities that a lessor has or may exercise in respect to his or her lessee under the law in force dealing with landlord and tenant.

**26 Accumulation of purchase deposit**

(1) Where, pursuant to sections 24 and 25 of the Act the commission is prepared to sell a house to an eligible person who has applied to purchase that house and such person is not, at the date of such application, the tenant (or husband or wife of the tenant) thereof and such person is not able then to pay to the commission the full deposit required by the commission to be paid to it in respect of the purchase of such house but has deposited with the commission not less than \$500 the commission may—

- (a) let such house to such person (in this section called the “**tenant**”) who shall enter into a tenancy agreement;
- (b) enter into a further agreement with the tenant whereby the tenant undertakes to—

## SCHEDULE (continued)

- (i) accumulate the balance of deposit within such period of time as may be stipulated by the commission by regular weekly payments to the commission in addition to the rent payable under the terms of the tenancy agreement; and
  - (ii) enter into a contract of sale for the purchase of the house upon the accumulation of the full deposit;
- (c) upon the tenant paying the full deposit and upon the tenant signing a contract of sale for the purchase of the house allow as an offset to the purchase price—
- (i) such portion of the rent paid by the tenant as the commission shall determine is referable to its capital outlay in the acquisition of the land its development and the construction of the house thereon; and
  - (ii) the amount equivalent to interest on the moneys from time to time deposited with the commission under the provisions of this section as would be payable had such moneys been deposited by the tenant in a Commonwealth Savings Bank account.

(2) For the purpose of this section, a form of the agreement may be prescribed which may include amongst other provisions provision for the determination thereof and for the disposal of the moneys paid by the tenant and held by the commission at the time of such determination.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 October 2001. Future amendments of the State Housing Act 1945 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 86 of 1994	4 April 1996
1A	to Act No. 54 of 1996	12 February 1997
1B	to Act No. 28 of 1997	17 September 1997
2	to Act No. 16 of 1998	20 July 1998
2A	to Act No. 29 of 1999	27 July 1999
2B	to Act No. 69 of 1999	17 February 2000
2C	to Act No. 13 of 2000	23 June 2000
2D	to Act No. 46 of 2000	31 October 2000
2E	to Act No. 45 of 2001	13 July 2001
2F	to Act No. 45 of 2001	14 August 2001

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **State Housing Act 1945 9 Geo 6 No. 24**

date of assent 26 November 1945

commenced 10 December 1945 (see s 2 and proc pubd gaz 8 December 1945 p 1363)

as amended by—

### **State Housing Act Amendment Act 1946 10 Geo 6 No. 38**

date of assent 14 November 1946

s 3 commenced 10 December 1945 (see s 3(2))

remaining provisions commenced on date of assent

### **State Housing Act Amendment Act 1948 12 Geo 6 No. 15**

date of assent 1 April 1948

commenced on date of assent

### **State Housing Acts and Another Act Amendment Act 1949 13 Geo 6 No. 39 pt 2**

date of assent 28 October 1949

ss 5, 6 commenced 4 April 1949 (see s 7)

remaining provisions commenced on date of assent

### **State Housing Acts Amendment Act 1950 14 Geo 6 No. 26**

date of assent 8 December 1950

commenced on date of assent

### **State Housing Acts and Another Act Amendment Act 1953 2 Eliz 2 No. 25 pt 2**

date of assent 18 December 1953

s 5(1) commenced 10 December 1945 (see s 5(2))

remaining provisions commenced on date of assent

### **State Housing Acts Amendment Act 1955 4 Eliz 2 No. 14**

date of assent 20 April 1955

commenced on date of assent

### **State Housing Acts and Another Act Amendment Act 1957 6 Eliz 2 No. 40 pt 4**

date of assent 20 December 1957

commenced 9 January 1958 (see s 1(2) and proc pubd gaz 11 January 1958 p 119)

**State Housing Acts Amendment Act 1961 10 Eliz 2 No. 12**

date of assent 29 March 1961

ss 5, 7 commenced 1 January 1959 (see s 1(4))

remaining provisions commenced on date of assent

**State Housing Acts and Another Act Amendment Act 1962 11 Eliz 2 No. 9 pt 2**

date of assent 27 March 1962

commenced on date of assent

**order in council published gazette 29 June 1963 p 1008**

commenced on date of publication

**State Housing Acts and Another Act Amendment Act 1964 No. 23 pt 2**

date of assent 9 April 1964

commenced on date of assent

**order in council published 30 May 1964 p 675**

commenced on date of publication

**Decimal Currency Act 1965 No. 61 s 11 sch 2**

date of assent 23 December 1965

commenced 14 February 1966 (see s 1(2))

**order in council published gazette 29 January 1966 p 812**

commenced 14 February 1966

**State Housing Acts Amendment Act 1966 No. 5**

date of assent 10 October 1966

s 7 commenced 1 July 1966 (see s 7(1))

remaining provisions commenced on date of assent

**order in council published gazette 22 October 1966 p 673**

commenced on date of publication

**Acquisition of Land Act 1967 No. 48 s 3(2) sch 1**

date of assent 22 December 1967

commenced 23 March 1968 (see s 1(2) and proc pubd gaz 23 March 1968 p 1206)

**order in council published gazette 23 December 1967 p 1548**

commenced on date of publication

**order in council published gazette 14 November 1970 p 1012**

commenced on date of publication

**State Housing Act Amendment Act 1971 No. 76**

date of assent 22 December 1971

commenced 1 July 1971 (see s 2)

**State Housing Act Amendment Act 1972 No. 27**

date of assent 21 December 1972

s 6 commenced 1 July 1972 (see s 6(1))

remaining provisions commenced on date of assent

**Commonwealth and State Housing Agreement Act 1973 No. 68 s 4**

date of assent 19 December 1973

commenced on date of assent

**Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974

commenced 1 March 1975 (see s 2 and proc pubd gaz 16 November 1974 p 1083)

**Limitation of Actions Act 1974 No. 75 s 4 sch**

date of assent 1 November 1974

commenced 1 July 1975 (see s 2)

**order in council published gazette 4 June 1977 p 844**

commenced on date of publication

**Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978 No. 58 pt 3**

date of assent 22 August 1978

commenced on date of assent (see s 2(1))

**order in council published gazette 23 September 1978 p 260**

commenced on date of publication

**State Housing Act and Another Act Amendment Act 1979 No. 5 pt 2**

date of assent 20 April 1979

commenced on date of assent

**State Development and Public Works Organization Act and Other Acts Amendment Act 1979 No. 26 pt 8**

date of assent 6 June 1979

commenced on date of assent

**State Housing Act Amendment Act 1981 No. 64**

date of assent 14 September 1981

commenced on date of assent

**Statutory Bodies Financial Arrangements Act 1982 No. 33 s 14(2), (4) sch 3**

date of assent 1 September 1982

commenced on date of assent

**State Housing Act and Another Act Amendment Act 1983 No. 9 pt 2**

date of assent 31 March 1983

commenced on date of assent

**State Housing Act and Another Act Amendment Act 1984 No. 89 pt 2**

date of assent 12 November 1984

commenced on date of assent

**State Housing Act Amendment Act 1985 No. 91**

date of assent 9 December 1985

commenced on date of assent

**Real Property Acts and Other Acts Amendment Act 1986 No. 26 s 4 sch**

date of assent 8 April 1986

commenced on date of assent (see s 2(1))

**Public Service Management and Employment Act 1988 No. 52 s 44 sch 3**

date of assent 12 May 1988

commenced 18 July 1988 (see s 1A(2) and proc pubd gaz 16 July 1988 p 2876)



**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989  
commenced on date of assent

**order in council published gazette 2 December 1989 p 2403**

commenced 1 January 1990

**State Housing Act Amendment Act 1990 No. 74**

date of assent 10 October 1990  
commenced on date of assent

**Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 5**

date of assent 14 November 1990  
commenced on date of assent (see s 2(1))

**Lands Legislation Amendment Act 1992 No. 64 ss 1–3 sch 1**

date of assent 7 December 1992  
ss 1–2 commenced on date of assent  
remaining provisions commenced 26 March 1993 (see s 2 and 1993 SL No. 88)

**Local Government Act 1993 No. 70 ch 1 pt 1, ch 14 pt 3, sch**

date of assent 7 December 1993  
ss 1–2 commenced on date of assent (see s 2(1))  
remaining provisions commenced 26 March 1994 (see s 2(5))

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993  
commenced on date of assent

**Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 24 April 1994 (see s 2 and 1994 SL No. 132)

**Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

**Residential Tenancies Act 1994 No. 86 ch 1 pt 1, s 343 sch 2**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 3 April 1995 (see s 2 and 1995 SL No. 35)

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commencement on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

**State Housing Amendment Act 1998 No. 16**

date of assent 26 March 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1998 (1998 SL No. 116)

**Financial Administration Legislation Amendment Act 1999 No. 29 ss 1–2, 50 sch**

date of assent 16 June 1999

ss 1–2, 50 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 122 and see 1999 SL No. 119, 1999 SL No. 70 s 2(3))

**Trusts (Investments) Amendment Act 1999 No. 69 pt 1, s 7 sch**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 3 February 2000 (2000 SL No. 16)

**State Housing Amendment Act 2000 No. 13**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 12 June 2000 (2000 SL No. 109)

**State Housing Amendment Act (No. 2) 2000 No. 29**

date of assent 4 September 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 31 October 2000 (see s 2)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Property Agents and Motor Dealers Act 2000 No. 62 ss 1–2, 601 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 54)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

## **7 List of annotations**

### **Commencement**

**s 2** om R1 (see RA s 37)

### **Parts of Act**

**s 3** amd 1949 13 Geo 6 No. 39 s 4; 1950 14 Geo 6 No. 26 s 2; 1971 No. 76 s 3;  
1978 No. 58 s 7; 1981 No. 64 s 2  
om R1 (see RA s 36)

### **Definitions**

**s 4** amd 1957 6 Eliz 2 No. 40 s 20  
def “**BCCM Act**” ins 1997 No. 28 s 295 sch 3  
def “**By-law**” om 1993 No. 70 s 804 sch  
def “**capital cost**” amd 1966 No. 5 s 2  
def “**chief executive (valuations)**” ins 1992 No. 64 s 3 sch 1  
def “**commission**” amd 1979 No. 5 s 4; 1990 No. 80 s 3 sch 5  
def “**Commissioner of Housing**” or “**Commissioner**” om 1990 No. 80 s 3  
sch 5  
def “**Director-General**” ins 1990 No. 80 s 3 sch 5  
om 1993 No. 76 s 3 sch 1  
def “**dwelling house**” amd 1981 No. 64 s 3(a); 1997 No. 28 s 295 sch 3  
def “**fund**” sub 1999 No. 29 s 50 sch  
def “**house**” ins 1985 No. 91 s 4  
def “**land**” amd 2000 No. 46 s 3 sch  
def “**Land Act**” amd 2000 No. 46 s 3 sch  
def “**Local Authority**” om 1993 No. 76 s 3 sch 1  
def “**Local Authority Area**” om 1993 No. 76 s 3 sch 1  
def “**Local Government Acts**” sub 1993 No. 70 s 804 sch  
def “**Minister**” sub 1990 No. 80 s 5 sch  
om 1993 No. 76 s 3 sch 1  
def “**Prescribed**” om 1981 No. 64 s 3(b)  
def “**Regulations**” om 1981 No. 64 s 3(b)  
def “**standard fixed interest rate**” ins 2000 No. 13 s 4  
def “**standard interest rate**” ins 2000 No. 13 s 4  
def “**standard interest rate policy**” ins 2000 No. 13 s 4  
def “**standard variable interest rate**” ins 2000 No. 13 s 4  
def “**This Act**” om 1981 No. 64 s 3(b)

### **Application of Act regarding Building Units and Group Titles Act 1980**

**s 4A** ins 1981 No. 64 s 4  
sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58  
s 5(1) sch 7)

### **Application of Act for BCCM Act**

**s 4B** ins 1997 No. 28 s 295 sch 3

### **Vesting of assets and liabilities in the commission**

**s 7** amd 1979 No. 5 s 5; 1990 No. 80 s 5 sch

### **Administration of Act**

**s 8** amd 1990 No. 80 s 3 sch 5

**Constitution of Queensland Housing Commission**

**s 9** amd 1979 No. 5 s 6; 1990 No. 80 s 3 sch 5

**General powers and duties of chief executive**

**s 10** amd 1964 No. 23 s 3; 1979 No. 5 s 7(1); 1988 No. 52 s 44 sch  
sub 1990 No. 80 s 3 sch 5

**Delegation of chief executive's powers**

**s 10A** ins 1990 No. 80 s 3 sch 5  
sub 2000 No. 13 s 5

**District offices and agents of the commission**

**s 10B** ins 1990 No. 80 s 3 sch 5  
sub 1998 No. 16 s 4

**Officers and employees employed under Public Service Act**

**s 11** amd 1972 No. 27 s 2; 1988 No. 52 s 44 sch; 1990 No. 74 s 3; 1990 No. 80 s 3  
sch 5; 1996 No. 37 s 147 sch 2

**Salaries payable out of the fund**

**s 12** amd 1990 No. 80 s 3 sch 5

**Validation of certain action**

**s 14** amd 1990 No. 80 s 3 sch 5

**Application of administrative provisions of sch to commission**

**s 15** sub 1998 No. 16 s 5

**Queensland Housing Commission Fund**

**s 16** amd 1961 10 Eliz 2 No. 12 s 2; 1999 No. 29 s 50 sch

**Loans by Government to commission**

**s 17** amd 1979 No. 26 s 52; 1981 No. 64 s 5; 1982 No. 33 s 14(2), (4) sch 3; 1996  
No. 54 s 9 sch; 1999 No. 69 s 7 sch

**Commission is statutory body**

**s 17A** ins 1979 No. 26 s 53  
sub 1996 No. 54 s 9 sch

**Power to vest other lands**

**s 18** amd 1993 No. 76 s 3 sch 1

**Exemption from rating**

**s 19** amd 1981 No. 64 s 6; 1997 No. 28 s 295 sch 3

**Loans and sales to minors under Parts III and IV of this Act**

**s 21A** ins 1955 4 Eliz 2 No. 14 s 2  
om 1974 No. 57 s 8 sch

**Special powers of commission**

**s 22** amd 1950 14 Geo 6 No. 26 s 3; 1966 No. 5 s 3; 1967 No. 48 s 3(2) sch 1; 1972  
No. 27 s 3; 1972 No. 27 s 11 sch; 1979 No. 5 s 8; 1981 No. 64 s 7; 1983  
No. 9 s 5; 1989 No. 103 s 3 sch; 1994 No. 11 s 194 sch 2; 1997 No. 28  
s 295 sch 3

**Provision for payment upon erection of 1 of several dwelling houses under contract**

**prov hdg** ins 1983 No. 9 s 6  
**s 22A** ins 1946 10 Geo 6 No. 38 s 2  
 amd 1966 No. 5 s 4

**Provision of land for industry, trade or business**

**prov hdg** ins 1983 No. 9 s 7(1)(a)  
**s 22B** ins 1950 14 Geo 6 No. 26 s 4  
 amd 1972 No. 27 s 4; 1979 No. 5 s 9; 1981 No. 64 s 8; 1983 No. 9  
 s 7(1)(b)–(c); 1992 No. 64 s 3 sch 1; 1998 No. 16 s 6

**Commission may make grants**

**s 22C** ins 1990 No. 74 s 4

**Commission may enter into joint ventures**

**s 22D** ins 1990 No. 74 s 5

**Audit of accounts**

**s 22E** ins 1990 No. 74 s 6  
 amd 1998 No. 16 s 7  
 om 2001 No. 45 s 29 sch 3

**Power to commission to make advances to eligible persons for erection of dwelling houses etc.**

**s 23** amd 1948 12 Geo 6 No. 15 s 2; 1949 13 Geo 6 No. 39 s 5; 1950 14 Geo 6  
 No. 26 s 5; 1953 2 Eliz 2 No. 25 s 4; 1956 4 Eliz 2 No. 14 s 3; 1965 No. 61  
 s 11 sch 2; 1972 No. 27 s 11 sch; 1979 No. 5 s 10; 1983 No. 9 s 8; 1984  
 No. 89 s 4; 1990 No. 74 s 7; 1990 No. 80 s 3 sch 5; 1993 No. 70 s 804 sch;  
 1998 No. 16 s 8

**Advances for the purchase of dwelling houses**

**s 23A** ins 1964 No. 23 s 4  
 amd 1978 No. 58 s 8; 1983 No. 9 s 9; 1984 No. 89 s 5; 1990 No. 74 s 8;  
 1990 No. 80 s 3 sch 5; 1994 No. 11 s 194 sch 2

**PART 4—SALE OF HOUSES**

**pt hdg** amd 1978 No. 58 s 9

**Sale of lots under Building Units and Group Titles Act or BCCM Act to pensioners**

**prov hdg** amd 1997 No. 28 s 295 sch 3  
**s 23B** ins 1985 No. 91 s 3  
 amd 1986 No. 26 s 4 sch; 1990 No. 74 s 9; 1992 No. 64 s 3 sch 1; 1994 No. 69  
 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7);  
 1997 No. 28 s 295 sch 3

**Power to commission to sell houses to eligible persons**

**s 24** amd 1949 13 Geo 6 No. 39 s 6; 1950 14 Geo 6 No. 26 s 6; 1953 2 Eliz 2  
 No. 25 s 5(1); 1957 6 Eliz 2 No. 40 s 21; 1961 10 Eliz 2 No. 12 s 3; 1966  
 No. 5 s 5; 1978 No. 58 s 10; 1979 No. 5 s 11; 1981 No. 64 s 9; 1983 No. 9  
 s 10; 1990 No. 74 s 10; 1992 No. 64 s 3 sch 1; 1993 No. 76 s 3 sch 1; 1998  
 No. 16 s 9

**Power of commission to provide home sites**

- s 24A** ins 1961 10 Eliz 2 No. 12 s 4  
 amd 1972 No. 27 s 5; 1979 No. 5 s 12; 1983 No. 9 s 11; 1990 No. 74 s 11;  
 1993 No. 76 s 3 sch 1; 1994 No. 11 s 194 sch 2

**Application of Act to workers' homes perpetual town leases**

- s 24B** ins 1983 No. 9 s 12

**Rental provisions regarding perpetual leases**

- s 24C** ins 1983 No. 9 s 13  
 amd 1992 No. 64 s 3 sch 1; 1998 No. 16 s 10

**PART 4A—ENCOURAGEMENT AND AID IN BUILDING HOUSES**

- pt hdg** ins 1949 13 Geo 6 No. 39 s 8

**Provisions for saving by intending home builders**

- s 25A** ins 1949 13 Geo 6 No. 39 s 8  
 amd 1955 4 Eliz 2 No. 14 s 4; 1966 No. 5 s 6; 1972 No. 27 s 11 sch  
 om 1983 No. 9 s 15(1)

**Home builders' insurance**

- s 25B** ins 1949 13 Geo 6 No. 39 s 9  
 amd 1953 2 Eliz 2 No. 25 s 6; 1955 4 Eliz 2 No. 14 s 5  
 sub 1961 10 Eliz 2 No. 12 s 5  
 amd 1966 No. 5 s 7(2); 1972 No. 27 s 6(2); 1974 No. 57 s 8 sch; 1990 No. 80  
 s 3 sch 5

**Power of commission to let or lease houses to employers for housing employees**

- s 25C** ins 1964 No. 23 s 5  
 amd 1981 No. 64 s 10; 1997 No. 28 s 295 sch 3

**Letting or leasing of houses to eligible persons**

- s 26** amd 1972 No. 27 s 7  
 sub 1984 No. 89 s 6  
 amd 1998 No. 16 s 11

**PART 5A—ADVANCES FOR HOUSING FOR EMPLOYEES**

- pt hdg** ins 1950 14 Geo 6 No. 26 s 7

**Power of commission to make advances for housing for employees**

- s 26A** ins 1950 14 Geo 6 No. 26 s 7  
 amd 1953 2 Eliz 2 No. 25 s 7; 1964 No. 23 s 6; 1965 No. 61 s 11 sch 2;  
 1972 No. 27 s 11 sch

**Act to apply with respect to advances under this part**

- s 26B** ins 1950 14 Geo 6 No. 26 s 8  
 amd 1990 No. 80 s 3 sch 5

**Powers of body corporate with respect to borrowing under this part**

- s 26C** ins 1950 14 Geo 6 No. 26 s 8

**PART 5B—SALE OF EMPLOYEE HOUSING**

- pt hdg** ins 1981 No. 64 s 11

**Sales of houses let or leased by employers**

s 26D ins 1981 No. 64 s 11  
amd 1994 No. 11 s 194 sch 2

**Commission to manage business of Commonwealth-State Housing Scheme**

s 27 amd 1955 4 Eliz 2 No. 14 s 6; 1966 No. 5 s 8

**Financial arrangements in respect of Commonwealth-State Housing Scheme**

s 29 sub 1972 No. 27 s 8

**PART 6A—ADVANCES TO APPROVED HOUSING INSTITUTIONS**

pt hdg ins 1971 No. 76 s 4

**Interpretation**

s 29A ins 1971 No. 76 s 4

**Approved housing institutions advances account**

s 29B ins 1971 No. 76 s 5(1)  
amd 1973 No. 68 s 4(1)(a); 1981 No. 64 s 12

**Approval of loans from the account**

s 29C ins 1971 No. 76 s 5

**Approved housing institutions authorised to receive loans**

s 29D ins 1971 No. 76 s 6

**Loan from the account charged on property and assets of borrower**

s 29E ins 1971 No. 76 s 6

**PART 6B—APPLICATION OF RESIDENTIAL TENANCIES ACT 1994**

pt hdg ins 1998 No. 16 s 12

**Definition**

s 29F ins 1998 No. 16 s 12

**Application of pt 6B**

s 29G ins 1998 No. 16 s 12

**Application of Residential Tenancies Act 1994**

s 29H ins 1998 No. 16 s 12

**PART 6C—TERMINATION OF HOUSING TRUSTS**

pt 6 (ss 29I–29R) ins 2000 No. 29 s 4

**PART 7—MISCELLANEOUS****Criminal Code does not apply in certain circumstances**

s 30AA ins 2000 No. 13 s 6

**Discretion as to requirement re ownership of dwelling house**

s 30A ins 1972 No. 27 s 9

**Declaration of standard interest rates**

s 32AA ins 2000 No. 13 s 7

**Interest rates for certain advances and contracts of sale**

s 32AB ins 2000 No. 13 s 7

**Interest rates for advances under transferred mortgages**

s 32AC ins 2000 No. 29 s 5

**Interest rates payable by borrowers and purchasers in respect of certain advances and contracts of sale**

prov hdg amd 2000 No. 29 s 6(1)

s 32A ins 1990 No. 74 s 12

amd 2000 No. 13 s 8; 2000 No. 29 s 6(2)–(3)

**Rate of interest payable by borrowers and purchasers of homes**

s 33 sub 1953 2 Eliz 2 No. 25 s 8

amd 1962 11 Eliz 2 No. 9 s 4; 1964 No. 23 s 7; 1972 No. 27 s 10;  
1972 No. 27 s 11 sch; 1978 No. 58 s 11; 1979 No. 5 s 13; 1981 No. 64  
s 13; 1993 No. 76 s 3 sch 1; 1998 No. 16 s 13**Priority of amounts added to principal under mortgage**

s 33A ins 1983 No. 9 s 16

**Penalty for procuration fees**

s 35 amd 1972 No. 27 s 11 sch

**Perfecting security over holdings when freehold acquired subsequent to mortgage**

s 38 amd 1979 No. 5 s 14

**Land Act applies to deeds of grant**

s 38A ins 1979 No. 5 s 15

**Notice of action**

s 40 om 1974 No. 75 s 4 sch

**Person taking fee or reward**

s 41 amd 1966 No. 5 s 9; 1972 No. 27 s 11 sch

**Secretary of commission etc. to be auctioneer**

s 42 amd 2000 No. 62 s 601 sch 2

**Lessee or tenant wrongfully holding over**

s 43 amd 1972 No. 27 s 11 sch

**Justice to issue warrant for possession**

s 43A ins 1961 10 Eliz 2 No. 12 s 6

amd 1966 No. 5 s 10; 1979 No. 5 s 16; 1990 No. 80 s 3 sch 5

**Annual report to Parliament**

s 45 amd 1981 No. 64 s 14; 1990 No. 80 s 3 sch 5; 1999 No. 29 s 50 sch

**Orders in council**

s 46 om 1998 No. 16 s 14

**Approval of forms**

s 47A ins 1998 No. 16 s 15

**Regulation-making power**

prov hdg sub 1998 No. 16 s 16(1)

s 48 amd 1973 No. 68 s 4(1)(b); 1981 No. 64 s 15; 1984 No. 89 s 7; 1994 No. 86  
s 343 sch 2; 1998 No. 16 s 16(2)–(5)  
(2B)–(2C) exp 3 April 1996 (see s 48(2C))



**SCHEDULE****Delivery of matters in possession of employee at removal**

**s 1** amd 1979 No. 5 s 17(a); 1984 No. 89 s 8(a); 1990 No. 80 s 3 sch 5

**Reserve fund**

**s 2** amd 1984 No. 89 s 8(b); 1996 No. 54 s 9 sch

**DEBENTURES**

**hdg prec s 3** om 1979 No. 26 s 54

**Debentures**

**s 3** om 1979 No. 26 s 54

**Contracts for negotiation, etc.**

**s 4** om 1979 No. 26 s 54

**Debentures lost, etc.**

**s 5** om 1979 No. 26 s 54

**Cancelling of discharged debentures**

**s 6** om 1979 No. 26 s 54

**Applications**

**s 7** amd 1978 No. 58 s 12(a)

**Applications already made**

**s 8** om 1984 No. 89 s 8(c)

**Advance to be deemed a loan until repaid in full and at prescribed rate of interest**

**prov hdg** amd 1978 No. 58 s 12(b)(i); 1983 No. 9 s 17(1)(a)(i)

**s 9** amd 1953 2 Eliz 2 No. 25 s 9; 1978 No. 58 s 12(b)(ii); 1983 No. 9 s 17(1)(a)(ii); 1993 No. 76 s 3 sch 1

**Repayment of advance for dwelling houses**

**s 12** amd 1946 10 Geo 6 No. 38 s 3(1); 1953 2 Eliz 2 No. 25 s 10; 1961 10 Eliz 2 No. 12 s 7; o in c pubd gaz 30 May 1964 p 675; 29 January 1966 p 812; 4 June 1977 p 844; 1978 No. 58 s 12(c) and (d); 1983 No. 9 s 17(1)(b); 1984 No. 89 s 8(d); o in c pubd 2 December 1989 p 2403; 1993 No. 76 s 3 sch 1; 1998 No. 16 s 17(1)–(3)

**Prepayment of unpaid balance of advance**

**s 13** amd 1983 No. 9 s 17(1)(c); 1990 No. 74 s 13

**s 13A** ins o in c pubd gaz 22 October 1966 p 673  
amd 1998 No. 16 s 17(4)

**Additional advances may be added to principal of loan**

**s 14** amd 1978 No. 58 s 12(e); 1983 No. 9 s 17(1)(d)

**Remedies of the commission**

**s 15** amd o in c pubd gaz 23 December 1967 p 1548; 1979 No. 5 s 17(b); 1984 No. 89 s 8(e); 1993 No. 76 s 3 sch 1; 1998 No. 16 s 17(5)

**Power to capitalise arrears of interest**

**s 16** amd 1966 No. 5 s 11

**Provisions for cases of hardship**

**s 18** amd o in c pubd gaz 29 June 1963 p 1008; 1979 No. 5 s 17(c); 1983 No. 9 s 17(1)(e); 1988 No. 103 s 3 sch

**Mortgages of miners' homesteads**

**s 19** amd 1984 No. 89 s 8(f)

**Mortgagor to effect necessary repairs**

**s 20** amd 1979 No. 5 s 17(d); 1984 No. 89 s 8(g)

**Conditions annexed to land whilst subject to advances**

**s 21** amd o in c pubd gaz 23 September 1978 p 260; 1979 No. 5 s 17(e); 1983 No. 9 s 17(1)(f) and (g)

**Power to lease in lieu of selling etc.**

**s 22** amd 1984 No. 89 s 8(h)

**Transfer of land**

**s 24** amd 1984 No. 89 s 8(i); 1993 No. 76 s 3 sch 1

**Accumulation of purchase deposit**

**s 26** ins o in c pubd gaz 14 November 1970 p 1012

## **8 Transitional and savings provisions**

State Housing Acts and Another Act Amendment Act 1957 6 Eliz 2 No. 40 pt II provides—

### **PART II—PROVISION FOR THE FREEHOLDING OF CERTAIN LEASEHOLDS HELD UNDER “THE STATE HOUSING ACTS, 1945 TO 1957.”**

#### **3 Interpretation**

This Part of this Act shall be read as one with “*The State Housing Acts, 1945 to 1957.*”

#### **4 Conversion of certain tenures from Perpetual Leases to leases for term of years with freeholding covenant**

A lessee of a Perpetual Town Lease or Perpetual Suburban Lease acquired and held under the provisions of subsection six of section twenty-four of “*The State Housing Acts, 1945 to 1957,*” or section 24A of *The State Housing Acts, 1945 to 1961* as amended from time to time may apply in writing to the Commission to have his lease deemed a lease for a

term determined in accordance with the provisions of section seven of this Act and subject to a covenant entitling the lessee to a deed of grant in fee-simple (hereinafter in this Part II called a “freeholding lease”).

## **5 Purchasing price**

(1) The purchasing price of the land comprised in a lease deemed, pursuant to this Part, to be a freeholding lease shall be the amount of the unimproved value, as at the date of the receipt by the Commission of the application referred to in section 4, of that land.

For the purposes of this section, the unimproved value of land shall be the amount which experienced persons would be willing to pay for the fee-simple of the land, assuming that it were unimproved and were offered for sale on such reasonable terms and conditions as a bona fide seller would require.

(2)(a) At the option of the lessee, the unimproved value of the land comprised in the lease in question shall be determined by—

- (i) the Commission;
- (ii) the Valuer-General; or
- (iii) the Land Court.

In every case, the lessee shall exercise his option under this subsection by stating in the application referred to in section 4 or in a separate writing given to the Commission the manner in which he desires the unimproved value of the land comprised in the lease in question to be determined.

(b) In every case where the lessee requires the Valuer-General to determine the unimproved value of the land comprised in the lease in question, the Commission shall request the Valuer-General to determine and the Valuer-General shall determine that value.

(c) In every case where the lessee requires the Land Court to determine the unimproved value of the land comprised in the lease in question, the Commission shall refer, or cause to be referred, to that Court for hearing and determination the matter of the amount of the unimproved value of that land and thereupon that Court shall hear and determine that matter.

(d) Where pursuant to this subsection the Valuer-General or the Land Court determines the unimproved value of the land comprised in the lease in question, the Commission may require the lessee to pay the whole or such part of the costs incurred by it thereby as it may determine and if the lessee fails to pay the whole of the amount which pursuant to this

subsection he is required to pay, the Commission may recover from the lessee in any court of competent jurisdiction, by action as for a debt, the unpaid balance of any such amount.

(3) No appeal shall lie against a determination pursuant to subsection (2) of the unimproved value of land by the Commission, the Valuer-General or, as the case may be, the Land Court.

(4) The Commission shall give to the lessee notice in writing of the amount of the purchasing price.

(5) The valuation of the unimproved value of any land determined by the Commission, the Valuer-General or the Land Court pursuant to this section shall have no force or effect save for the purpose for which that valuation is so determined or made.

## **6 Lessee to elect whether to proceed with application**

(1) The lessee shall, within thirty days from the date when he receives from the Commission notification in writing of the purchasing price, notify the Commission in writing where he elects to proceed with his application under this Part of this Act.

(2) Every application under this Part of this Act shall lapse at the expiration of thirty days after the date when the Commission gives to the lessee notice in writing of the amount of the purchasing price unless the lessee has sooner notified the Commission in writing that he elects to proceed therewith:

Provided that a lessee may, with the prior approval of the Commission, make a second or any subsequent application under this Part of this Act notwithstanding that any prior such application made by him has lapsed.

(3) A notice under this section in respect of any lease shall not affect or prejudice howsoever any mortgage or other encumbrance, estate or interest then subsisting over, upon, or in the land comprised in the lease.

(4) A lessee who elects to proceed with his application under this Part of this Act shall be deemed to comply with the requirements of the perpetual lease with respect to the payment of rent, if he pays rent, until and including the day preceding the quarter day when the term of the freeholding lease commences, at the rate thereof actually payable at the date when the Commission receives the notice referred to in section four of this Act.

## **7 Term of the freeholding lease**

Upon and from the quarter day next following the receipt by the Commission pursuant to section six of this Act of notice from a lessee that he elects to proceed with his application under this Part of this Act the Perpetual Town Lease or Perpetual Suburban Lease, the subject of the application shall be deemed to be a freeholding lease—

(a)—

- (i) Where there is a subsisting contract of sale of a home erected on the land comprised in the lease and the unexpired term of that contract exceeds ten years, for a term equivalent to the unexpired term of the contract commencing on the quarter day next following the date when the Commission receives the notice; or
- (ii) Where there is a subsisting contract of sale of a home erected on the land comprised in the lease and the unexpired term of the contract does not exceed ten years, for a term of ten years commencing on the quarter day next following the date when the Commission receives the notice; or
- (iii) In any other case, for a term of ten years commencing on the quarter day next following the date when the Commission receives the notice; and

(b) Subject in every respect to the provisions of this Part II of this Act,

and the Commission shall cause the lease to be endorsed in terms of this section.

## **8 Terms and conditions of freeholding lease**

Every lease deemed, pursuant to this Part II of this Act to be a freeholding lease, shall be subject to the following provisions, terms and conditions:—

- (a) The purchasing price of the land comprised in the lease shall be the amount of the unimproved value, as determined, as prescribed by section five of this Act, of that land as at the date when the Commission receives the application referred to in section four of this Act;
- (b) The term of the lease shall commence on the quarter day next following the date when the Commission receives from the

lessee, pursuant to section six of this Act, notice in writing of his election to proceed with his application;

- (c) The lessee shall pay, as prescribed by section nine of this Act, the purchasing price of the land;
- (d) The lessee shall pay, as prescribed by section nine of this Act, interest on the outstanding balance of the purchasing price;
- (e) Moneys paid as rent under the perpetual lease in respect of any time before the commencement of the term of the freeholding lease shall not be credited to the purchasing price;
- (f) Subject to paragraphs (a) to (e), both inclusive, of this section, all such terms and conditions as, pursuant to "*The State Housing Acts, 1945 to 1957,*" applied with respect to the lease in question as a perpetual lease.

## **9 Payment of purchasing price including interest thereon**

(1) In the case of a freeholding lease whereto subparagraph (i) of paragraph (a) of section seven of this Act applies—

- (i) The purchasing price of the land shall be added to and become part of the moneys payable to the Commission under the contract, and interest on the balance of the purchasing price outstanding at the beginning of each month shall be payable to the Commission by the lessee at the rate per centum per annum prescribed from time to time; and
- (ii) From the commencement of the term of the freeholding lease, the monthly instalment payable under the contract and "*The State Housing Acts, 1945 to 1957,*" shall be altered from time to time to such sum or sums as will liquidate both the moneys (including interest thereon) payable under the contract and the purchasing price (including interest thereon) of the land not later than the expiration of the term of the contract.

(2) In the case of a freeholding lease whereto subparagraph (ii) of paragraph (a) of section seven of this Act applies, the unexpired period of the term of the contract remaining at the date when the freeholding lease commences shall be extended and shall be ten years commencing on that date and—

- (i) The purchasing price of the land shall be added to and become part of the moneys payable to the Commission under the

contract, and interest on the balance of the purchasing price outstanding at the beginning of each month shall be payable to the Commission by the lessee at the rate per centum per annum prescribed from time to time; and

- (ii) From the commencement of the term of the freeholding lease, the monthly instalment payable under the contract and "*The State Housing Acts, 1945 to 1957,*" shall be altered to such sum as will liquidate both the moneys (including interest thereon) payable under the contract and the purchasing price (including interest thereon) of the land not later than the expiration of the extended term of the contract.

(3) In the case of a freeholding lease whereto subparagraph (iii) of paragraph (a) of section seven of this Act applies—

- (i) A deposit of one-twentieth of the amount of the purchasing price which shall accompany and be paid with the notice by the lessee that he elects to proceed with his application under this Part of this Act; and
- (ii) The balance of the purchasing price, together with interest on the amount thereof outstanding at the beginning of each month of the ten year term of the lease at the rate per centum per annum prescribed from time to time, shall be liquidated by such monthly instalments as shall be determined by the Commission from time to time which instalments are payable respectively on or before the last day of each month of the ten year term of the lease, commencing on the quarter day next following the date when the deposit is paid.

(4) Notwithstanding any provision of "*The State Housing Acts, 1945 to 1957,*" or any term or condition of the freeholding lease, the lessee may at any time complete payment in full of the purchasing price of the land paying—

- (a) In a case where the purchasing price of the land has been added to the moneys payable under the contract of sale of a home erected on the land, the unpaid amounts of the moneys payable under the contract and of the purchasing price of the land together with the interest payable in respect of those amounts up to the date of payment thereof; and
- (b) In any other case, the unpaid amount of the purchasing price of the land together with the interest payable thereon up to the date of the payment thereof.

(5) Without prejudice to any other remedy had by it, the Commission may recover, by action as for a debt in any court of competent jurisdiction, any moneys due and not paid to it in respect of the purchasing price (including interest thereon) of the land comprised in a freeholding lease.

(6)(a) Subject to paragraph (b), the provisions of section 9 of *The State Housing Acts and Another Act Amendment Act of 1957* shall continue to apply to leases deemed pursuant to this Part to be freeholding leases prior to the commencement of Part IV of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978* as if those provisions had not been varied by that Part IV.

(b) In respect of every lease deemed, pursuant to subsection (3), to be a freeholding lease prior to the commencement of Part IV of the *Commonwealth and State Housing Agreement and State Housing Act and Another Act Amendment Act 1978*, the balance of the purchasing price and the prescribed interest thereon shall be liquidated by such monthly instalments as shall be determined from time to time by the Commission payable respectively on or before the last day of each month of the balance of the ten year lease commencing on the first quarter day next following the commencement of that Part.

(7) In respect of the purchasing price of land under this section, the Governor in Council may from time to time by Order in Council—

- (a) prescribed the rate per centum per annum of the interest payable thereon;
- (b) vary the rate per centum per annum of the interest payable thereon by increasing above or reducing below the rate fixed by the preceding Order in Council.

An Order in Council made under this subsection shall come into force on such date as may be specified therein or, if no such date is so specified, on the date of the publication thereof in the Gazette and shall continue in force until and including the day next preceding the date when the next following such an Order in Council comes into force.

## **10 Freeholding covenant**

(1) Every lease, deemed pursuant to this Part II of this Act to be a freeholding lease, shall be deemed to contain a covenant that the Governor in Council shall in the name of Her Majesty, grant in fee-simple to the lessee the land comprised in the lease—



- (a) Upon payment of all moneys, including interest thereon, payable in respect of the purchase of the land comprised in the freeholding lease and of the home erected thereon;
- (b) Upon the due performance by the lessee of the terms and conditions of the contract of sale of the home erected on the land; and
- (c) Upon the due performance by the lessee of all other terms and conditions binding upon him of the lease.

(2) Upon a lessee becoming entitled to performance of the covenant referred to in subsection one of this section, the Commission shall surrender to the Crown any estate or interest of the Commission in the land concerned.

(3) The Governor in Council shall, in the name of Her Majesty, grant in fee-simple any land to a person thereunto entitled under this Part II of this Act.

### **Section 285 of Land Act 1962–1975 applied**

(4) Section 285 of the *Land Act 1962–1975* shall apply with respect to any deed of grant issued pursuant to this Part of this Act, and for the purposes of so applying that section the provisions thereof shall be read with and subject to all necessary adaptations, including by reading as a reference to the Commission any reference therein to the Department of Lands.

(5) Every grant in fee-simple by the Governor in Council pursuant to this Act and every deed of grant issued accordingly whether before or after the commencement of the *State Housing Act and Another Act Amendment Act 1979* shall be and, it is hereby declared, always was deemed to have been issued under the Land Acts the provisions whereof relating to deeds of grant apply thereto.

### **10A Application of Land Act of 1962 to freeholding leases**

Subject to the provisions of this Act, the provisions of *The Land Act of 1962* or that Act as subsequently amended which apply to grazing homestead freehold leases relating to registers, transfers, transmissions, mortgages, sub-leases and other dealings, forfeiture, resumption and compensation shall, with and subject to all necessary adaptations apply and, it is hereby declared, always did apply from the commencement of that Act to a freeholding lease and for that purpose—

- (a) a reference to the Minister in that Act shall be read and construed as a reference to the Minister charged with the administration of this Act;
- (b) a reference to the Department of Lands or to the Department in that Act shall be read and construed as a reference to the Commission.