

Housing Bill 1983

NOTES ON CLAUSES

PART I.—PRELIMINARY

Division 1—Commencement, Repeals, Interpretations

Clause 1 provides for the short title.

Clause 2 provides for the Act to come into operation on a day to be proclaimed.

Clause 3 provides for the Acts mentioned in Schedule 1 to be repealed or amended to the extent expressed therein. Amongst the Acts repealed are the *Home Finance Act 1962* and the *Housing Act 1958*. It also contains the usual savings provisions.

Clause 4 sets out interpretations of a number of terms used in the Bill.

Clause 5 provides that the Act shall bind the Crown.

Division 2—Objects

Clause 6 sets out the objects of the Act. It establishes Parliament's intention that the Act be interpreted so as to further those objects. It also provides that every power conferred or duty imposed by the Act shall be exercised and performed so as to promote and achieve those objects.

PART II.—ADMINISTRATION

Division 1—The Minister

Clause 7 provides that the Minister shall have the powers, duties etc., given him under the Commonwealth–State–Northern Territory Housing Agreement 1981.

Clause 8 contains provisions relating to the establishment by the Minister of advisory committees to advise him on such matters as he refers to the committees.

Division 2—The Director of Housing

Clause 9 establishes a corporation, with all the usual powers of a corporation, to be called the Director of Housing. It also provides (when read with *Clause 4*) that that body corporate shall be comprised by the Director of Housing appointed under this clause or in his absence by the person acting in that office.

Clause 10 requires the Director to exercise the powers and perform the duties conferred on the Director subject to the direction and control of the Minister.

Clause 11 contains provisions of a transitional nature. It also provides that the Director shall be the successor in law to the Housing Commission and the Home Finance Trust.

Clause 12 contains provisions requiring the Director to make an annual report to the Minister and the Minister to lay that report before Parliament.

PART III.—POWERS OF THE DIRECTOR AS TO PROPERTY

Clause 13 provides that the Director is subject to the direction and control of the Minister in exercising its powers, duties etc., conferred or imposed by or under this Part.

Clause 14 specifies the Director's powers to acquire and dispose of land and interests in land, including the power compulsorily to acquire land. It also applies Part I of Schedule 2 for the purposes of this clause.

Clause 15 provides the Director's power to develop, generally control, manage or use land and maintain, repair, generally control, manage or use houses and buildings.

Clause 16, sub-clause (1) gives the Director power to grant easements over land vested in the Director and to recommend to the Governor in Council that certain streets be closed or that easements or restrictive covenants be extinguished. It substantially re-enacts sections 26 and 71 of the *Housing Act 1958*.

Clause 16, sub-clause (2) provides that an easement of way or of drainage or for the supply of water, gas, electricity or for sewerage or underground telephone services be created in certain cases over land not vested in the Director.

Clause 16, sub-clause (3) provides that where certain land is subject to an easement referred to in sub-clause (2) that land may be numbered consecutively with and shall be deemed to be an allotment in the land contained in the subdivision. Sub-clauses (2) and (3) substantially re-enact section 23 of the *Housing Act 1958*.

Clause 16, sub-clauses (4) and (5) contain consequential provisions to give effect to the closure of a street or extinguishment of an easement or restrictive covenant under sub-clause (1).

Clause 16, sub-clause (6) provides an entitlement to compensation to any owner of land substantially affected by action taken under sub-clause (1) to close a street or extinguish an easement or restrictive covenant.

Clause 16, sub-clause (7) provides for Part II. of Schedule 2 to apply for the purposes of Clause 16.

Clause 17 empowers the Director to accept donations, etc., including, with the consent of the Governor in Council, those subject to certain trusts. It also applies the provisions of Part III. of Schedule 2 for the purposes of this clause. It substantially re-enacts with amendments the provisions of sections 22 (3), (3AA) and (3B) of the *Housing Act 1958*.

Clause 18, sub-clause (1) empowers the Director to provide a movable unit to any person on such terms and conditions as are prescribed and the Director thinks fit.

Sub-clause (2) allows the Director to purchase, acquire or manufacture movable units.

Sub-clause (3) enables the Director to require the yielding up of possession of a movable unit after a hiring agreement is determined.

Sub-clause (4) makes it an offence to hinder or obstruct an authorised person removing a movable unit that is the property of the Director.

Sub-clause (5) applies Part IV. of Schedule 2 for the purposes of Clause 18.

PART IV.—POWERS OF THE DIRECTOR AS TO FINANCE

Division 1—General

Clause 19 provides that the powers, duties etc., of the Director under this Part are subject to the direction and control of the Minister.

Clause 20 provides that with the approval of the Treasurer the Director may borrow money on various terms and conditions.

Clause 21 enables the Director to lend money, with or without security.

Clause 22 enables the Director to invest surplus funds in any bank, or certain trustee investments, or in some other approved manner.

Clause 23 enables the Director, on such terms and conditions as may be prescribed, to forgo the payment of any moneys owing to the Director on the death or disability of a purchaser or mortgagor.

Clause 24 enables the Director to make grants of money to any person for the purposes of the Act.

Clause 25 specifies the Director's obligation to keep bank accounts and to pay in all money received.

Clause 26 enables the Treasurer, with the approval of the Governor in Council, to guarantee the repayment of any loan made to the Director or to any other person for housing purposes.

Clause 27 requires the Director to prepare annual operating and capital works budgets for the relevant financial year and to submit these budgets to the Minister for approval. Before the Minister gives such approval, he must seek the approval of the Treasurer. There is provision for the revision of such budgets once approved, but the Director is obliged to operate within the limits of the budgets or any revised budget for the relevant financial year.

Clause 28 lists the Director's duties to keep proper accounts and records, to ensure that all payments are correctly made and properly authorized, and that adequate control is maintained over the assets of the Director and over the incurring of liabilities by the Director. It also requires the preparation of a statement of accounts and the auditing by the Auditor-General of those accounts.

Division 2—The Agreement

Clause 29 ratifies and approves the Commonwealth–State–Northern Territory Agreement 1981, a copy of which is set out in Schedule 3. It also provides for Schedule 4 of the Bill to apply to previous Commonwealth–State Housing Agreements.

Clause 30 appoints the Director as Victoria's agent for the performance of the Agreement.

Clause 31 makes provision for the supervision and control of moneys advanced under the Agreement by the Commonwealth to Victoria and the keeping of accounts, and the payment of moneys under the Agreement by the State of Victoria.

PART V.—GENERAL

Division 1—Other Powers of Director

Clause 32 requires the Director to exercise the powers and perform the duties etc., conferred or imposed upon the Director under this Part subject to the direction and control of the Minister.

Clause 33 empowers the Director for the purposes of the Act to enter into an agreement with and person or body corporate on such terms and conditions as the Director thinks fit, subject to certain limitations that may be imposed by the Governor in Council or by the Minister.

Clause 34, without limiting the effect of clause 33, makes provision for particular kinds of agreement. Thus, it is provided that the Director may appoint a municipality, an incorporated regional housing council recognized by the Minister, or a rental housing co-operative, to carry out works, provide services or perform functions which the Director is empowered to carry out. It also authorizes those bodies to act and to enter into agreements with the Director for the purposes of the Act. This re-enacts section 107A of the *Housing Act 1958* with amendments.

Sub-clause (4) enables the Director to enter into such an agreement with any body of persons where a substantial number of them occupy houses owned or leased by the Director.

Clause 35 provides that the Director by a written instrument of delegation and with the prior approval of the Minister may delegate the powers, discretions, functions or authorities of the Director to any officer of the Ministry, or in matters concerned with the management and control of land to any regional housing council or to any person or body of persons. It is based on section 20C of the *Housing Act 1958*.

Clause 36 applies Schedule 5 with respect to the parking of vehicles on land vested in or held under lease by the Director.

Division 2—Enforcement and Miscellaneous Provisions

Clause 37 contains provisions regulating the manner of execution of any document, etc., by the Director. It also provides for judicial notice to be taken of the seal of the Director and the signature of the Director or any officer authorized to sign on behalf of the Director.

Clause 38 makes it an offence for any officer of the Ministry to be in any way improperly concerned or interested in any contract or agreement made by or for the Director.

Clause 39 absolves any officer of the Ministry or any other person acting on behalf of the director from personal liability, provided that in taking or not taking the relevant action they acted in good faith for the purposes of the Act.

Clause 40, sub-clause (1) makes it an offence for a person wilfully to give information that is untrue in any particular where that person is required to give information pursuant to the Act or regulations.

Sub-clause (2) makes it an offence wilfully to give information that is untrue in any particular in any application etc., made under or for the purposes of the Act or the regulations. *Clause 40* substantially re-enacts section 120A of the *Housing Act 1958*.

Clause 41 provides a penalty for offences for which no penalty is provided elsewhere in the Bill.

Clause 42 empowers the Director to direct that proceedings be taken for offences against the Act or the regulations. Any person authorized by the Director may commence such prosecution.

Clause 43, sub-clauses (1) to (3) provide for the manner of service of documents and notices which by or under the Act or the regulations are authorized or required to be given to the owner or occupier of any building or land.

Sub-clause (4) prescribes the manner in which any document may be given or served on the Director.

Clause 44 provides that, in any prosecution or other legal proceeding under the Act, no proof is required of any order or authority to prosecute, of the powers of the Director, or of the authority of the Director's delegate.

Clause 45 provides that, unless there is express provision otherwise, all alleged offences under the Act may be heard summarily before a Magistrates Court consisting of a Stipendiary Magistrate sitting alone and that all money and costs etc., payable or recoverable under the Act may be recovered in any court of competent jurisdiction.

PART VI.—RENTAL HOUSING CO-OPERATIVES

Clause 46 provides that a rental housing co-operative may be formed as a co-operative under this Part for all or any of a number of specified objects.

Clause 47 enables any group of persons to form a rental housing co-operative and apply for its registration under this Part. It also directs that the provisions of Sections 52 to 57 of the *Co-operation Act 1981*, with necessary adaptations, apply to the formation and registration of such a co-operative.

Clause 48, sub-clause (1) provides that the membership of a rental housing co-operative must number not fewer than seven persons and shall not, without the Minister's approval, exceed 200 persons.

Sub-clause (2) ensures that at least two thirds of the membership of a co-operative comprises persons who have been selected by the co-operative to occupy houses owned or leased by it.

Sub-clause (3) provides that no person shall be compelled to become a member of a co-operative made by the co-operative.

Sub-clause (4) ensures that each member of a co-operative shall have only one vote in any decision.

Sub-clause (5) applies section 58 of the *Co-operation Act 1981*, with any necessary adaptations, to a co-operative under this Part.

Clause 49 provides that that with three exceptions the provisions of sections 59 to 67 of the *Co-operation Act 1981* shall with any necessary adaptations, apply to a co-operative under this Part.

Clause 50 provides that upon registration of a co-operative under Part VI the co-operative shall be a body corporate by its registered name but with all the normal powers of a body corporate and with power to do all things necessary for the purpose of its incorporation, including the acquisition of interests in land, the management and control of land, the maintenance and management of houses, the employment of staff, and the borrowing of money.

Clause 51 requires a co-operative to hold an annual general meeting and provides for the timing of such meetings and the keeping of the minutes thereof.

Clause 52, sub-clause (1) provides that a co-operative's operations shall be managed and controlled as specified in the rules of the co-operative.

Sub-clauses (2) and (3) provide for the appointment of committees of management and place the members of such committees under the same obligations and duties as are imposed upon directors of co-operative societies under those provisions of the *Co-operation Act 1981* which are incorporated into this Part of the Act.

Clause 53 enables any two or more co-operatives to form and register an association for all or any of the objects for which a co-operative may be formed and for the object of providing services to its component co-operatives.

Clause 54 enables any body corporate to be registered and become incorporated solely under this Part if its objects are similar to those required for a co-operative.

Clause 55, sub-clause (1) enables the Treasurer, upon the recommendation of the Minister, to give a guarantee of the repayment of any loan to be made to a co-operative.

Sub-clause (2) prohibits such a guarantee being made unless the co-operative first enters into an agreement with the Treasurer concerning the conduct of its affairs.

Sub-clause (3) regulates the form of guarantees and *sub-clause (4)* appropriates such sums as may from time to time become due and payable under any guarantee.

Sub-clause (5) provides that a guarantee authorised by *sub-clause (2)* may be executed by any person authorised by the Treasurer in accordance with the provisions of Section 220 of the *Co-operation Act 1981*.

Clause 56 permits only members of a co-operative and their dependents to occupy land owned or leased by it and such occupation must accord with its rules and the provisions of the *Residential Tenancies Act 1980*.

Clause 57 applies to co-operatives, with any necessary adaptations, the various provisions of the *Co-operation Act 1981* dealing with name and address and service of documents—accounts, audit and returns—receivers and managers—official management—winding up—and the inspection of books of the co-operative.

Clause 58 provides for the prescription, by regulation, of model rules for the government of co-operatives and that all or any of the model rules may be adopted. The model rules are deemed to form part of the rules of a co-operative insofar that any rules tendered for registration are not inconsistent with or do not exclude or modify the model rules. Any alteration of the model rules shall not apply to an established co-operative unless it, by majority resolution, adopts the alteration.

Sub-clause (5) applies various sections of the *Co-operation Act 1981*, with any necessary adaptations, to co-operatives registered under this Part.

Clause 59 defines the term majority resolution and describes the procedures to be followed on and following the taking of a vote on a majority resolution.

Clause 60, sub-clause (1) establishes a registrar of rental housing co-operatives, together with a deputy registrar or registrars and an office of the registrar.

Sub-clause (2) provides that the registrar and others persons employed in that Office shall be appointed to and shall hold their office or employment under the *Public Service Act 1974*.

Sub-clauses (3) to (5) provide for the duties, powers, and authorities of the registrar, the ability of the registrar to delegate any of his powers and functions to any other officer of the registry, and the seal of office of the registrar.

Sub-clause (6) provides that the actions etc. of a deputy registrar shall be as valid and effectual as if done, signed or sealed by the registrar.

Sub-clause (7) provides that all documents etc. required to be registered under this Part or to be lodged with the registrar shall be kept in the office of the registrar.

Sub-clause (8) applies to a co-operative registered under this Part, with any necessary adaptations, certain provisions of the *Co-operation Act 1981*.

Sub-clause (9) provides that in applying to a co-operative any of the provisions of the *Co-operation Act 1981*, any reference to the registrar shall be construed as a reference to the registrar of rental housing co-operatives.

Clause 61 makes it an offence for any co-operative or person to contravene or fail to comply with any provision Part VI.

PART VII.—STANDARDS OF HABITATION

Clause 62 sets down the interpretation of certain terms used in this Part of the Bill.

Clause 63 empowers the Governor in Council to make regulations specifying standards of habitation for houses. It requires that all houses whenever constructed shall comply with the regulations and that subject to this Part and Part VI. of Schedule II, the permanent head shall enforce the regulations.

Clause 64 empowers the permanent head to serve on certain persons a declaration that any house does not comply with the regulations and setting out the particulars in respect of which the house fails to comply.

Clause 65 allows any person who feels aggrieved by a declaration under *Clause 64* to appeal to a Magistrates Court which may dismiss or allow the appeal in whole or in part or vary the particulars set out in the declaration.

Clause 66 specifies the circumstances in which the permanent head may serve a notice directing an owner to do all things considered necessary to make the house comply with the regulations or to demolish it. In giving such a direction the permanent head must have due regard to any hardship which compliance with it may cause to the owner. Failure to comply with the directions listed in the notice within the period specified is an offence, although it is a defence for the owner to show that he had made every reasonable endeavour to comply or that to do so would have caused him undue hardship.

Clause 67, sub-clause (1) provides that if an owner fails to comply with a direction under *Clause 66*, the permanent head may do anything he considers necessary to make the house comply with the regulations or to give effect or any direction made under *Clause 66* even if that direction had not required some or any of those things to be done; in addition the permanent head may demolish the house where the case requires.

Sub-clause (2) enables the permanent head to recover from the owner any expenses incurred under *sub-clause (1)* and provides that, until paid, such expenses remain a first charge on the land.

Sub-clause (3) empowers the permanent head to sell or dispose of materials taken from any house pursuant to any operation under *sub-clause (1)*, to apply the proceeds towards the expenses incurred and to pay the surplus (if any) to the owner.

Clause 68, sub-clause (1) provides that where a direction has been given under *Clause 66* the permanent head may give a notice requiring a house to be and to remain unoccupied or requiring the occupier to vacate the house from a specified date. This provision does not apply in those cases where the permanent head has required a house to be made to comply with the regulations and this has been done to his satisfaction before the specified date.

Sub-clause (2) provides that it is an offence to occupy or inhabit the house or permit such occupation or inhabitation after the expiration of the period specified unless the permanent head has issued a certificate of clearance certifying that the house has been made to comply with the regulations.

Clause 69, sub-clause (1) prohibits the owner of any house which is the subject of a declaration under *Clause 64* or *Clause 66* and which has not subsequently been certified under *Clause 68* to comply with the regulations from selling or entering into a contract to sell the house unless a true copy of a certificate under *Clause 70* signed by the vendor and purchaser is attached to the contract of sale.

Sub-clause (2) provides that an owner who contravenes *sub-clause (1)* shall be deemed wilfully to have concealed a defect in his title. It goes on to provide that the purchaser under the contract, where he has not executed the transfer or conveyance of the house to himself, shall be entitled to rescission of the contract and repayment of any sum he has paid under it, together with his reasonable costs. In a case where the purchaser has executed the transfer or conveyance to himself, he is entitled to recover damages from the owner for any loss suffered as the result of the wilful concealment of that defect in the title.

Clause 69 re-enacts, with amendments, section 56 (8) of the *Housing Act 1958* and section 36 (1) and (4) of the *Building Control Act 1981*.

Clause 70, sub-clause (1) empowers the permanent head to issue a certificate in the prescribed form to a person who applies in the prescribed form and upon payment of the prescribed fee. The certificate shall state in respect of land described in the application whether the permanent head has served any notice or taken any step under this Part or whether any money is charged on that land.

Sub-clause (2) deems a certificate issued under this *Clause* to be conclusive proof at its date of any step taken under this Part or of any money which is a charge on that land.

Sub-clause (3) allows the permanent head to provide with a certificate such other information concerning the property as he deems relevant.

Clause 70 substantially re-enacts with amendments section 61 of the *Housing Act 1958*.

Clause 71, sub-clause (1) provides that for the purposes of carrying out any of the functions or powers of the permanent head under this Part or the regulations the person authorized by the permanent head shall have power to enter any house or land on which a house is situated between 8.00 a.m. and 6.00 p.m. or any other building or land at any reasonable time. Such an authorized person is empowered to conduct such inspections and carry out such work or other operations as are necessary.

Sub-clause (2) requires that an authorized officer shall not, except with the consent of the occupier or where otherwise provided, enter any occupied building until after the expiration of twenty-four hours' notice given to the occupier.

Sub-clause (3) empowers an authorized person to enter any building or land at any time where the safety of the public or of the occupants is at risk.

Sub-clause (4) makes it an offence to hinder or obstruct an authorized person entering any house or land.

Clause 72 applies Schedule 6 for the purposes of this Part.

PART VIII.—REGULATIONS

Clause 73 provides for the Governor in Council to be able to make regulations as required for the purposes of the Act.

SCHEDULE 1—AMENDMENTS AND REPEALS

This Schedule details amendments to, and repeals of, other Acts.

SCHEDULE 2—PROVISIONS WITH RESPECT TO PROPERTY

PART I.—ACQUISITION AND DISPOSAL OF LAND

Clause 1 incorporates the *Lands Compensation Act 1958* with the Act.

Clause 2 empowers the Governor in Council to grant any Crown lands to the Director at such price (if any) and on such terms and conditions as the Governor in Council thinks fit.

Clause 3 empowers a municipality or public statutory corporation to sell, lease, grant to, or otherwise empower the Director to use any land vested in it.

Clause 4 contains provisions relating to the taking of covenants from the purchaser by the Director where the Director sells any lands subject to terms and conditions relating to the use or development of the land by the purchaser.

Clause 5 requires any such sale of land to be subject to the terms and conditions of any housing agreement with the Commonwealth.

Clause 6 empowers the Director, at any time after such sale, to grant a loan to the purchaser on security of a mortgage and subject to such terms and conditions as the Director thinks fit.

Clause 7 allows the Director, with the consent of the Treasurer, to write off such amounts of outstanding rent as from time to time are proved to the satisfaction of the Director to be irrecoverable.

PART II.—EASEMENTS, CLOSURE OF STREETS, ETC.

Clause 8 lays down the procedure to be adopted by the Director before making any recommendation to the Governor in Council that any street should be closed or that any easement or restrictive covenant should be extinguished.

Clause 9 authorizes the Registrar of Titles to make all such endorsements etc. upon any Crown grant or certificate of title etc. as may be necessary or expedient by reason of the operation of the Act. It also requires the holder of any duplicate grant or certificate etc. when required in writing to produce it to the Registrar of Titles for the purpose of endorsement etc.

Clause 10 prescribes consequential actions to be taken when land comprised in any street to be closed is not under the *Transfer of Land Act 1958*.

PART III.—DONATIONS, ETC.

Clause 11 contains provisions enabling property held on trust for an object which is one of the objects of the Act or which is substantially similar to such object to be transferred etc. to the Director. A declaration by the Governor in Council shall be conclusive evidence of the validity of the transfer etc., whereupon the trustee concerned shall be discharged from all duties and obligations in relation to that property.

Clause 12 contains provisions relating to the donation or gift of real or personal property to the Director by any municipality or public statutory corporation.

PART IV.—MOVABLE UNITS

Clause 13 excludes the application of Part VI. of the *Instruments Act 1958* to any agreement between the Director and a person under *sub-clause (1)* of *Clause 18*.

Clause 14 exempts from stamp duty any sale or hiring agreement relating to a movable unit.

Clause 15 deems the land upon which a hired movable unit is situated to be in the occupation of the hirer and not to be a separate property for taxation or rating purposes: such movable unit is deemed not to constitute an improvement to the land.

Clause 16 provides that a movable unit owned by the Director shall remain personal property and shall not be capable of becoming fixed to the land within the meaning of any law relating to real property. It also deems footings, fittings etc. supplied by the Director in relation to a movable unit to be part of the movable unit.

SCHEDULE 3—THE COMMONWEALTH—STATE—NORTHERN TERRITORY HOUSING AGREEMENT 1981

This Schedule contains the text of the Commonwealth—State—Northern Territory Housing Agreement 1981.

SCHEDULE 4—PREVIOUS AGREEMENTS

Clause 1 identifies earlier Agreements between the State of Victoria and the Commonwealth and declares them to have been ratified and approved.

Clauses 2 to *5* refer to the previous Agreements and contain provisions requiring the Treasurer to keep certain accounts and prescribing the manner of receipt or repayment of moneys subject to the Agreements.

SCHEDULE 5—STANDARDS OF HABITATION

Clause 1 requires that when any land is charged pursuant to the Act the permanent head must cause a certificate under his seal to be lodged with the Registrar of Titles or the Registrar-General as the case requires.

Clause 2 provides for the registration of the permanent head's certificate and the cancellation of that registration when the amount of the expenses is paid. *Clauses 1* and *2* substantially re-enact section 58 (2) of the *Housing Act 1958* and section 37 (1) to (3) of the *Building Control Act 1981*.

Clause 3 outlines the manner of enforcing any charge in the County Court. It substantially re-enacts section 60 (1) and (2) of the *Housing Act 1958* and section 40 (1) of the *Building Control Act 1981*.

Clause 4 provides that any decree or order of the County Court made pursuant to *Clause 3* shall for certain purposes have effect as if it were a decree or order of the Supreme Court. This is substantially the same as section 60 (3) of the *Housing Act 1958* and section 40 (2) and (3) of the *Building Control Act 1981*.

Clause 5 makes it an offence for any person to publish a statement intended to promote the sale or disposal of any house subject to a declaration under section 64 or section 66 and which has not subsequently been certified by the permanent head to be fit for habitation etc., unless the statement clearly refers to the declaration. It is a defence to show that a person did not know and could not reasonably have been expected to know of the declaration.

Clause 6 provides for the permanent head to lodge a copy of the declaration with the Registrar of Titles or the Registrar-General (as the case may be) and prescribes the action to be taken by those officers.

Clause 7 contains provisions relating to the ability of the permanent head to recover money owing by an owner by attaching the rent payable by an occupier.

Sub-clause (3) makes it an offence for an occupier who has the means to comply with the notice of the permanent head under this clause to fail to do so.

Clause 8 contains provisions enabling trustees who are directed to make any house or land comply with the regulations or to demolish any house to take certain actions.