

South Australia

South Australian Co-operative and Community Housing Act 1991

An Act to make provision for the registration, incorporation and regulation of housing co-operatives; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *South Australian Co-operative and Community Housing Act 1991*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

accounting records includes—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

associate of a person means—

- (a) a body corporate of which the person is a director or a member of the governing body; or
- (b) a proprietary company in which the person is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the person is a trustee; or
- (d) a partner of the person (the partnership being a partnership within the meaning of the *Partnership Act 1891*); or
- (e) an employer or employee of the person; or
- (f) a spouse of the person; or
- (g) a person (not being a spouse) with whom the person lives on a permanent domestic basis; or
- (h) a parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, step-brother, step-sister, uncle, aunt, nephew, niece or first-cousin of the person;

associated land owner, in relation to a registered housing association, means the registered proprietor of land that is leased by the registered housing association for the purposes of providing housing;

Authority means the South Australian Community Housing Authority continued in existence under this Act;

capital value means—

- (a) a value determined in accordance with regulations made for the purposes of this definition; or
- (b) if no such regulations are made—capital value defined in the *Valuation of Land Act 1971*;

committee member of a registered housing co-operative means any person occupying or acting in the position of member of the committee of management of the co-operative;

committee of management means a committee of management of a registered housing co-operative;

current market value, in relation to property, means the price that could reasonably be expected to be obtained on a sale of the property (free of encumbrances) on the open market;

Department means the department of the Minister to whom the administration of this Act is committed;

financial statements means accounts of income and expenditure, and balance sheets, and includes such statements, reports and notes (other than auditors' reports) as are attached to, or intended to be read with, any of those accounts or balance sheets;

Fund means the South Australian Community Housing Development Fund continued in existence under this Act;

housing association means an association—

- (a) which is formed principally to provide housing accommodation (not necessarily for its members); and
- (b) which does not trade for profit;

housing co-operative means an association which is formed—

- (a) on the basis of the principles of co-operation; and
- (b) principally to provide housing accommodation to its members;

investment share means a share issued by a registered housing co-operative under Part 6;

issue, in relation to an investment share, includes allot;

officer, in relation to a registered housing co-operative, means a committee member or executive officer of the co-operative;

principles of co-operation see subsection (2);

property of a housing association—see subsection (6);

registered housing association means a housing association registered under Schedule 1;

the rules of a co-operative means the constitution, rules and by-laws of the co-operative;

SAHT means the *South Australian Housing Trust* and includes a subsidiary of the *South Australian Housing Trust*;

secondary co-operative means an association or society formed (wholly or in part) on the basis of the principles of co-operation to provide support or assistance to registered housing co-operatives and includes an association or society formed by two or more registered housing co-operatives for their mutual benefit;

special resolution, in relation to a registered housing co-operative, means a resolution as to which the following conditions are satisfied:

- (a) at least 14 days written notice, setting out the terms of the proposed resolution, is given to all members of the co-operative; and
- (b) the resolution is supported at a duly convened meeting of the co-operative by not less than three-quarters of those members of the co-operative who, being entitled to do so, exercise a vote at the meeting;

statutory corporation means a body established under the *Housing and Urban Development (Administrative Arrangements) Act 1995*;

statutory price see section 4;

subsidised co-operative means a registered housing co-operative any real property of which is subject to a charge under Part 7;

tenancy agreement means any agreement, whether express or implied, under which a member of a registered housing co-operative is granted by the co-operative a right to occupy, whether exclusively or otherwise, and whether immediately or at some time in the future, any residential premises or proposed residential premises (or part of such premises) for the purposes of residence;

tenant-member of a registered housing co-operative means—

- (a) a member of the co-operative who has entered into a tenancy agreement with the co-operative; or
- (b) a person whose application for membership of the co-operative as a tenant-member has been accepted;

unanimous resolution, in relation to a registered housing co-operative, means a special resolution of the co-operative passed without any dissentient vote.

- (2) An association will, for the purposes of this Act, be regarded as having been formed on the basis of the principles of co-operation if the following conditions are satisfied:
 - (a) membership of the association must be voluntary and available without artificial restriction or any discrimination based on sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or political opinion to all who can make use of its services and are willing to accept the responsibilities of membership; and
 - (b) the affairs of the association must be administered on a fair and democratic basis by persons who are elected or appointed by the members of the association and who are accountable to them; and
 - (c) no dividend may be declared on shares in the association; and
 - (d) any surplus or savings arising from the operations of the association must belong to the members of the association and must be distributed in such a way that no member gains at the expense of others; and
 - (e) the association should support the education of its members, officers and employees, and of the general public, in the principles and practices of co-operation (both economic and democratic); and
 - (f) the association should, in the interests of its members and the community, actively co-operate in every practical way with similar associations at the local, national and international level.
- (3) An association will not, for the purposes of this Act, be regarded as not complying with the principles of co-operation by virtue only of the fact that membership of the association is limited, on a genuine and reasonable basis, to—
 - (a) persons of one sex; or
 - (b) persons of a particular marital status; or
 - (c) persons who have a particular disability or impairment; or
 - (d) persons of a particular age group.
- (4) Subject to subsection (5), a housing co-operative of which—
 - (a) a principal or subsidiary object is to secure a pecuniary profit for all or any of its members; or
 - (b) a principal or subsidiary object is to engage in trade or commerce,is not, unless the Minister otherwise approves, eligible to be registered under this Act.

- (5) A housing co-operative will not, for the purposes of this Act, be regarded as having as a principal or subsidiary object the securing of a pecuniary profit for any of its members or engaging in trade or commerce by reason only of any one or more of the following circumstances:
- (a) the co-operative itself makes a pecuniary profit;
 - (b) the co-operative subsidises rents or other outgoings payable by its members;
 - (c) the co-operative buys, sells, improves or otherwise deals with land or houses to provide more, or improved, housing accommodation for its members;
 - (d) the co-operative enters into transactions intended to provide financial support to the co-operative in a manner that is directly related to the provision of housing accommodation.
- (6) For the purposes of this Act, a reference to property or premises of, or held by, a housing association includes a reference to property or premises of an associated land owner leased by the housing association for the purposes of providing housing.

4—Statutory price

- (1) The statutory price is the amount payable to the holder of investment shares in a registered housing co-operative when those shares are redeemed or cancelled under this Act.
- (2) Subject to the regulations—
- (a) where investment shares have been issued in relation to a particular residential property—the statutory price must be an amount that bears the same relationship to the issue price of the shares as the capital value of the property at the time of redemption or cancellation bears to the capital value of the property at the time of issue; and
 - (b) where investment shares have been issued in relation to the real property of the co-operative generally—the statutory price must be an amount that bears the same relationship to the issue price of the shares as the average capital value of all real property of the co-operative at the time of redemption or cancellation bears to the average capital value of all real property of the co-operative at the time of issue.
- (3) For the purposes of this Act, the statutory price must be calculated in relation to whole parcels of investment shares.

5—Financial year

- (1) The period from 1 July to the following 30 June is the financial year for a registered housing co-operative.
- (2) If a housing co-operative is registered (otherwise than as a result of an amalgamation) on a day falling between 1 January and 30 June in any year, its first financial year may, if the co-operative so elects, extend to 30 June in the following year.

6—Exclusion of operation of *Corporations Act 2001* of the Commonwealth

- (1) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies:
 - (a) a registered housing co-operative;
 - (b) any act or omission of any person, body or other entity in relation to a registered housing co-operative.
- (2) The regulations may declare any matter relating to registered housing co-operatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies that does not apply to registered housing co-operatives as a law of the Commonwealth (including by virtue of subsection (1)), with such modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Part 2—Administration

Division 1—The Minister

7—Power of Minister to delegate

- (1) The Minister may delegate any of the Minister's functions or powers under this Act—
 - (a) to the Authority; or
 - (b) to a particular person or body; or
 - (c) to the person for the time being occupying a particular office or position.
- (2) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Minister to act personally in any matter; and
 - (c) is revocable at will by the Minister.
- (3) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

Division 2—The Authority

8—The Authority

- (1) The South Australian Co-operative Housing Authority is continued in existence as the *South Australian Community Housing Authority*.
- (2) The Authority—
 - (a) is a body corporate; and

- (b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate; and
 - (c) may sue and be sued in its corporate name; and
 - (d) holds its property on behalf of the Crown.
- (3) Where a document appears to bear the common seal of the Authority, it will be presumed, in the absence of proof to the contrary, that the common seal of the Authority has been duly affixed to that document.

9—Membership of the Authority

- (1) The Authority consists of seven members, as follows:
- (a) five will be appointed by the Governor—
 - (i) four, with expertise in finance, the housing industry or community housing, being nominated by the Minister;
 - (ii) one being chosen from a panel of three submitted by the Community Housing Associations Forum Incorporated;
 - (b) two will be elected, in the manner prescribed by the regulations, by the members of registered housing co-operatives.
- (2) Subject to this Act, a member of the Authority holds office for a term, not exceeding three years—
- (a) in the case of an appointed member—specified in the instrument of appointment;
 - (b) in the case of an elected member—determined in accordance with the regulations.
- (3) A member of the Authority is eligible for re-appointment or re-election, as the case may be, but a person cannot hold office as a member of the Authority for more than six consecutive years.
- (5) The Governor may appoint a suitable person to be a deputy of a member of the Authority.
- (6) A deputy may, in the absence of the member, act as a member of the Authority.
- (7) The Minister will appoint a member to be the presiding member of the Authority for such term as the Minister thinks fit and specifies in the instrument of appointment.

10—Conditions of office

- (1) The Governor may remove a member of the Authority from office—
- (a) for misconduct; or
 - (b) for neglect of duty; or
 - (c) for incompetence; or
 - (d) for mental or physical incapacity to carry out the duties of office satisfactorily; or

- (e) if the member, having been elected by members of registered housing co-operatives, ceases, in the opinion of the Governor, to be a suitable person to act as a representative of those members.
- (2) The Minister should consult with the Community Housing Associations Forum Incorporated before a member of the Authority is removed under subsection (1)(e).
- (3) The office of a member of the Authority becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office by the Governor under subsection (1).
- (4) On the office of a member becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

11—Allowances and expenses

A member of the Authority is entitled to such allowances and expenses as the Governor may determine.

12—Procedure at meetings

- (1) The presiding member of the Authority will, if present at a meeting of the Authority, preside at that meeting and in the absence of that member a member chosen by those present will preside.
- (2) Subject to subsection (3), the Authority may act despite a vacancy in its membership or a defect in the appointment of a member.
- (3) Four members constitute a quorum of the Authority and no business may be transacted at a meeting of the Authority unless a quorum is present.
- (4) Each member present at a meeting of the Authority is entitled to one vote on a matter arising for decision at the meeting (and the person presiding at the meeting does not have a second or casting vote).
- (5) A decision carried by a majority of the votes cast by the members present at a meeting of the Authority is a decision of the Authority.
- (6) The Authority must cause minutes to be kept of its proceedings.
- (7) Subject to subsection (8), any member of the public is entitled to attend a meeting of the Authority as an observer.
- (8) The Authority may exclude persons who are not members of the Authority from a meeting while the Authority considers business that it considers to be confidential.
- (9) Subject to this Act, the proceedings of the Authority may be conducted as it thinks fit.

13—Conflict of interest

- (1) A member of the Authority has an interest in a matter before the Authority if—
- (a) the member or an associate of the member would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
 - (b) the member or an associate of the member would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

(not being a benefit or detriment that would be enjoyed or suffered by the member or his or her associate in common with a substantial class or group of persons).

- (2) A member of the Authority who has an interest in a matter before the Authority must disclose the existence of that interest to the Authority.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (3) A disclosure under subsection (2) must be recorded in the minutes of the Authority.

- (4) A member of the Authority who has an interest in a matter before the Authority—

- (a) must not, except on the request of the Authority, take part in any discussion by the Authority relating to that matter; and
- (b) must not vote in relation to that matter; and
- (c) must, unless the Authority permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (5) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

- (6) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Minister, a member of the Authority, or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

14—Misuse of confidential information

A member of the Authority must not use confidential information gained by virtue of the member's official position for the purpose of securing a private benefit for the member personally or for some other person.

Maximum penalty: \$10 000 or imprisonment for 2 years.

15—Immunity of members

- (1) No personal liability attaches to a member of the Authority for an act or omission by the member or the Authority in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or the Authority's powers, functions or duties under this Act.
- (2) A liability that would, but for subsection (1), lie against a member of the Authority lies instead against the Crown.

Division 3—Functions and powers of the Authority

16—Functions and powers of the Authority

- (1) The functions of the Authority are as follows:
 - (a) to advise the Minister on—
 - (i) the administration of this Act; and
 - (ii) the policies that should govern that administration; and
 - (iii) other matters relating to the co-operative and community housing sector in this State;
 - (b) to report to the Minister, on its own initiative or when requested to do so by the Minister, on any matter relating to housing co-operatives or housing associations;
 - (c) to take action (so far as may be appropriate) to support the activities and promote the best interests of housing co-operatives and housing associations;
 - (d) to ensure the full and proper accountability of any housing co-operative, secondary co-operative or housing association that receives funds or other forms of assistance from the Authority or another government agency or instrumentality;
 - (e) to promote the development of co-operative or community housing in this State;
 - (f) to register housing co-operatives and housing associations under this Act and to oversee and regulate the activities of those co-operatives and associations;
 - (g) to provide, or arrange for the provision of, administrative, managerial, educational and other services to registered housing co-operatives, secondary co-operatives and registered housing associations to ensure so far as practicable that they perform their activities efficiently and effectively;
 - (h) to manage funds that come under the Authority's control;
 - (i) to undertake, commission or sponsor research, educational and training programmes relating to co-operative or community housing;
 - (j) to publicise the activities of housing co-operatives and housing associations and disseminate information and statistics on co-operative and community housing;

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- (k) to liaise with other government agencies or instrumentalities that provide assistance or services to housing co-operatives or housing associations, or that are otherwise involved in the housing sector;
 - (l) to develop links and encourage communication between housing co-operatives, housing associations and other bodies or organisations that are interested in the activities of the co-operative and community housing sector;
 - (m) to promote the active involvement of people in the development of co-operative and community housing;
 - (n) to perform other functions assigned to the Authority by or under this Act or by the Minister.
- (2) Except in relation to the provision of advice and reports to the Minister, the Authority will, in the performance of its functions, be subject to the control and direction of the Minister.
- (3) The Authority may establish such committees and subcommittees as it thinks fit (which may, but need not consist of, or include, members of the Authority) to assist it in the performance of its functions under this Act.
- (4) For the purposes of this Act, the Authority may—
- (a) with the consent of the Minister—
 - (i) establish and operate accounts with financial institutions;
 - (ii) invest money held by it;
 - (iii) borrow money;
 - (iv) issue, sell, purchase, pay-off, redeem, convert or otherwise deal in or with securities or shares;
 - (v) enter into contracts of guarantee;
 - (b) acquire, hold, deal with and dispose of real and personal property;
 - (c) enter into agreements and arrangements of any kind and acquire or incur rights or liabilities;
 - (d) charge fees in relation to the provision of services by the Authority;
 - (e) exercise any other powers that are contemplated by this Act or necessary or expedient for the efficient and effective performance of the Authority's functions.
- (5) The Authority must prepare and publish guidelines to assist housing co-operatives that are registered under this Act (and the members of such co-operatives) to understand their rights and responsibilities under this Act.

17—Delegation

- (1) The Authority may, by instrument in writing, delegate any of the Authority's functions or powers under this Act—
- (a) to a member of the Authority; or
 - (b) to a committee or subcommittee established by the Authority; or
 - (c) to a particular person or body; or

- (d) to the person for the time being occupying a particular office or position.
- (2) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Authority to act in any matter; and
 - (c) is revocable at will by the Authority.
- (3) In any legal proceedings an apparently genuine certificate, purportedly signed by a member of the Authority, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.
- (4) The Authority must ensure that a list of the delegations that it makes in a particular financial year is included in its annual report for that year.

Division 4—Staff and use of facilities

18—Staff and use of facilities

- (1) The Minister will, after consultation with the Chief Executive of the Department and the Authority, determine the staffing arrangements for the Authority (and such staff will, subject to this Act or unless the Minister otherwise determines, be persons who are appointed and hold office under the *Public Sector Management Act 1995*).
- (3) The Authority may, with the approval of the Minister, engage persons as agents or consultants.
- (4) The Authority may, by arrangement with the appropriate authority, make use of the services, facilities or employees of a government department, agency or instrumentality.

Division 5—Operational, property and financial matters

18A—Transfer of property etc

- (1) The Minister may with the concurrence of the Treasurer, by notice in the Gazette—
 - (a) transfer an asset, right or liability of the Minister to the Authority;
 - (b) transfer an asset, right or liability of the Authority—
 - (i) to the Minister; or
 - (ii) to a statutory corporation; or
 - (iii) to SAHT; or
 - (iv) to the Crown, or to another agent or instrumentality of the Crown; or
 - (v) in prescribed circumstances, subject to prescribed conditions (if any), and with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown.
- (2) A notice under subsection (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the relevant transfer.

- (3) However, the Minister must not act under subsection (1)(b) if to do so would contravene an express agreement entered into by the Minister that limits the Minister's powers in relation to the Authority.

18B—Tax and other liabilities

- (1) The Treasurer may require the Authority to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines to be equivalent in effect to income tax and other taxes or imposts that the Authority does not pay to the Commonwealth but would be liable to pay under the law of the Commonwealth if it were constituted and organised in such manner as the Treasurer determines to be appropriate for the purposes of this subsection as a public company.
- (2) Amounts determined to be payable under subsection (1) must be paid by the Authority at the times and in the manner determined by the Treasurer.

18C—Dividends

- (1) The Authority must, if so required by the Minister by notice to the Authority at any time during a financial year, recommend to the Minister that a specified dividend or specified dividends be paid by the Authority for that financial year, or that no such dividend or dividends be paid by the Authority, as the Authority considers appropriate.
- (2) The Minister may, in consultation with the Treasurer, by notice to the Authority—
 - (a) approve a recommendation of the Authority under subsection (1); or
 - (b) determine that a dividend or dividends specified by the Minister be paid, or that no dividend be paid,as the Minister and the Treasurer consider appropriate.
- (3) If a dividend or dividends is or are to be paid by the Authority, the dividend or dividends must be paid by the Authority to the Minister in the manner and at the time or times determined by the Minister in consultation with the Treasurer.
- (4) If the Minister receives an amount from the Authority under this section the Minister may, in consultation with the Treasurer—
 - (a) allocate that amount, or any part of that amount, in a manner determined by the Minister; or
 - (b) pay that amount, or any part of that amount, for the credit of the Consolidated Account.
- (5) A recommendation under this section must be made by the Authority and may not be made by a person or committee pursuant to a delegation.

19—Accounts and audit

- (1) The Authority must keep proper accounts of its financial affairs and must, in respect of each financial year, prepare financial statements that comply with the requirements of any instructions issued by the Treasurer under the *Public Finance and Audit Act 1987*.
- (2) The Auditor-General must, in respect of each financial year, audit the financial statements of the Authority prepared under subsection (1).

20—Annual report

- (1) The Authority must, on or before 30 September in each year, present a report to the Minister on the activities of the Authority during the preceding financial year.
- (2) A report under this section must incorporate the audited financial statements of the Authority for the financial year to which the report relates.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Division 6—Registers and inspection

21—Registers and inspection

- (1) For the purposes of this Act, the Authority must keep, in such form as it considers appropriate—
 - (a) a register of housing co-operatives registered under this Act; and
 - (ab) a register of housing associations registered under this Act; and
 - (b) such other registers as the Authority considers appropriate.
- (2) Subject to the regulations, a person may, on payment of the prescribed fee—
 - (a) inspect a register kept by the Authority under this Act; or
 - (b) inspect any document registered by, or filed or lodged with, the Authority under this Act; or
 - (c) obtain from the Authority—
 - (i) a certified copy of, or extract from, an entry in a register kept under this Act; or
 - (ii) a certified copy of a certificate of incorporation issued under this Act; or
 - (iii) a certified copy of, or extract from, any document registered by, or filed or lodged with, the Authority under this Act.
- (3) If the Authority adopts a system of record keeping that involves the making or reproductions or transparencies of certificates or other documents—
 - (a) the Authority cannot be required to produce the document from which the reproduction or transparency was made; and
 - (b) any such reproduction or transparency is equivalent to an original; and
 - (c) a copy produced from the reproduction or transparency is to be regarded as a copy of the original.

Part 3—Registration of housing co-operatives

Division 1—Registration and incorporation

22—Registration

- (1) A person duly authorised by a housing co-operative may apply to the Authority for the registration of the housing co-operative under this Act.
- (2) The application must be made in the prescribed manner and form and must be accompanied by—
 - (a) a copy of the rules of the co-operative (other than by-laws); and
 - (b) a statutory declaration made by the applicant verifying—
 - (i) that he or she is authorised by the co-operative to apply for registration; and
 - (ii) the particulars contained in the application; and
 - (iii) that the copy of the rules of the co-operative which accompanies the application is a true copy (disregarding by-laws); and
 - (c) the prescribed fee.
- (3) The applicant must, at the request of the Authority, supply it with such further documents or information as the Authority may require.
- (4) Where the Authority is satisfied—
 - (a) that the application has been made in accordance with this section; and
 - (b) that the co-operative is eligible to be registered as a housing co-operative under this Act,the Authority must, subject to subsection (5), register the co-operative and its rules and issue a certificate of incorporation in respect of the co-operative.
- (5) The Authority may decline to register a co-operative under this Act if, in its opinion—
 - (a) it would not be in the public interest to register the co-operative under this Act; or
 - (b) it would be more appropriate for the co-operative to be registered under some other Act; or
 - (c) the rules of the co-operative fail to conform with the provisions of this Act; or
 - (d) the rules of the co-operative contain unreasonable provisions affecting the rights of members; or
 - (e) the co-operative is not to be managed by tenant-members of the co-operative; or
 - (f) there is some other good reason why the co-operative should not be registered under this Act.

23—Incorporation

- (1) On the issue of a certificate of incorporation under this Act in respect of a housing co-operative—
 - (a) the co-operative becomes a body corporate—
 - (i) with the corporate name set forth in the certificate of incorporation (in which the word "Incorporated" must appear as part, and at the end, of the name); and
 - (ii) with, subject to this Act and the rules of the co-operative, full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate; and
 - (b) all real and personal property held by any person for or on behalf of the co-operative vests in the co-operative (subject to any trusts that may affect that property); and
 - (c) all rights and liabilities (whether certain or contingent) exercisable against the members or officers of the co-operative in their capacity as such immediately before the incorporation of the co-operative become rights and liabilities of the registered housing co-operative.
- (2) The Registrar-General must—
 - (a) on the application of a co-operative in which any estate or interest in land has vested by virtue of this section; and
 - (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,

register the vesting of that estate or interest in land in the co-operative.
- (3) The vesting of property in a co-operative under this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

24—Rights and liabilities of members

- (1) Except as may be provided by the rules of the co-operative, a member of a registered housing co-operative is not liable to contribute towards the payment of the debts and liabilities of the co-operative or the costs, charges and expenses of a winding up of the co-operative.
- (2) Subsection (1) does not apply in respect of debts or liabilities incurred by or on behalf of the co-operative prior to incorporation.

Division 2—Amalgamation

25—Amalgamation

- (1) Any two or more registered housing co-operatives—
 - (a) may, by special resolution passed by each co-operative, resolve to amalgamate; and
 - (b) may apply to the Authority for amalgamation as a single registered housing co-operative.

- (2) An application under subsection (1) must be made in the prescribed manner and form and must be accompanied by—
- (a) a copy of the special resolution passed by each of the registered housing co-operatives supporting the amalgamation; and
 - (b) a copy of the rules of the co-operative proposed to be formed by the amalgamation (other than by-laws); and
 - (c) such certificates and other documents as may be prescribed; and
 - (d) the prescribed fee.
- (3) The applicants must, at the request of the Authority, supply it with such further documents or information as the Authority may require.
- (4) Where the Authority is satisfied—
- (a) that the application has been made in accordance with this section; and
 - (b) that the co-operative proposed to be formed by the amalgamation is eligible to be registered under this Act,
- the Authority must, subject to subsection (5), register the co-operative and its rules and issue a certificate of incorporation in respect of the co-operative.
- (5) The Authority may decline to register a co-operative under this section if, in its opinion—
- (a) it would be more appropriate for the proposed registered co-operative to be registered under some other Act; or
 - (b) the rules of the co-operative fail to conform with the provisions of this Act; or
 - (c) the rules of the co-operative contain unreasonable provisions affecting the rights of members; or
 - (d) there is some other good reason why the proposed registered co-operative should not be registered under this section.
- (6) Upon registration of a co-operative under subsection (4)—
- (a) the co-operative becomes a body corporate—
 - (i) with the corporate name set forth in the certificate of incorporation (in which the word "Incorporated" must appear as part, and at the end, of the name); and
 - (ii) with, subject to this Act and the rules of the co-operative, full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate; and
 - (b) any registered housing co-operative that was a party to the application for amalgamation is dissolved; and
 - (c) the property of the co-operatives that were parties to the application for amalgamation becomes the property of the registered housing co-operative formed by the amalgamation; and
 - (d) the rights and liabilities (whether certain or contingent) of the co-operatives that were parties of the application for amalgamation become rights and liabilities of the registered housing co-operative formed by the amalgamation.

- (7) The Registrar-General must—
- (a) on the application of a co-operative in which any estate or interest in land has vested by virtue of this section; and
 - (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,
- register the vesting of that estate or interest in land in the co-operative.
- (8) The vesting of property in an amalgamated co-operative under this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Division 3—Rules

26—Status of rules

- (1) The rules of a registered housing co-operative bind—
- (a) the co-operative; and
 - (b) the members of the co-operative; and
 - (c) insofar as they affect the occupation of premises of the co-operative (and as may otherwise be appropriate)—occupiers of those premises who are not members of the co-operative.
- (2) The rules of a registered housing co-operative (other than by-laws) must not contain any provision that is contrary to or inconsistent with this Act.
- (3) The by-laws of a registered housing co-operative must not contain any provision that is contrary to or inconsistent with—
- (a) this Act; or
 - (b) the rules of the co-operative (as registered under this Act).

27—Alteration of rules

- (1) Where it is intended to alter the rules of a registered housing co-operative—
- (a) the alteration must be approved—
 - (i) if another provision of this Act so provides—by a unanimous resolution of the co-operative;
 - (ii) in any other case—by a special resolution of the co-operative; and
 - (b) the notice of the intention to propose the resolution must be accompanied by a memorandum that states, in relation to each rule that would be altered if the resolution were passed—
 - (i) the reason for the proposed alteration; and
 - (ii) the effect of the proposed alteration.
- (2) Where a registered housing co-operative has, under subsection (1), resolved to alter its rules, it must apply to the Authority, not later than one month after passing the resolution, for registration of the proposed alteration.

Maximum penalty: \$5 000.

- (3) An application for registration of a proposed alteration of the rules of a registered housing co-operative—
 - (a) must be in a form approved by the Authority; and
 - (b) must have annexed to it—
 - (i) a copy of the appropriate resolution of the co-operative; and
 - (ii) a copy of the explanatory memorandum required under subsection (1)(b); and
 - (c) must be accompanied by the prescribed fee.
- (4) Subject to subsection (5), the Authority will, if satisfied that the proposed alteration complies with the requirements of this Act, register the alteration.
- (5) The Authority may decline to register a proposed alteration if, in its opinion—
 - (a) the alteration contains an unreasonable provision affecting the rights of members of the co-operative; or
 - (b) the Authority considers that there is some other good reason why the alteration should not be allowed.
- (6) An alteration of the rules does not take effect until it has been registered in accordance with this section.
- (7) A reference in this section to the rules of a co-operative does not extend to the by-laws of the co-operative.

Division 4—Powers

28—Powers of a registered housing co-operative

- (1) A registered housing co-operative may, subject to this Act and its rules—
 - (a) acquire, hold, deal with and dispose of real and personal property; and
 - (b) administer property on trust; and
 - (c) establish and operate accounts with financial institutions; and
 - (d) invest its moneys in any manner authorised by the rules of the co-operative or agreed to by the Authority; and
 - (e) borrow money; and
 - (f) give such security for the discharge of liabilities incurred by the co-operative as the co-operative thinks fit; and
 - (g) enter into contracts of employment and appoint agents to act on its behalf; and
 - (h) enter into any other contract or transaction it considers necessary or desirable; and
 - (i) do any other thing that is contemplated by this Act, authorised by the regulations or the rules of the co-operative, or necessary or expedient for the purpose of carrying out its objects.

- (2) A registered housing co-operative cannot dispose of real property unless authorised by special resolution of the co-operative.
- (3) A reference in subsection (1) to the rules of the co-operative does not extend to the by-laws of the co-operative.
- (4) A registered housing co-operative must not allow its borrowings at any particular time to exceed, in total, an amount equal to the current market value of all of its properties.
- (5) A contravention of subsection (4) does not affect the rights of any person who has lent money to the co-operative.

Division 5—Transactions

29—Manner in which contracts may be made

Contracts may be made by or on behalf of a registered housing co-operative as follows:

- (a) under the co-operative's common seal;
- (b) in the case of a written contract—under the signature of a person with express or implied authority to enter into the contract on the co-operative's behalf;
- (c) in the case of an oral contract—by oral agreement made on behalf of the co-operative by a person with express or implied authority to enter into the contract on the co-operative's behalf.

30—Limitation of doctrine of ultra vires

- (1) A contract made with a registered housing co-operative is not invalid by reason of any deficiency in the capacity of the co-operative to enter into, or carry out, the contract unless the person contracting with the co-operative has actual notice of the deficiency.
- (2) A registered housing co-operative that enters into a contract that would, but for the provisions of subsection (1), be invalid is empowered to carry out the contract.
- (3) This section does not prejudice an action by a member of a registered housing co-operative to restrain the co-operative from entering into a transaction that lies beyond the powers conferred on the co-operative by or under this Act or its rules.

31—Abolition of doctrine of constructive notice in relation to registered housing co-operatives

It will not be presumed that a person dealing with a registered housing co-operative has notice of the rules of the co-operative, or of any other document registered by, or lodged with, the Authority in relation to the co-operative.

Part 4—Membership

Division 1—The nature of membership

32—Application for membership

- (1) Applications for membership in a registered housing co-operative must be made in accordance with the rules of the co-operative.

- (2) The rules of a registered housing co-operative may, with the approval of the Authority, provide for different classes of membership (including one or more classes comprised of, or including, persons who are not tenants of the co-operative).
- (3) A body corporate may, if the rules of a registered housing co-operative so provide, become a non-tenant-member of the co-operative.
- (4) A corporate member may, by instrument in writing (a copy of which must be served on the co-operative), appoint a natural person to represent it at any meeting of the members of the co-operative.
- (5) Subject to the rules of the co-operative, a person appointed under subsection (4) is entitled to exercise the same rights of voting as a member of the co-operative.

33—Voting rights of members

- (1) Subject to this Act and the rules of a registered housing co-operative, each member of the co-operative who is present personally at a meeting of the co-operative is entitled to one vote, and no more than one vote, on any question arising for decision at that meeting.
- (2) No rule of a registered housing co-operative that has the effect of conferring on a member a right to more than one vote, or denying or limiting a member's right to vote, on a question arising at a meeting of the co-operative, is valid unless specifically approved by the Authority.
- (3) The rules of a registered housing co-operative may, with the approval of the Authority, make provision with respect to the appointment of proxies by members of the co-operative, and the ability of those proxies to attend and vote at meetings of the co-operative.
- (4) This section does not prevent a member who has been appointed to represent a corporate member of the co-operative, or who is otherwise entitled to act on behalf of another member, from voting both as a member and in his or her representative capacity.

34—Membership fees

- (1) The rules of a registered housing co-operative may provide for the imposition of membership fees.
- (2) The rules may provide for different levels of fees according to different classes of membership.
- (3) Subject to subsections (4) and (5), a member is not entitled to vote on any question arising for decision at a meeting of the co-operative unless his or her membership fees have been paid.
- (4) Subsection (3) does not apply—
 - (a) if a unanimous resolution is required; or
 - (b) if the co-operative has resolved that the member can exercise a vote notwithstanding that his or her fees have not been paid.
- (5) A co-operative may, in an appropriate case, remit the membership fee payable by a person wholly or in part.

35—Obligations of membership

In addition to the other obligations imposed by this Act, or by the rules of the co-operative, a member of a registered housing co-operative must—

- (a) take reasonable steps to support the objects of the co-operative;
- (b) comply with the rules of the co-operative, and insofar as those rules require the member to perform any function as a member of the co-operative, perform that function with reasonable care and diligence;
- (c) attend meetings of the co-operative whenever it is reasonably practicable to do so;
- (d) undertake such other tasks and discharge such other obligations of membership as may be reasonably required by the co-operative.

36—Control of payments to members etc

(1) Except as authorised by or under this or any other Act, by order of a court or tribunal, or by determination of the Authority, a registered housing co-operative must not make a gift or payment, or grant a benefit, to—

- (a) a member of the co-operative; or
- (b) a person who is an associate of a member of the co-operative.

(2) Subsection (1) does not prevent—

- (a) any payment relating to a share held by a member;
- (b) reasonable payments to a person for services provided to the co-operative by the person, other than where those services are provided by the person in his or her capacity as a member of the co-operative;
- (c) the reimbursement of costs or expenses incurred by a person on behalf of the co-operative;
- (d) any payment made to discharge (wholly or in part) any liability of the co-operative to the person to whom the payment is made;
- (e) any payment due under a tenancy agreement;
- (f) any reasonable subsidisation of rent, or the provision of a benefit through a rent-relief programme in a case of need;
- (g) the grant or renewal of a tenancy;
- (h) the making of a payment or the granting of a benefit authorised by the regulations.

(3) In this section—

member of a co-operative includes a former member of the co-operative.

(4) If a co-operative contravenes subsection (1), the co-operative is not guilty of an offence but each officer of the co-operative is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(5) Where—

- (a) a person is convicted of an offence against subsection (4); and

- (b) the court by which the person is convicted is satisfied that the co-operative or another person has suffered loss or damage as a result of the act or omission that constituted the offence,

the court may, in addition to imposing a penalty under that subsection—

- (c) order the convicted person to pay compensation to the co-operative or other person, as the case may be, of such amount as the court specifies;
- (d) order the convicted person to undertake, in accordance with the terms of the order, specified work for the benefit of the co-operative.
- (6) Where a person contravenes or fails to comply with a provision of this section and a co-operative suffers loss or damage as a result of the contravention or failure, the co-operative may, whether or not the person has been convicted of an offence against this section, recover from the person as a debt due to the co-operative by action in a court of competent jurisdiction an amount equal to that loss or damage.

Division 2—Application of rules of natural justice

37—Rules of natural justice to apply in relation to any dispute

Subject to this Act, where a dispute arises between two or more members of a registered housing co-operative, or between a member of a registered housing co-operative and the co-operative, a person or body exercising a power of adjudication in relation to the dispute must observe the rules of natural justice.

Part 5—Management

Division 1—The committee of management

38—Management of registered housing co-operative

- (1) A registered housing co-operative must have a committee of management comprised of natural persons who are members of the co-operative.
Maximum penalty: \$5 000.
- (2) The committee of management may, subject to any restrictions placed on it by this Act or the regulations, the rules of the co-operative, or a resolution of the co-operative—
- (a) manage the affairs of the co-operative;
- (b) exercise or carry out any power or function of the co-operative assigned to the committee of management by the co-operative (including the power to make by-laws).
- (3) The committee of management must consist of not less than three members.

39—Qualification of a committee member and vacation of office

- (1) A person is not eligible to be committee member of a registered housing co-operative if that person—
- (a) has not attained the age of 18 years; or
- (b) unless the rules of the co-operative otherwise provide—is a non-tenant-member of the co-operative; or

- (c) is a bankrupt or insolvent debtor or is bound by a composition in favour of creditors; or
 - (d) has been convicted in the preceding period of five years—
 - (i) of an indictable offence in connection with the promotion, formation or management of a body corporate; or
 - (ii) of an offence involving fraud or dishonesty; or
 - (iii) of any prescribed offence.
- (2) The office of a committee member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) is absent from three consecutive ordinary meetings of the committee of management without its leave and the committee of management resolves that the office should become vacant; or
 - (d) ceases to be a member of the co-operative; or
 - (e) having been appointed as a tenant-member of the co-operative, ceases to be a tenant; or
 - (f) resigns by instrument in writing addressed to the committee of management; or
 - (g) is removed from office in accordance with the rules of the co-operative; or
 - (h) becomes a bankrupt or insolvent debtor, is bound by a composition in favour of creditors or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (i) is convicted—
 - (i) of an indictable offence in connection with the promotion, formation or management of a body corporate; or
 - (ii) of an offence involving fraud or dishonesty; or
 - (iii) of any prescribed offence.
- (3) The Supreme Court may exempt a person from the operation of subsection (1) or (2)(h) or (i).
- (4) When granting an exemption under this section, the Supreme Court may impose such conditions or limitations as it thinks fit and a person who contravenes or fails to comply with any such condition or limitation that is applicable to him or her is guilty of an offence.
- Penalty: \$5 000.
- (5) A person intending to apply to the Supreme Court for an exemption must give to the Authority not less than 21 days notice of his or her intention to make the application.
- (6) The Supreme Court may, on the application of the Authority, revoke an exemption granted by the Court under this section.

40—Appointment of committee members

Committee members must be appointed in accordance with the rules of the co-operative by a general meeting of the co-operative.

41—Validity of acts of committee members

The acts of a committee member are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

42—Conflict of interest

- (1) A committee member has an interest in a matter before the committee of management if—

- (a) the committee member or an associate of the committee member would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
- (b) the committee member or an associate of the committee member would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

(not being a benefit or detriment that would be enjoyed or suffered by the committee member or his or her associate in common with a substantial group within the particular co-operative).

- (2) A committee member who has an interest in a matter before the committee of management must disclose the existence of that interest to the committee of management.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (3) A disclosure under subsection (2) must be recorded in the minutes of the committee of management.

- (4) A committee member who has an interest in a matter before the committee of management—

- (a) must not, except on the request of the committee of management, take part in any discussion by the committee of management relating to that matter; and
- (b) must not vote in relation to that matter; and
- (c) must, unless the committee of management permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (5) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

- (6) The fact that a committee member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Minister, a member of the co-operative, or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

43—Meetings of a committee of management

- (1) Meetings of a committee of management must be held as often as may be necessary for properly conducting the business of the co-operative.
- (2) A meeting of a committee of management must be held no later than three months from the date of the last meeting of the committee of management.
- (3) A quorum of a committee of management consists of the number of committee members prescribed by the rules of the co-operative but the number may not in any case be less than half of the total number of committee members.
- (4) No business may be transacted at a meeting of a committee of management unless a quorum is present.
- (5) A committee of management must cause minutes to be kept of its proceedings.
- (6) Subject to this Act and the rules or any resolution of the co-operative, a committee of management may regulate its meetings and proceedings as it thinks fit.

Division 2—Duties and liabilities of officers and employees

44—Duties and liabilities of officers and employees

- (1) An officer of a registered housing co-operative must at all times act honestly in the exercise of the powers and the discharge of the duties of his or her office.
Maximum penalty:
 - (a) If the offence was committed with intent to deceive or defraud—\$20 000 or imprisonment for 4 years;
 - (b) In any other case—\$5 000 or imprisonment for 1 year.
- (2) An officer of a registered housing co-operative must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the duties of his or her office.
Maximum penalty: \$5 000.
- (3) An officer or employee of a registered housing co-operative, or a former officer or employee of a registered housing co-operative, must not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the co-operative.
Maximum penalty: \$20 000 or imprisonment for 4 years.

- (4) An officer or employee of a registered housing co-operative must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the co-operative.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (5) Where—

- (a) a person is convicted of an offence against this section; and
- (b) the court by which the person is convicted is satisfied that the co-operative has suffered loss or damage as a result of the act or omission that constituted the offence,

the court may, in addition to imposing a penalty under this section—

- (c) order the convicted person to pay compensation to the co-operative of such amount as the court specifies;
 - (d) order the convicted person to undertake, in accordance with the terms of the order, specified work for the benefit of the co-operative.
- (6) Where a person contravenes or fails to comply with a provision of this section in relation to a co-operative, the co-operative may, whether or not the person has been convicted of an offence against this section in relation to that contravention or failure, recover from the person as a debt due to the co-operative by action in a court of competent jurisdiction—
- (a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit; and
 - (b) if the co-operative has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.
- (7) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors and officers of bodies corporate.

Division 3—Meetings of a co-operative

45—Meetings of a co-operative

- (1) The annual general meeting of a registered housing co-operative must be held within three months after the close of the co-operative's financial year.
- (2) Any other meetings of a registered housing co-operative must be held, or may be called, as prescribed by the rules of the co-operative.
- (3) At a meeting of a registered housing co-operative no business may be transacted unless a quorum of members, as prescribed by the rules of the co-operative, is present at the time the meeting is considering that business.
- (4) A written notice setting out the date, time and place of a meeting must be given to all members in accordance with the rules of the co-operative at least seven days before the date of the meeting.
- (5) A registered housing co-operative must cause minutes to be kept of its proceedings.

Division 4—Accounts and audit

46—Accounting records to be kept

- (1) A registered housing co-operative must—
 - (a) keep accounting records that correctly record and explain its financial transactions and financial position; and
 - (b) so keep its accounting records that—
 - (i) true and fair financial statements of the co-operative can be prepared from time to time; and
 - (ii) its accounting records and financial statements can be conveniently and properly audited in accordance with this Division.
- (2) A registered housing co-operative must keep its accounting records at such a place or places within the State as its committee of management thinks fit.

47—Preparation of accounts and audit

- (1) The committee of management of a registered housing co-operative must, as soon as practicable after the end of a financial year, ensure that financial statements are prepared and audited in respect of that financial year.
- (2) The committee of management must ensure that the co-operative's financial statements are made out in accordance with the approved accounting standards (unless to do so would not give a true and fair view of the accounts of the co-operative).
- (3) An audit must be carried out by—
 - (a) a registered company auditor; or
 - (b) a firm of registered company auditors; or
 - (c) a member of the Australian Society of Certified Practising Accountants; or
 - (d) a member of The Institute of Chartered Accountants in Australia; or
 - (e) such other appropriately qualified person who may be approved by the Authority as an auditor for the purposes of this section.
- (4) A member of a registered housing co-operative may not be appointed as auditor of the accounts of the co-operative of which he or she is a member.
- (5) An auditor of a registered housing co-operative has a right of access at all reasonable times to the accounting records and other records of the co-operative and is entitled to require from any officer or employee of the co-operative such information and explanations as he or she requires for the purposes of the audit.
- (6) An officer or employee of a registered housing co-operative must not, without lawful excuse—
 - (a) refuse or fail to allow an auditor access, for the purposes of an audit, to any accounting records and other records of the co-operative in his or her custody or control; or
 - (b) refuse or fail to give any information or explanation as and when required by an auditor; or

- (c) otherwise hinder, obstruct or delay an auditor in the exercise or performance of a power or function of the auditor.

Maximum penalty: \$5 000.

- (7) If an auditor, in the course of the performance of his or her duties as auditor, is satisfied that—
- (a) there has been a contravention of, or failure to comply with—
- (i) a provision of this Act; or
- (ii) a rule of the co-operative; or
- (iii) a term of an agreement between the Authority and the co-operative under Division 3 of Part 7; and
- (b) the circumstances are such that in his or her opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the committee of management of the co-operative,
- the auditor must immediately report the matter to the Authority by notice in writing.
- (8) An auditor must, on the completion of the audit, prepare a report on the audit in accordance with the regulations.
- (9) An auditor is not, in the absence of malice on his or her part, liable to any action for defamation in respect of any statement that the auditor makes, orally or in writing, in the course of the performance of his or her duties as auditor under this Act.
- (10) Subsection (9) does not limit or affect any right, privilege or immunity that an auditor has, apart from that subsection, as defendant in an action for defamation.
- (11) In this section—
- the approved accounting standards* are accounting standards prepared and published by the Authority for the purposes of this section.
- (12) Unless the Treasurer otherwise approves, the approved accounting standards must incorporate accounting standards approved from time to time by the Accounting Standards Review Board, or such other authority as may be prescribed by the regulations for the purposes of this provision.

48—Accounts and reports to be laid before annual general meeting

- (1) The committee of management of a registered housing co-operative must cause to be laid before each annual general meeting of the co-operative—
- (a) a copy of the audited financial statements of the co-operative for the last financial year of the co-operative, together with the auditor's report; and
- (b) such other information or report as the regulations may require.
- (2) A registered housing co-operative must furnish to the Authority, within 14 days after each annual general meeting of the co-operative, a copy of the audited financial statements and auditor's report laid before the annual general meeting of the co-operative pursuant to subsection (1).

Division 5—Miscellaneous

49—Returns and other information

- (1) A registered housing co-operative must furnish returns to the Authority in accordance with the regulations.
- (2) The regulations may make provision with respect to—
 - (a) the information to be contained in returns to the Authority;
 - (b) the circumstances in which and the periods within which returns must be furnished to the Authority;
 - (c) any documents that must be incorporated in or forwarded together with returns to the Authority.
- (3) The Authority may, by instrument in writing, require a registered housing co-operative to furnish such other returns or information as the Authority may require.

50—Right of inspection

- (1) Subject to subsection (4), a registered housing co-operative must, on the application of a member, at all reasonable times, make available for inspection by the member without charge—
 - (a) a copy of the rules of the co-operative for the time being in force;
 - (b) any accounting records or financial statements of the co-operative;
 - (c) the minutes of any meeting of the committee of management, or of any general meeting of the co-operative;
 - (d) a copy of any return or other document required to be furnished by the co-operative to the Authority;
 - (e) any other prescribed documentary material.

Maximum penalty: \$5 000.

- (2) A co-operative must, at the request of a member, provide a copy of any documentary material referred to in subsection (1).
Maximum penalty: \$5 000.
- (3) A co-operative is entitled to charge the prescribed fee for any material provided under subsection (2).
- (4) A co-operative is not required to disclose under this section—
 - (a) any rent records of the co-operative (other than any such record that relates to the member requesting the information);
 - (b) any information excluded from the operation of this section by the regulations.

Part 6—Investment shares

Division 1—Issue of shares

51—Issue of investment shares

- (1) The rules of a registered housing co-operative may, if approved by unanimous resolution of the co-operative, provide for the issue of investment shares in the co-operative.
- (2) The following terms and conditions apply in relation to investment shares:
 - (a) each share must be issued as a fully paid-up \$1 share;
 - (b) unless the Authority otherwise approves, an investment share may only be issued to a person who is, or who has been approved to become, a tenant-member of the co-operative;
 - (c) an investment share is not transferable;
 - (d) the holder of investment shares is not, by virtue of holding those shares, entitled to exercise any special or additional voting rights at a meeting of the co-operative;
 - (e) the holder of an investment share is, on the redemption or cancellation of the share, entitled to the statutory price for the share in accordance with this Act, but otherwise no dividend or interest is payable on the share.
- (3) Unless the co-operative has resolved otherwise by unanimous resolution, a registered housing co-operative must not require that a person hold investment shares in the co-operative to become or to remain as a tenant-member of the co-operative.
- (4) The regulations may prescribe a minimum number of shares that must make up an allotment of investment shares.
- (5) Investment shares may only be dealt with as whole parcels, as issued at a particular time by the relevant co-operative.
- (6) An investment share must, according to the rules of the co-operative, be issued in relation to—
 - (a) a particular residential property of the co-operative; or
 - (b) the real property of the co-operative generally.
- (7) A registered housing co-operative must not issue investment shares except—
 - (a) for cash; or
 - (b) for some other form of consideration.
- (8) A registered housing co-operative must not issue investment shares at a discount or premium.
- (9) A registered housing co-operative must not issue any share warrant.
- (10) Where—
 - (a) the rules of a registered housing co-operative provide for the issue of investment shares; and

- (b) a person who is, or who has been approved to become, a tenant-member of the co-operative, applies for the issue to him or her of a specified number of investment shares and provides the appropriate consideration; and
- (c) the issue of the shares to the person would not be contrary to this Act; and
- (d) the issue of the shares to the person would not be contrary to any rule of the co-operative that limits the number of investment shares that a person can hold in the co-operative,

the co-operative must issue the shares in accordance with the application.

- (11) Subject to this section and the other provisions of this Act or the regulations, the rights attaching and the terms and conditions applying to any investment shares issued by a registered housing co-operative will be as provided in the rules of the co-operative or determined by the committee of management of the co-operative in accordance with the rules (but no such rules may be registered unless the provisions in respect of those rights, terms and conditions comply with the requirements of this Act and the regulations and are, in the opinion of the Authority, otherwise appropriate).
- (12) If a co-operative contravenes this section, the co-operative is not guilty of an offence against this Act but each officer of the co-operative is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (13) Where—
 - (a) a person is convicted of an offence against this section in relation to a co-operative; and
 - (b) the court by which the person is convicted is satisfied that the co-operative has suffered loss or damage as a result of the act or omission that constituted the offence,

the court may, in addition to imposing a penalty—

- (c) order the convicted person to pay compensation to the co-operative of such amount as the court specifies;
 - (d) order the convicted person to undertake, in accordance with the terms of the order, specified work for the benefit of the co-operative.
- (14) Where a contravention of this section takes place—
 - (a) if a person other than the co-operative concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the co-operative may, whether or not that person or any other person has been convicted of an offence against subsection (12) in relation to that contravention, recover from the person as a debt due to the co-operative by action in any court of competent jurisdiction an amount equal to the profit; and
 - (b) where the co-operative concerned has suffered loss or damage as a result of the contravention—the co-operative may recover an amount equal to the loss or damage from any person who is in default, whether or not that person or any other person has been convicted of an offence against subsection (12) in relation to that contravention, as a debt due to the co-operative by action in any court of competent jurisdiction.

52—Share capital account

- (1) Where a registered housing co-operative issues investment shares, it must establish an account, to be called the "share capital account", at an ADI.
- (2) On the issue of any investment shares by the co-operative, the co-operative must credit the amount paid on the shares to the share capital account.

Maximum penalty: \$10 000.

- (3) If the co-operative is a subsidised co-operative, the co-operative must, subject to the regulations, within one month after an amount is credited to the share capital account—
 - (a) transfer the amount to the Authority; and
 - (b) furnish the Authority with such information relating to the shares as the Authority may require.

Maximum penalty: \$10 000.

- (4) If the co-operative is not a subsidised co-operative, the co-operative may, subject to the regulations, use any amount credited to the share capital account—
 - (a) in satisfying any liability of the co-operative on the redemption or cancellation of any shares of the co-operative; or
 - (b) to any other purpose authorised under the rules of the co-operative or approved by the Authority.

53—Co-operative financing dealings in its shares etc

- (1) Except as otherwise expressly provided by this Act, a registered housing co-operative must not, without the approval of the Minister—
 - (a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with, the acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of investment shares in the co-operative; or
 - (b) whether directly or indirectly, lend money on the security of investment shares in the co-operative.
- (2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation, the forgiving of a debt or otherwise.
- (3) For the purposes of this section, a co-operative is to be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition (in this subsection referred to as the *relevant purpose*) if—
 - (a) the co-operative gave the financial assistance for purposes that included the relevant purpose; and
 - (b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

- (4) If a co-operative contravenes subsection (1), the co-operative is not guilty of an offence but each officer of the co-operative is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (5) Where—
- (a) a person is convicted of an offence against subsection (4); and
 - (b) the court by which he or she is convicted is satisfied that the co-operative has suffered loss or damage as a result of the act or omission that constituted the offence,
- the court may, in addition to imposing a penalty—
- (c) order the convicted person to pay compensation to the co-operative of such amount as the court specifies;
 - (d) order the convicted person to undertake, in accordance with the terms of the order, specified work for the benefit of the co-operative.
- (6) Where a contravention of this section takes place—
- (a) if a person other than the co-operative concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the co-operative may, whether or not that person or any other person has been convicted of an offence against subsection (4) in relation to that contravention, recover from the person as a debt due to the co-operative by action in any court of competent jurisdiction an amount equal to the profit; and
 - (b) where the co-operative concerned has suffered loss or damage as a result of the contravention—the co-operative may recover an amount equal to the loss or damage from any person who is in default, whether or not that person or any other person has been convicted of an offence against subsection (4) in relation to that contravention, as a debt due to the co-operative by action in any court of competent jurisdiction.

Division 2—Title to shares

54—Numbering of share allotments

Each allotment of investment shares in a registered housing co-operative must be distinguished by an appropriate number.

55—Share certificates

- (1) Within two months after the issue to any person of any investment shares of a registered housing co-operative, the co-operative must—
- (a) complete, and have ready for delivery to the person, a certificate that relates to those shares; and
 - (b) unless otherwise instructed by the person, send or deliver the completed certificate to the person or, where the person has instructed the co-operative in writing to send them to a nominated person, to that person.

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- (2) A certificate referred to in subsection (1) must be under the common seal of the co-operative and must state—
 - (a) the name of the co-operative; and
 - (b) the number of shares allotted.
 - (3) A certificate issued by a registered housing co-operative specifying the shares held by a member of the co-operative is evidence of the title of the member to the shares.
 - (4) Failure to comply with this section does not affect the rights of a shareholder.

56—Loss or destruction of certificates

- (1) Subject to subsection (2), where a share certificate is lost or destroyed, the co-operative must, on application by the shareholder, issue a duplicate certificate to the shareholder within 21 days after the application is made or within such longer period as the Authority approves.
- (2) The application must be accompanied by—
 - (a) a statement in writing that the certificate has been lost or destroyed, and has not been pledged or otherwise disposed of, and, if lost, that proper searches have been made; and
 - (b) an undertaking in writing that if it is found or received by the shareholder it will be returned to the co-operative; and
 - (c) if the co-operative so requires—the prescribed fee.

Division 3—Redemption or cancellation of shares

57—Redemption of investment shares

- (1) Subject to this section, a registered housing co-operative may redeem any parcel of investment shares issued by the co-operative.
- (2) The shares may not be redeemed on the co-operative's own initiative except—
 - (a) —
 - (i) on such terms and conditions and in such manner as are provided by the rules of the co-operative; and
 - (ii) with the approval of the Authority and subject to such conditions (if any) as the Authority may attach to that approval; or
 - (b) in any other circumstance of a prescribed kind.
- (3) Subject to subsection (5), investment shares must be redeemed by a registered housing co-operative—
 - (a) on application in the prescribed form by the holder of the shares under subsection (4); or
 - (b) on notification to the co-operative that the holder of the shares has died; or
 - (c) —

- (i) in the case of shares issued to a person who was, or who had been approved to become, a tenant-member of the co-operative at the time of the issue of the shares—if the shareholder ceases to be a tenant-member of the co-operative, or does not become a tenant-member of the co-operative within three months after it is proposed by the co-operative that he or she become a tenant-member of the co-operative;
 - (ii) in any other case—in circumstances determined by the Authority at the time that the Authority gives its approval to the issue of the shares; or
 - (d) in the case of shares issued in relation to a particular residential property, on the transfer of the property (or any part of the property); or
 - (e) in any other circumstance of a prescribed kind.
- (4) An application can only be made under subsection (3)(a) if the Authority is satisfied—
- (a) that the holder of the shares is experiencing, or in danger of experiencing, severe financial difficulties; and
 - (b) that it is appropriate that the shares be redeemed.
- (5) The co-operative may take up to three months to redeem investment shares under subsection (3).
- (6) The holder of the shares is entitled to the statutory price payable on the shares as at the day of redemption.
- (7) Subject to this Act, where the Authority is holding money paid on investment shares of the co-operative, the co-operative is entitled to request the Authority to provide the money payable on the redemption of those shares under this section.
- (8) Shares are to be taken to be redeemed notwithstanding that a cheque given in payment of the amount payable on redemption of the shares has not been presented for payment.
- (9) If a co-operative fails to comply with this section, the co-operative is guilty of an offence.
- Maximum penalty: \$10 000.

58—Cancellation of shares

- (1) The rules of a registered housing co-operative may provide for the cancellation by the co-operative of any of its investment shares, but no such rules are valid unless the provisions in respect of cancellation comply with the requirements of this Act and are, in the opinion of the Authority, otherwise appropriate.
- (2) Subject to this Act, investment shares in a registered housing co-operative may not be cancelled by the co-operative except—
 - (a) —
 - (i) in accordance with its rules; and
 - (ii) with the approval of the Authority and subject to such conditions (if any) as the Authority may attach to that approval; or
 - (b) in any other circumstances of a prescribed kind.

- (3) The holder of cancelled investment shares is entitled to the statutory price payable on the shares as at the day of cancellation.
- (4) Subject to this Act, where the Authority is holding money paid on investment shares of the co-operative, the co-operative is entitled to request the Authority to provide the money payable on the cancellation of those shares under this section.

Division 4—Miscellaneous

59—Restriction on offering shares etc for public subscription

A registered housing co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Chapter 6D of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) any exclusions of any part of that Chapter by the regulations;
- (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

60—Prohibition of charges on shares

- (1) The holder of investment shares in a registered housing co-operative must not create a charge over the shares unless—
 - (a) the charge is in favour of a prescribed person, or a person of a prescribed class; and
 - (b) the charge is created for a purpose authorised by the regulations; and
 - (c) the charge is created in accordance with the regulations.
- (2) A charge over a share created in contravention of subsection (1) is void.

61—Validation of share improperly issued

Where a registered housing co-operative has purported to issue investment shares and—

- (a) the creation or issue of the shares is invalid by reason of any provision of this Act or of the rules of the co-operative, or for any other reason; or
- (b) the terms of the purported issue are inconsistent with or are not authorised by any such provision,

the Supreme Court may, on application made by the co-operative, the share holder, or a creditor of the co-operative, and on being satisfied that in all the circumstances it is just and equitable to do so, make an order—

- (c) validating the purported issue of the share; or
 - (d) confirming the terms of the purported issue of the shares,
- or both.

Part 7—Funding

Division 1—Preliminary

62—Interpretation

In this Part—

subsidised premises means premises of a registered housing co-operative acquired, developed or improved with the assistance of the Authority.

Division 2—Central Fund

63—The Fund

- (1) The Co-operative Housing Development Fund continues in existence at Treasury as the *South Australian Community Housing Development Fund*.
- (2) The Fund will be administered by the Authority.
- (3) The Fund will consist of—
 - (a) any money advanced to the Authority for the purposes of this Act;
 - (b) grants made to the Authority;
 - (c) any income and accretions produced by the investment of money from the Fund;
 - (d) amounts paid to the Authority on account of financial or other assistance provided to registered housing co-operatives and other bodies involved in the co-operative housing sector;
 - (da) amounts paid to the Authority on account of financial or other assistance provided to registered housing associations and other bodies involved in the community housing sector;
 - (e) amounts transferred to the Authority under Part 6;
 - (f) any proceeds from dealing in or with securities or shares;
 - (g) donations or bequests made to the Authority;
 - (h) other money received by the Authority under this Act.
- (4) The Fund may be applied towards—
 - (a) the acquisition or construction of residential premises for the benefit of registered housing co-operatives or registered housing associations;
 - (b) the development, improvement and maintenance of residential premises held by registered housing co-operatives or registered housing associations;
 - (c) the provision of other forms of financial assistance to registered housing co-operatives, registered housing associations and other appropriate bodies;
 - (d) the satisfaction of the Authority's liabilities;
 - (e) other costs or payments associated with the performance of the Authority's functions under this Act;

- (f) other purposes authorised by the Minister after consultation with the Treasurer.
- (5) The Authority must, in administering the Fund, take into account policies and guidelines (if any) determined by the Minister after consultation with the Treasurer.
- (6) The Authority may divide the Fund into separate accounts.

Division 3—Financial transactions

64—Financial transactions between the Authority and registered housing co-operatives

- (1) The Authority may, as a condition to entering into a transaction with a registered housing co-operative that involves the provision or expenditure of money by the Authority, or the acquisition, construction, development or improvement of premises by or for the benefit of a registered housing co-operative, require the co-operative to enter into an agreement with the Authority that contains (with or without modification or addition) one or more terms prescribed by the regulations for the purposes of this Division.
- (2) An agreement under subsection (1)—
 - (a) must provide for its review on a periodical basis; and
 - (b) may be altered by agreement between the Authority and the co-operative.
- (3) If a registered housing co-operative fails to comply with the terms and conditions of a transaction between the Authority and the co-operative, the transaction is voidable at the option of the Authority.
- (4) Where the Authority avoids a transaction, the Authority may—
 - (a) take steps to enforce any relevant charge under Division 4;
 - (b) recover from the co-operative any outstanding amount, together with compensation for any loss or expenses suffered or incurred by the Authority, as a debt due to the Authority by action in a court of competent jurisdiction.

Division 4—Statutory charge

65—Creation of charge

- (1) The Authority may, in order to secure the enforcement of an agreement under Division 3 that applies in relation to subsidised premises, impose a charge under this Division over real property.
- (2) For the purposes of the imposition of a charge under subsection (1), the Authority may deliver to the Registrar-General a notice, in a form determined by the Registrar-General—
 - (a) setting out or incorporating the terms of the charge; and
 - (b) setting out the real property over which it is to exist; and
 - (c) requesting the Registrar-General to make a notation under this section in the Register Book.

- (3) The notice may provide for the imposition of the charge over the whole of an allotment notwithstanding that the subsidised premises only comprise a part of that allotment.
- (4) On receipt of a notice under subsection (2), the Registrar-General must, in relation to the real property referred to in the notice, enter an appropriate notation in the Register Book.
- (5) When an entry is made under subsection (4), a charge over the real property is created.
- (6) While a charge exists over real property, the Registrar-General must not register an instrument affecting the property unless—
 - (a) the instrument was executed before the charge was created or relates to an instrument registered before the charge was created; or
 - (b) the instrument is an instrument of a prescribed class; or
 - (c) the Authority consents to the registration in writing; or
 - (d) the instrument is expressed to be subject to the charge; or
 - (e) the instrument is a duly stamped conveyance that relates to the transfer or sale of the real property under section 66.
- (7) Subject to this Division, an instrument registered under subsection (6)(a), (b), or (c) has effect, in relation to the charge, as if it had been registered before the charge was created.
- (8) If an instrument is registered under subsection (6)(e), the charge will be taken to be cancelled and the Registrar-General must make the appropriate entries in the Register Book to give effect to the cancellation.
- (9) The Authority may, on its own initiative, by further notice to the Registrar-General under this section, cancel the charge.
- (10) Where the Authority delivers a notice to the Registrar-General under this section, the Authority must send a copy of the notice to the co-operative.
- (11) In this section—

allotment means the whole of the land comprised in a certificate of title.

66—Enforcement of charge

- (1) If a registered housing co-operative fails to comply with the terms of an agreement secured by a charge, the charge may be enforced as follows:
 - (a) the Authority must, by notice in writing, inform the co-operative of the breach and give the co-operative at least one month to remedy the breach; and
 - (b) if the co-operative does not remedy the breach within the time allowed in a notice under paragraph (a), the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter; and
 - (c) the investigator or investigators must give the co-operative a reasonable opportunity to make submissions in relation to the matter; and

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- (d) where, on the report of the investigator or investigators, it appears reasonable to enforce the charge, the Authority may apply to the Minister for an order under subsection (2) in relation to the property subject to the charge.
- (2) The Minister may, on application under subsection (1), in relation to the property that is subject to the charge—
- (a) order that steps be taken to transfer the property—
- (i) to the Authority;
 - (ii) to one or more members of the co-operative;
 - (iii) to another registered housing co-operative;
 - (iv) with the agreement of the person or persons occupying the property—to the South Australian Housing Trust; or
- (b) order that steps be taken to sell the property on the open market.
- (3) The co-operative must comply with the terms of the order within a reasonable time.
Maximum penalty: \$10 000.
- (4) If the property is transferred pursuant to an order under subsection (2)(a), the value of the property will be taken to be its current market value.
- (5) If the property is transferred to the Authority, the Authority must, as soon as is reasonably practicable, divest itself of the property.
- (6) If the property is sold pursuant to an order under subsection (2)(b), the money received in respect of the sale must be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs of a prescribed kind;
 - (b) secondly—in discharging any liabilities secured by instrument registered before the charge was created, or that is taken to have such effect by virtue of section 65;
 - (c) thirdly—in discharging the amount or amounts secured by the charge over that property;
 - (d) fourthly—in discharging any other liabilities secured by registered instruments;
 - (e) fifthly—in discharging any other liabilities that exist in relation to that property of which the Authority has notice;
 - (f) sixthly—in payment to the Fund.
- (7) The title obtained on the sale of the property will be free of—
- (a) any charge under this Part; and
 - (b) all other liabilities discharged under subsection (6); and
 - (c) any other liability that may exist on account of any mortgage, charge or encumbrance.
- (8) If the co-operative does not comply with the terms of an order under subsection (2) within a reasonable time, the Minister may take such steps as are necessary to give effect to the order.

- (9) The power of the Minister to act under subsection (8) includes the power to rescind any contract and to deal with or dispose of the property to which the order relates, and the power to make, execute, sign and give such contracts, instruments and documents as the Minister thinks necessary.
- (10) If the Minister acts under subsection (8), a conveyance executed by the Minister will, on registration or enrolment, operate to vest title to the property in the person or body named in the conveyance as transferee.
- (11) The Registrar-General must, on production of a conveyance executed under subsection (10), register the conveyance and, notwithstanding the *Real Property Act 1886*, production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee).
- (12) If an order is made under this section for the transfer or sale of property, the Authority must take such steps as are reasonably practicable—
 - (a) to protect the interests of any creditor of the co-operative; and
 - (b) to assist any tenant whose tenancy is affected or who is otherwise inconvenienced by virtue of the order.

67—Creation of option

- (1) A charge over real property under this Division also constitutes an option to the Authority to purchase the property in the event of a proposed sale by the co-operative (being an option that prevails over any other option that may exist in relation to the property).
- (2) If a co-operative proposes to sell real property that is subject to such an option (other than in pursuance of an order under section 66), the co-operative must give the Authority at least two months notice, in writing, of the proposed sale.
- (3) The Authority must then decide, within the two month period, whether or not to exercise the option.
- (4) If the Authority decides to exercise the option, the value of the property will be taken to be the current market value of the property.
- (5) If the Authority decides not to exercise the option, the co-operative may proceed to sell the property on the open market (subject to the charge on the property being discharged by the co-operative on completion of the sale).
- (6) If the Authority acquires property from a co-operative pursuant to this section, the Authority must, as soon as is reasonably practicable, divest itself of the property.

68—Paying out the charge

- (1) Where—
 - (a) investment shares have been issued in relation to property that is subject to a charge under this Division (whether the shares were issued before or after the creation of the charge); and
 - (b) the value of those shares equals (or exceeds) the capital value of the property; and

- (c) the Authority holds the amount or amounts paid on those shares in the Fund; and
- (d) application is made to the Authority in accordance with the regulations for the discharge of the charge; and
- (e) the Authority is paid any amount that is payable to discharge the charge under the agreement secured by the charge,

then—

- (f) the charge will be taken to be cancelled; and
 - (g) the Authority must deliver an appropriate notice of cancellation to the Registrar-General; and
 - (h) notwithstanding the other provisions of this Act, the Authority ceases to be liable to make any payment in relation to the shares when those shares are redeemed or cancelled.
- (2) For the purposes of subsection (1), if investment shares have been issued in relation to the real property of the co-operative generally, the shares will be taken to have been divided up between the pieces of real property owned by the co-operative at the time of the issue according to their relative values and issued on that basis in respect of particular pieces of property.
- (3) On receipt of a notice under subsection (1), the Registrar-General must make the appropriate entries in the Register Book to give effect to the cancellation of the charge.

Part 8—Powers of investigation

69—Appointment of authorised officers

- (1) The Minister may appoint such persons to be authorised officers for the purposes of this Part as the Minister thinks fit.
- (2) An appointment under this section—
 - (a) will be for a period stated in the instrument of appointment; and
 - (b) may be made subject to conditions limiting the purposes for which the appointee may exercise the powers of an authorised officer.
- (3) A person appointed as an authorised officer will be issued with an identity card in a form approved by the Minister.

70—Powers of investigation

- (1) In this section—

prescribed matter means—

- (a) any matter relevant to ascertaining whether the provisions of this Act have been or are being complied with; or
- (b) any matter that, in the opinion of the Minister or the Authority, requires investigation for the proper or expedient exercise or performance of a power or function under this Act; or

- (c) any other matter of a prescribed class.
- (2) An authorised officer may, for the purpose of investigating a prescribed matter—
- (a) require a person who may be in a position to furnish information relevant to the investigation—
 - (i) to take reasonable steps to provide that information to the authorised officer;
 - (ii) to answer a question to the best of that person's knowledge, information and belief;
 - (b) —
 - (i) require a person to produce any books, documents or records in his or her possession or control;
 - (ii) require a person to produce any information stored by computer, microfilm or by any other process,

(insofar as the books, documents, records or information may be relevant to the investigation);
 - (c) —
 - (i) examine, copy and take extracts from any books, documents, records or information produced under paragraph (b) or require a person to provide a copy of any such book, document, record or information;
 - (ii) take possession of any books, documents or records produced under paragraph (b).
- (3) Any person who is in a position to do so must at the request of an authorised officer provide such assistance as the authorised officer may reasonably require in the exercise of a power under subsection (2).
- (4) An authorised officer exercising a power under subsection (2) may be accompanied by such assistants as are reasonably necessary in the circumstances.
- (5) A person who—
- (a) hinders an authorised officer or any assistant in the exercise of powers under subsection (2); or
 - (b) refuses or fails to comply with a requirement under subsection (2) or (3),
- is guilty of an offence.
Maximum penalty: \$5 000.
- (6) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person of an offence, or to produce a book, document or record, or information, under this section if it or its contents would tend to incriminate the person of an offence.
- (7) A person will not be subject to any civil liability by reason of compliance with a requirement made under this section.

- (8) If the possession of a book, document or record is retained under this section, a person who would be entitled to inspect the book, document or record if it were not in the possession of an authorised officer is entitled to inspect the book, document or record at any reasonable time.
- (9) An authorised officer exercising a power under this section must, at the request of a person affected by the exercise of the power, produce for the inspection of that person his or her identity card.

Part 9—Special powers of intervention

71—Grounds for intervention

- (1) The Authority may, if satisfied that it is appropriate to do so, by notice in writing to a registered housing co-operative, declare that there are grounds for intervention in the affairs of the co-operative under this section.
- (2) The grounds on which the Authority may make a declaration under subsection (1) in relation to a registered housing co-operative are—
 - (a) that the co-operative has ceased to be administered on the basis of the principles of co-operation; or
 - (b) that the co-operative does not commence operations within six months from its incorporation or suspends or ceases its operations for six months or more; or
 - (c) that serious irregularities or difficulties have occurred or arisen in the management of the co-operative or the administration of its affairs; or
 - (d) that the co-operative has ceased to be managed by tenant-members of the co-operative; or
 - (e) that the committee members of the management committee have acted in the affairs of the co-operative in their own interests rather than in the interests of the members as a whole, or in any other manner that appears to be unfair or unjust to other members; or
 - (f) that the co-operative is experiencing serious internal disputes or otherwise is not functioning in a proper manner; or
 - (g) that the co-operative has insufficient members to operate efficiently and effectively; or
 - (h) that there are insufficient committee members to form a quorum of the committee of management; or
 - (i) that the by-laws of the co-operative contain an unreasonable provision that affects the rights of members of the co-operative; or
 - (j) that an irregularity has occurred in relation to the issue, redemption or cancellation of any shares in the co-operative; or
 - (k) that the co-operative has contravened or failed to comply with a condition imposed in relation to the co-operative by the Authority or the Minister under this Act; or

- (l) that the co-operative has failed to comply with a term of an agreement between the Authority and the co-operative under Part 7; or
 - (m) that the co-operative has intentionally committed a serious breach of this Act or the rules of the co-operative; or
 - (n) that the co-operative has committed any breach of this Act or the rules of the co-operative and the co-operative has, after notice by the Authority of the breach, failed, within the time referred to in the notice, to remedy the breach; or
 - (o) that the co-operative is insolvent or in danger of becoming insolvent or has taken unreasonable action contrary to the interests of its creditors; or
 - (p) such other grounds as may be prescribed by the regulations.
- (3) Before the Authority makes a declaration under this section, the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter.
- (4) The investigator or investigators must give the co-operative a reasonable opportunity to make submissions in relation to the matter.
- (5) Where the Authority makes a declaration under this section in relation to a registered housing co-operative, the Authority may do one or more of the following:
- (a) order an audit of the affairs of the co-operative by an auditor approved by the Authority at the expense of the co-operative;
 - (b) require the members of the co-operative to take specified action to ensure that the co-operative is acting efficiently, effectively and co-operatively;
 - (c) require the co-operative to take specified action to ensure compliance with this Act or the rules of the co-operative;
 - (d) require the co-operative to correct specified irregularities or to reverse specified action;
 - (e) require the co-operative to apply specified management practices;
 - (f) stipulate principles in accordance with which the affairs of the co-operative are to be conducted;
 - (g) require the co-operative to alter its rules;
 - (h) with the approval of the Minister—
 - (i) remove a committee member from office; or
 - (ii) suspend or terminate the membership of a member of the co-operative; or
 - (iii) prohibit or restrict the raising of funds by the co-operative or the exercise of any other power of the co-operative;
 - (i) if the co-operative is a subsidised co-operative—
 - (i) appoint an administrator (who must not be a member of the staff of the Authority) to conduct the affairs of the co-operative;
 - (ii) require the co-operative to dispose of specified property of the co-operative in accordance with the directions of the Authority;

- (j) require members of the co-operative to attend any conference called by a person nominated by the Authority with a view to overcoming any problem within the co-operative by discussion and conciliation;
 - (k) recommend to the Minister that the co-operative be wound up;
 - (l) take such other action as may be prescribed by the regulations.
- (6) Where a co-operative is required to alter its rules under subsection (5)—
- (a) the co-operative is not required to do so by special resolution or to obtain the approval of its members; and
 - (b) the Authority may itself make the required alteration by notation on registers of the Authority if the co-operative fails to comply with the requirement within a reasonable time.
- (7) A direction of the Authority under subsection (5)(i) may include a direction that property be transferred to the Authority.
- (8) Where the Authority has made a declaration under this section in relation to a registered housing co-operative, the Authority may, of its own motion, or on application in writing by the co-operative, if satisfied that it is appropriate to do so, by notice in writing to the co-operative, revoke the declaration.

72—Appointment of administrator

- (1) Where the Authority appoints an administrator to conduct the affairs of a registered housing co-operative—
- (a) the administrator has all the powers, functions and duties of the co-operative and may act in the name of and on behalf of the co-operative; and
 - (b) the administrator must report regularly to the Authority on the administration.
- (2) An administrator of a registered housing co-operative is entitled to such remuneration as is approved by the Authority.
- (3) The remuneration of the administrator and all other costs and expenses arising out of the administration of a registered housing co-operative are payable out of the funds of the co-operative.
- (4) An administrator of a registered housing co-operative may, by notice in writing, require an officer or employee or former officer or employee of the co-operative to furnish a written report on such matters relating to the affairs of the co-operative as the administrator may specify in the notice.
- (5) A person required to furnish a report pursuant to subsection (4) may be reimbursed out of the funds of the co-operative for such costs and expenses as the administrator considers have been reasonably incurred in making the report.
- (6) A person who fails to comply with a requirement made under subsection (4) is guilty of an offence.
Maximum penalty: \$5 000.
- (7) On the appointment of an administrator of a registered housing co-operative, unless otherwise determined by the Authority, the committee members of the co-operative cease to hold office.

- (8) Before terminating the appointment of an administrator of a registered housing co-operative, the Authority must—
 - (a) ensure that committee members of the co-operative have been elected in accordance with the rules of the co-operative at a meeting convened by the administrator in accordance with those rules; or
 - (b) appoint committee members of the co-operative.
- (9) Committee members elected or appointed under subsection (8) hold office until the annual general meeting of the co-operative that next follows revocation of that appointment.
- (10) An administrator appointed by the Authority must, on the termination of his or her appointment, fully account to the Authority for the administration of the co-operative.

Part 10—Compromise, winding up, transfer of activities and dissolution

73—Power to compromise with creditors

- (1) A registered housing co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.1 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications necessary to give effect to the succeeding provisions of this Part;
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) A registered housing co-operative may not reach a compromise or enter into an arrangement with any member of the co-operative.

74—Winding up

- (1) Subject to the succeeding provisions of this Part, a registered housing co-operative may be wound up—
 - (a) voluntarily; or
 - (b) by the Supreme Court; or
 - (c) on the certificate of the Minister.
- (2) A registered housing co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.4 to 5.6 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications necessary to give effect to the other provisions of this Part;
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

- (3) The grounds on which a registered housing co-operative may be wound up by the Supreme Court are as follows:
- (a) that the co-operative has by a resolution passed in accordance with subsection (4) resolved that it be wound up by the Supreme Court; or
 - (b) that the co-operative is unable to pay its debts; or
 - (c) that the Supreme Court is satisfied that it would be in the best interests of members or creditors of the co-operative if the co-operative were to be wound up; or
 - (d) that the Supreme Court is of the opinion that it is just and equitable that the co-operative be wound up.
- (4) A resolution of a registered housing co-operative that the co-operative be wound up by the Supreme Court must be passed by a special resolution of the co-operative or in such other manner as the rules of the co-operative may provide.
- (5) For the purposes of subsection (3), if—
- (a) a creditor, by assignment or otherwise, to whom a co-operative is indebted in a sum exceeding the prescribed amount then due has served on the co-operative a demand, signed by or on behalf of the creditor, requiring the co-operative to pay the sum so due and the co-operative has, for three weeks after service of the demand, failed to pay the sum or secure or compound for it to the reasonable satisfaction of the creditor; or
 - (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of a co-operative is returned unsatisfied in whole or in part; or
 - (c) the Supreme Court, after taking into account any contingent and prospective liabilities of a co-operative, is satisfied that the co-operative is unable to pay its debts,
- the co-operative will be taken to be unable to pay its debts.
- (6) The prescribed amount under subsection (5)(a) is \$5 000 or, if some greater amount is prescribed, that other amount.
- (7) Where an application has been filed with the Supreme Court for the winding up of a registered housing co-operative on the ground that it is unable to pay its debts, the co-operative is not, without the permission of the Supreme Court, entitled to resolve that it be wound up voluntarily.
- (8) The grounds on which the Minister may issue a certificate for the winding up of a registered housing co-operative are as follows:
- (a) that the Authority has, pursuant to Part 9, recommended that the co-operative be wound up; or
 - (b) that the registration of the co-operative was obtained by mistake or fraud; or
 - (c) that the co-operative has not, within four months of notice being given by the Minister under section 76, transferred its undertaking to another body corporate.

- (9) For the purposes of this Act, the winding up of a registered housing co-operative on the certificate of the Minister commences on application to the Supreme Court by the Minister and lodgment with the Court of a copy of the certificate and is to proceed as if the co-operative had by special resolution resolved that it be wound up by the Supreme Court.
- (10) The Supreme Court may, on an order being made for the winding up of a registered housing co-operative by the Court (including a winding up on the certificate of the Minister), if the Minister nominates a person who is not a registered company liquidator for appointment as the liquidator of the co-operative, appoint the person so nominated as the liquidator of the co-operative.
- (11) The Minister may, in relation to the voluntary winding up of a registered housing co-operative, approve the appointment of a person who is not a registered company liquidator as the liquidator of the co-operative.
- (12) The reasonable costs of a winding up are payable out of the property of the co-operative.

75—Appeals from decisions of receivers, liquidators, managers etc

- (1) A person aggrieved by an act, omission or decision of—
 - (a) a person administering a compromise or arrangement;
 - (b) a receiver, or a receiver and manager, of property of a registered housing co-operative;
 - (c) a liquidator or provisional liquidator of a registered housing co-operative,may appeal to the Supreme Court in respect of that act, omission or decision.
- (2) The Court may, on an appeal pursuant to subsection (1), confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

76—Transfer of activities

- (1) Where the Minister is of the opinion—
 - (a) that a registered housing co-operative has ceased to be a co-operative eligible to be registered under this Act; or
 - (b) that the undertaking or operations of a registered housing co-operative are being carried on by a body corporate incorporated under some other Act,the Minister may give notice to the co-operative under this section.
- (2) If, within four months of the date of a notice under subsection (1), a co-operative transfers its undertaking to another body corporate, the Minister may, by instrument published in the Gazette, dissolve the co-operative.
- (3) On the publication of an instrument under subsection (2)—
 - (a) the property of the co-operative becomes the property of the body corporate referred to in the instrument; and
 - (b) the rights and liabilities of the co-operative (whether certain or contingent) become rights and liabilities of the body corporate referred to in the instrument.

- (4) The Registrar-General must—
- (a) on the application of a body corporate in which any estate or interest in real property has vested by virtue of this section; and
 - (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,
- register the vesting of that estate or interest in land in the body corporate.
- (5) The vesting of property in a body corporate under this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

77—Distribution of assets on winding up

- (1) It is not lawful to distribute among members, former members or associates of members of a registered housing co-operative any surplus assets available for distribution at the completion of the winding up of the co-operative under this Part.
- (2) Subject to this section, the regulations and any order of the Supreme Court, the surplus assets of a registered housing co-operative will on a winding up of the co-operative be distributed—
- (a) in the case of a co-operative that was a subsidised co-operative at the commencement of the winding up—according to the determination of the Minister—
 - (i) to the Authority; or
 - (ii) to another registered housing co-operative; or
 - (iii) to another body that has identical or similar aims and objects to the co-operative;
 - (b) in any other case—in accordance with the rules of the co-operative.
- (3) The Supreme Court may, on the application of the Minister, a liquidator or a member of a co-operative, determine how surplus assets of the co-operative are to be distributed on a winding up.
- (4) In this section—
- surplus assets*, in relation to the winding up of a registered housing co-operative, means those assets that remain after the liabilities of the co-operative have been discharged (including liabilities to the Authority and the holders of any investment shares) and the costs and expenses of the winding up have been paid.

78—Defunct co-operatives

- (1) Where the Authority is of the opinion that a registered housing co-operative is defunct, it may, by notice served on the co-operative or, where service cannot reasonably be effected in accordance with this Act, by notice published in a daily newspaper circulating generally throughout the State, require the co-operative to show good cause why the co-operative should not be dissolved.
- (2) If, upon the expiration of one month from giving notice under subsection (1), the Authority is satisfied that the registered housing co-operative should be dissolved, it may, by notice published in the Gazette, cancel the incorporation of the co-operative, whereupon the registered housing co-operative is dissolved.

- (3) If the Authority is satisfied that a registered housing co-operative was dissolved as a result of an error on the part of the Authority, the Authority may reinstate the co-operative as a registered housing co-operative after which the co-operative is to be taken to have continued in existence as if it had not been dissolved.

79—Outstanding property of former co-operative

- (1) Any estate or interest in outstanding property of a co-operative that is dissolved under this Act vests in the Authority.
- (2) In this section—

outstanding property, in relation to a co-operative, means any property, whether within or outside the State, which was vested in the co-operative, to which the co-operative was entitled, or over which the co-operative had a disposing power, at the time that the co-operative was dissolved but which has not got in, realised upon or otherwise dealt with or disposed of at that time.

80—Disposal of outstanding property

- (1) Upon proof to the satisfaction of the Authority that there is vested in it by force of section 79 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Authority may get in, sell or otherwise deal with or dispose of that estate or interest, or any part of that estate or interest, as it sees fit.
- (2) The power of the Authority under subsection (1) to sell or otherwise deal with or dispose of any such estate or interest may be exercised, either solely or together with any other person, by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Authority thinks fit, and includes power to rescind any contract and resell or otherwise deal with or dispose of that property as the Authority thinks expedient, and power to make, execute, sign and give such contracts, instruments and documents as the Authority thinks necessary.
- (3) Property vested in the Authority by operation of section 79 is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any laws as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the co-operative, but there will not be imposed, on the Authority or the Crown, any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the property of the co-operative so far as it is, in the opinion of the Authority, properly available for and applicable to such a payment.

81—Removal of name from register

On the dissolution of a registered housing co-operative, its name will be removed from the register of housing co-operatives registered under this Act.

82—Offences

A registered housing co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 589 to 596 and 1307 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

- (a) a reference in those provisions to a company is to be read as a reference to a registered housing co-operative;
- (b) a reference in those provisions to the Australian Securities and Investments Commission (ASIC) is to be read as a reference to the Authority; and
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

83—Assistance to tenants

Where action is taken to wind up a registered housing co-operative under this Part, the Authority must take such steps as are reasonably practicable to assist any tenant whose tenancy is affected or who is otherwise inconvenienced by virtue of the winding up.

Part 11—Appeals

84—Appeals

- (a1) In this section—

relevant appeal authority means—

- (a) in the case of an application under subsection (1)(a) or (b)—the Authority;
 - (b) in the case of an application under subsection (1)(c)—the Minister.
- (1) An application for relief under this section may be made by—
- (a) a member of a registered housing co-operative—
 - (i) who is a party to a dispute between the member and another member of the co-operative, or between the member and the co-operative; or
 - (ii) who believes that a decision of the co-operative is unreasonable, oppressive or unjust; or
 - (iii) who is the subject of any action of a prescribed kind taken by the co-operative against the member; or
 - (b) a person whose application for membership of a registered housing co-operative has been rejected; or
 - (c) subject to the regulations, a housing co-operative that is directly affected by an act or decision of the Authority under this Act.
- (2) The application must be made in the prescribed manner and form and be addressed to the relevant appeal authority.

- (3) The relevant appeal authority may only hear and determine an appeal under this section if the relevant appeal authority is satisfied that the appellant has previously made a genuine attempt to have the dispute resolved through a prescribed mediation or conciliation process and that mediation or conciliation process has failed to resolve the dispute or has failed to resolve the dispute within a reasonable period of time.
- (6) The following provisions apply where the Authority is the relevant appeal authority:
- (a) the Authority may require a party—
 - (i) to furnish such information in relation to the matter as the Authority thinks necessary; and
 - (ii) to verify any information by statutory declaration; and
 - (b) the Authority, in investigating and determining the matter, is not bound by the rules of evidence but may obtain information in any manner the Authority thinks fit; and
 - (c) the Authority may invite any person to appear before the Authority (either personally or through a representative) and to make submissions relating to the matter; and
 - (d) the Authority may, after considering the matter and any submissions made to the Authority—
 - (i) dismiss the application;
 - (ii) in the case of a dispute, order that a party to the dispute take such action as is in the opinion of the Authority necessary to resolve the dispute and is specified in the order;
 - (iii) vary or reverse any decision of the co-operative (including a decision of the co-operative to make, vary or revoke a rule of the co-operative);
 - (iv) substitute its own decision for a decision of the co-operative;
 - (v) make incidental and ancillary orders.
- (7) The following provisions apply where the Minister is the relevant appeal authority:
- (a) the Minister may require the housing co-operative to furnish such information in relation to the matter as the Minister thinks fit; and
 - (b) the Minister, in investigating and determining the matter, is not bound by the rules of evidence but may obtain information in any manner the Minister thinks fit; and
 - (c) the Minister may (but is not obliged to) permit a representative of the housing co-operative to appear before the Minister and to make submissions relating to the matter; and
 - (d) the Minister may, after considering the matter and any submissions made to the Minister—
 - (i) confirm, vary or rescind the relevant act or decision;
 - (ii) refer the matter back to the Authority, with such suggestions as the Minister thinks fit;

- (iii) make incidental and ancillary orders.
- (8) If an application is made under this section and the relevant appeal authority is satisfied that an interim order is justified by the urgent circumstances of the case, the relevant appeal authority may make an interim order to safeguard the position of a person pending the final resolution of the matter.
- (9) An interim order—
 - (a) has effect for such period, not exceeding two months, as the relevant appeal authority may determine and specifies in the order, and may be renewed by the relevant appeal authority for a further period of up to two months;
 - (b) unless sooner revoked, ceases to have effect on the determination or resolution of the matter under this section.
- (10) Nothing in this section derogates from the right of any person or registered housing co-operative to take proceedings in a court or tribunal in relation to a matter that may be the subject of an application under this section.
- (11) The relevant appeal authority must—
 - (a) decline to proceed (or further proceed) with an application under this section if it appears that it would be more appropriate for proceedings to be taken in a court or tribunal constituted by law;
 - (b) decline to proceed (or further proceed) with an application under this section if proceedings related to the subject matter of the application have been commenced in a court or tribunal constituted by law.
- (12) A person who fails to comply with an order under this section is guilty of an offence.
Maximum penalty: \$5 000.
- (13) The power to make an order under this section includes the power to vary or revoke the order.

Part 12—Miscellaneous

85—Tenancy agreements must be in writing

- (1) A tenancy agreement between a registered housing co-operative and a member of the co-operative must be in writing.
- (2) If subsection (1) is not observed, the co-operative is guilty of an offence.
Maximum penalty: \$5 000.

86—Special provision relating to borrowing of money

- (1) Without limiting the ability of the co-operative to borrow money in any other manner, a registered housing co-operative may borrow money from any member under this section.
- (2) Where a co-operative borrows money from a member under this section—
 - (a) the terms of the loan must be recorded in writing; and
 - (b) the rights of the member to the repayment of the loan, or any part of the loan, and to the payment of interest, are a charge on the real property of the co-operative.

- (3) The charge referred to above can only be enforced—
 - (a) with the approval of the Supreme Court; and
 - (b) subject to any conditions to which the Supreme Court's approval is subject.
- (4) If the Supreme Court approves the enforcement of the charge it may, subject to the conditions stipulated by the Supreme Court, be enforced in the same manner as a mortgage registered under the *Real Property Act 1886*.
- (5) The ranking of the charge will be determined by the Supreme Court.

87—Restrictions on shares

A registered housing co-operative must not issue shares in the co-operative other than—

- (a) if the rules of the co-operative provide for membership shares—membership shares on the basis of one share per member; and
- (b) investment shares.

88—Persons under disability

Subject to any order of the Supreme Court, where a member of a registered housing co-operative is under a disability, the rights and powers of that member under this Act and the rules of the co-operative may be exercised on his or her behalf by—

- (a) a person appointed by the member; or
- (b) a guardian; or
- (c) any person who is otherwise entitled at law to act on behalf of the member; or
- (d) a person authorised by the Authority.

89—Transfer of incorporated associations to this Act

- (1) If an association incorporated under the *Associations Incorporation Act 1985* becomes, on application under Part 3, a registered housing co-operative under this Act—
 - (a) the incorporation of the association under the *Associations Incorporation Act 1985* is terminated; and
 - (b) the property of the association becomes the property of the registered housing co-operative; and
 - (c) the rights and liabilities (whether certain or contingent) of the association become the rights and liabilities of the registered housing co-operative.
- (2) The Registrar-General must—
 - (a) on the application of a co-operative in which any estate or interest in land has vested by virtue of subsection (1); and
 - (b) on production of such duplicate instruments of title and other documents as the Registrar-General may require,
register the vesting of that estate or interest in land in the co-operative.
- (3) The vesting of property in a co-operative under this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

90—Use of abbreviation "Inc."

For the purposes of this Act, the abbreviation "Inc." may be used in place of the word "Incorporated".

91—Misrepresentation as to registration under this Act

A person must not, in order to gain an advantage for himself or herself or any other person, falsely represent that a body is a housing co-operative registered under this Act.

Maximum penalty: \$10 000.

92—Power of Authority to reject documents etc

- (1) If the Authority is of opinion that a document submitted to the Authority—
 - (a) contains matter contrary to law; or
 - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
 - (c) by reason of an omission or misdescription has not been duly completed; or
 - (d) does not comply with the requirements of this Act; or
 - (e) contains an error, alteration or erasure,the Authority may refuse to register or may reject the document and may request—
 - (f) that the document be appropriately amended or completed and resubmitted; or
 - (g) that a fresh document be submitted in its place; or
 - (h) where the document has not been duly completed, that a supplementary document in the prescribed form be submitted.
- (2) The Authority may request a person who submits a document to the Authority to produce to the Authority such other document, or to furnish to the Authority such information, as the Authority thinks necessary in order to form an opinion whether it should refuse to register or should reject the document.
- (3) If a person fails to comply with a request of the Authority made pursuant to subsection (1) or (2) within 14 days after the service on the person of the request, a court of summary jurisdiction may, on an application of the Authority, order the person to comply with the Authority's request within the time specified in the order.
- (4) An order made under subsection (3) may provide that all costs of, and incidental to, the application are to be borne by the person responsible for the non-compliance.
- (5) A person who contravenes or fails to comply with an order made under subsection (3) is guilty of an offence.

Maximum penalty: \$5 000.

93—False or misleading statements

- (1) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Authority—
- (a) makes, or authorises or permits the making of, a statement that to his or her knowledge is false or misleading in a material particular; or
 - (b) omits, or authorises or permits the omission of, any matter or thing without which the document is to his or her knowledge misleading in a material respect,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person who makes, or authorises or permits the making of, a statement that is based on information that to his or her knowledge—
- (a) is false or misleading in a material particular; or
 - (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is, for the purposes of subsection (1), to be regarded as having made, or authorised or permitted the making of, a statement that to his or her knowledge was false or misleading in a material particular.

- (3) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Authority—
- (a) makes, or authorises or permits the making of, a statement that is false or misleading in a material particular; or
 - (b) omits, or authorises or permits the omission of, any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) A person who makes, or authorises or permits the making of, a statement without having taken reasonable steps to ensure that the information on which the statement was based—
- (a) was not false or misleading in a material particular; and
 - (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect,

is, for the purposes of subsection (3), to be regarded as having made, or authorised or permitted the making of, a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

94—General power of Authority to grant extensions and exemptions

- (1) The Authority may, on the application of a co-operative, an officer of a co-operative or a person authorised by a co-operative to make an application under this section—
 - (a) extend any limitation of time prescribed by or under this Act, whether or not the prescribed period has expired; and
 - (b) with the approval of the Minister, exempt the co-operative or any officer of the co-operative from the obligation to comply with any provision of this Act.
- (2) An application under subsection (1) may be granted by the Authority on such conditions as the Authority thinks fit.
- (3) The Authority may, at any time, by instrument in writing—
 - (a) vary or revoke an extension or exemption under subsection (1);
 - (b) vary or revoke a condition under subsection (2).
- (4) A co-operative, or an officer of a co-operative (as the case may be) must not contravene or fail to comply with a condition imposed by the Authority under this section.

Maximum penalty: \$10 000.

95—Ability of Authority to convene special meetings of co-operatives

- (1) The Authority must, on the application of a majority of the committee members of a registered housing co-operative, or on the application of the prescribed number of members of a registered housing co-operative, or may, of its own motion, call a special meeting of the co-operative.
- (2) An application under subsection (1) must be supported by such evidence as the Authority directs for the purpose of showing that the applicants have good reason for requiring the meeting and that the application is made without malicious motive.
- (3) Notice of the application must be given to the co-operative as the Authority directs.
- (4) The Authority may—
 - (a) direct at what time and place the meeting is to be held; and
 - (b) direct what matters are to be discussed or determined; and
 - (c) notwithstanding the rules of the co-operative, give such notice to members of the holding of the meeting as it considers appropriate.
- (5) A meeting held under this section has all the powers of a meeting called in accordance with the rules of the co-operative.
- (6) A person nominated by the Authority may, on behalf of the Authority, attend and address a meeting held under this section.
- (7) All expenses of and incidental to the meeting may be defrayed by the applicants or out of the funds of the co-operative or by any officer or member, or former officer or member, in such proportions as may be agreed between the Authority and those persons, and may be recovered as a debt in a court of competent jurisdiction.
- (8) In default of agreement under subsection (7), the expenses must be defrayed by such persons, and in such proportions, as the District Court, on the application of the Authority, directs.

(9) In this section—

the prescribed number of members of a co-operative means—

- (a) in the case of a co-operative with 12 or less members—3 members of the co-operative;
- (b) in the case of a co-operative with more than 12 members—10 or one-quarter of the members of the co-operative (whichever is the lesser number of members).

96—Evidentiary provision

- (1) An apparently genuine document purporting to be under the seal of the Authority and to be a copy of a certificate of incorporation of a registered housing co-operative will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the incorporation of the co-operative on the date specified in the document.
- (2) An apparently genuine document purporting to be a copy of any document registered or lodged under this Act and to be certified by the Authority as a true copy of such a document, will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of that document.
- (3) An apparently genuine document purporting to be a copy of, or extract from, a record kept by a registered housing co-operative, and to be verified by an officer of the co-operative authorised by the committee of management for the purpose, will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of, or extract from, that record.
- (4) An apparently genuine document purporting to bear the common seal of a registered housing co-operative will be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the co-operative.
- (5) A certificate purporting to be under the seal of the Authority and certifying that a registered housing co-operative has, or has not, complied with a requirement of this Act as to the filing or lodging of any document or return, or the giving of any notice, will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matters so certified.

97—Service on registered housing co-operatives

Service of any process, notice or other document may be effected on a registered housing co-operative—

- (a) by serving the process, notice or other document on any officer of the co-operative; or
- (b) by serving the process, notice or other document by post addressed to the co-operative at the registered address of the co-operative; or
- (c) by leaving the process, notice or other document in a letter box at the registered address of the co-operative; or
- (d) by transmission by facsimile transmission or electronic mail to the co-operative's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).

98—Failure to supply appropriate information

If a co-operative or other person—

- (a) refuses or neglects to furnish any return or information required by the Authority under this Act; or
- (b) refuses or neglects to furnish any return or information in a form required by or under this Act,

the co-operative or other person is guilty of an offence.

Maximum penalty: \$5 000.

99—Continuing offences

- (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence and liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.
- (2) For the purposes of subsection (1), an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

100—Default on the part of officers

An officer of a registered housing co-operative must take all reasonable steps to secure compliance by the co-operative with its obligations under this Act.

Maximum penalty: \$5 000.

101—General defence

In proceedings for an offence against this Act, it is a defence if the defendant proves that in the circumstances of the case there was no failure on the defendant's part to take reasonable care to avoid commission of the offence.

102—Proceedings for offences

- (1) An offence against this Act that is not punishable by imprisonment is a summary offence.
- (2) An offence against this Act that is punishable by imprisonment is, subject to subsection (3), an indictable offence.
- (3) Where—
 - (a) proceedings for an offence against this Act that is punishable by imprisonment are brought in a court of summary jurisdiction; and
 - (b) the prosecutor requests the court to hear and determine the proceedings,the offence is to be taken to be a summary offence and must be heard and determined as such.
- (4) A court of summary jurisdiction may not—
 - (a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding one year; or

- (b) impose, in respect of a number of offences against this Act, cumulative periods of imprisonment that, in aggregate, exceed three years.
- (5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.
- (6) A prosecution for an offence against this Act—
 - (a) may be commenced—
 - (i) by the Authority; or
 - (ii) by an officer or employee of the Authority; or
 - (iii) with the consent of the Minister, by any other person; and
 - (b) must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Attorney-General may, in a particular case, allow.
- (7) A document apparently signed by the Minister or the Attorney-General and stating—
 - (a) that the Minister consents to a particular prosecution; or
 - (b) that the Attorney-General allows a specified extension of the period for commencing a particular prosecution,is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.
- (8) In any proceedings for an offence against this Act an allegation—
 - (a) that a co-operative is or was at a specified time incorporated under this Act; or
 - (b) that the defendant is or was at a specified time an officer of a co-operative named in the proceedings; or
 - (c) that any meeting of the members of a co-operative required by a specified provision of this Act to be held has not been held as required by that provision; or
 - (d) that the complainant is an officer or employee of the Authority,will be taken to be proved in the absence of proof to the contrary.

103—Government guarantee

- (1) Liabilities incurred or assumed by the Authority in pursuance of this Act are guaranteed by the Treasurer to any extent to which they cannot be satisfied out of the Fund.
- (2) A liability of the Treasurer under a guarantee arising by virtue of subsection (1) will be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.
- (3) The Authority is liable to pay to the Treasurer such fees in respect of the guarantee arising by virtue of subsection (1) as are determined by the Treasurer in consultation with the Minister.

104—Remission from taxes etc

- (1) A registered housing co-operative that is liable for the payment of rates charged with respect to residential premises of which the co-operative is the owner is entitled to claim a remission of rates under the *Rates and Land Tax Remission Act 1986* equal to any remission of rates under that Act that a tenant-member of the co-operative who is in actual occupation of the premises could claim in respect of those premises if he or she were the owner of that part of the premises that he or she occupies.
- (2) In subsection (1)—
rates means rates within the meaning of the *Rates and Land Tax Remission Act 1986*.
- (3) An allotment of any share in a registered housing co-operative, or any other dealing with such a share, is exempt from stamp duty under the *Stamp Duties Act 1923*.
- (4) Without derogating from the operation of subsection (3), the Treasurer may, by notice published in the Gazette, exempt from a tax, duty or other impost, to the extent specified in the notice, any of the following:
 - (a) the Authority;
 - (b) instruments to which the Authority or a registered housing co-operative is a party;
 - (c) instruments that arise from or are connected with a transaction to which the Authority or a registered housing co-operative is a party.
- (5) The Treasurer may, by further notice published in the Gazette, vary or revoke an exemption under subsection (4).

105—Fees in respect of lodging documents

- (1) Where a fee is payable to the Authority for or in respect of the lodging of a document with the Authority under this Act and the document is submitted without payment of the fee, the document will be taken not to have been lodged until the fee has been paid to the Authority.
- (2) Notwithstanding subsection (1), the Authority may—
 - (a) waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable under this Act; and
 - (b) refund, in whole or in part, any fee paid under this Act.

106—Rule against perpetuities

The rule against perpetuities does not apply in relation to any right or interest of the Authority in any property of a registered housing co-operative.

107—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) those regulations may—
 - (a) prescribe model rules with a view to their adoption by registered housing co-operatives or co-operatives intending to apply for incorporation under this Act; and

- (b) prescribe provisions that must be included in the rules of registered housing co-operatives, or otherwise regulate the content of such rules; and
- (c) regulate or restrict the powers that can be assigned to a committee of management by a registered housing co-operative; and
- (d) prescribe procedures that must be observed before a registered housing co-operative can act against a member in prescribed circumstances; and
- (e) make provision in relation to the form of accounting records and financial statements kept or prepared by registered housing co-operatives; and
- (f) require registered housing co-operatives to keep registers relating to their members that contain such information as the regulations may prescribe, and make provision for, or in relation to, the inspection of those registers and the provision of extracts from those registers; and
- (g) require registered housing co-operatives to furnish prescribed information to the Authority in prescribed circumstances; and
- (h) prescribe any form, or regulate any procedure, for the purposes of this Act; and
- (i) prescribe, and provide for the payment and recovery of, fees (including fees for the late lodgment of returns or reports required under this Act); and
- (j) prescribe a minimum balance that must be maintained in the share capital account of a registered housing co-operative that has issued investment shares under Part 6; and
- (k) prescribe procedures by which the Authority or the co-operative may obtain prescribed information from a person entitled to shares in a registered housing co-operative; and
- (l) prescribe principles, assumptions or factors that are to be applied, made or taken into account in relation to the calculation of the statutory price payable on the redemption or cancellation of investment shares issued by registered housing co-operatives; and
- (m) make provision in relation to the creation and enforcement of charges over investment shares issued by a registered housing co-operative; and
- (n) make provision for, or in relation to, any form of investment in registered housing co-operatives; and
- (o) regulate, restrict or prohibit the issue of investment shares by registered housing co-operatives in prescribed circumstances; and
- (p) make provision for, or in relation to, the form or content of any agreement between the Authority and registered housing co-operatives; and
- (q) make any provision in relation to the administration of a co-operative by an administrator appointed under this Act; and
- (r) make any provision in relation to the winding up of registered housing co-operatives; and
- (s) prescribe penalties, not exceeding a fine of \$5 000, for breach of, or non-compliance with, any regulation.

- (3) Regulations under this Act—
 - (a) may be of general or restricted application;
 - (b) may—
 - (i) leave any matter or thing to be determined, varied, dispensed with or regulated according to the discretion of the Authority;
 - (ii) confer other forms of discretionary powers;
 - (c) may make different provision according to the persons, things or circumstances to which they are expressed to apply.
- (4) Except where it is not expedient or reasonably practicable to do so, the Authority should not recommend that a regulation be made under this Act until the proposed regulation has been made available for public comment.

Schedule 1—Housing associations

1—Interpretation

In this Schedule—

rules of a housing association means the constitution, rules and by-laws of the housing association;

subsidised housing association means a registered housing association any real property of which is subject to a charge under Part 7.

2—Registration

- (1) A person duly authorised by a housing association may apply to the Authority for the registration of the housing association under this Act.
- (2) The application must be made in the prescribed manner and form and must be accompanied by—
 - (a) the rules of the housing association; and
 - (b) a statutory declaration made by the applicant verifying—
 - (i) that he or she is authorised by the housing association to apply for registration; and
 - (ii) the particulars contained in the application; and
 - (iii) that the copy of the rules of the housing association which accompanies the application is a true copy; and
 - (c) the prescribed fee.
- (3) The applicant must, at the request of the Authority, supply it with such further documents or information as the Authority may require.
- (4) If the Authority is satisfied—
 - (a) that the application has been made in accordance with this clause; and
 - (b) that the housing association is eligible to be registered as a housing association under this Act (see subclause (5)),

the Authority must, subject to subclause (6), register the housing association and its rules.

- (5) A housing association is eligible to be registered as a housing association under this Act if—
- (a) the housing association is an incorporated body under another Act; and
 - (b) the housing association has a committee of management; and
 - (c) the association provides housing without artificial restrictions; and
 - (d) the association is managed according to principles of equity and fairness; and
 - (e) the rules of the housing association contain provisions of a prescribed kind and otherwise comply with the regulations; and
 - (f) a surplus or saving arising from the operations of the housing association is applied to the provision of housing (or housing services), or in some other manner approved by the Minister; and
 - (g) the financial year of the housing association is from 1 July to the following 30 June; and
 - (h) the housing association complies with any other condition or requirement prescribed by the regulations.
- (6) The Authority may decline to register a housing association under this Act if, in its opinion—
- (a) it would not be in the public interest to register the housing association under this Act; or
 - (b) the rules of the housing association contain unreasonable provisions affecting the rights of members, tenants or other persons; or
 - (c) there is some other good reason why the housing association should not be registered under this Act.

3—Property and borrowings

- (1) In this clause—
- special resolution*, in relation to a registered housing association, has the same meaning as in the *Associations Incorporation Act 1985*.
- (2) A registered housing association cannot dispose of real property unless authorised by special resolution of the housing association.
- (3) A registered housing association must not allow its borrowings at a particular time to exceed, in total, an amount equal to the current market value of all of its properties.
- (4) A contravention of subclause (3) does not affect the rights of a person who has lent money to the housing association.

4—Accounts and audit

- (1) In this clause—
- prescribed association* means—
- (a) a prescribed association under the *Associations Incorporation Act 1985*; or

- (b) an association registered under the *Corporations Act 2001* of the Commonwealth.
- (2) The financial statements of a registered housing association must—
 - (a) be made out in accordance with accounting standards approved by the Authority (unless to do so would not give a true and fair view of the accounts of the housing association); and
 - (b) comply with the requirements prescribed by the regulations.
- (3) A registered housing association that is not a prescribed association in a particular financial year, and the committee of management and auditor of such a housing association, must, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, comply with the requirements of Division 4 of Part 5 as if the registered housing association were a registered housing co-operative.
- (4) If the auditor of a registered housing association that is a prescribed association in a particular year, in the course of performing his or her duties as auditor, is satisfied that—
 - (a) there has been a contravention of, or failure to comply with—
 - (i) a provision of this Act; or
 - (ii) a rule of the housing association; or
 - (iii) a term of an agreement between the Authority and the housing association under Division 3 of Part 7 or an agreement between the Authority and an associated land owner under clause 1 of Schedule 2; and
 - (b) the circumstances are such that in his or her opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the committee of management of the housing association,

the auditor must immediately report the matter to the Authority by notice in writing.
- (5) The auditor of a registered housing association that is a prescribed association must, on the completion of the audit, ensure that his or her report on the audit includes, or is accompanied by, a report on any matter prescribed by the regulations.
- (6) A registered housing association that is a prescribed association must furnish to the Authority, in accordance with the regulations, a copy of the audited financial statements of the housing association and the auditor's report (together with accompanying material) in relation to the audit.

5—Returns and other information

Section 49 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

6—Right of inspection

Section 50 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

7—Financial transactions

Division 3 of Part 7 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

8—Statutory charge

Division 4 of Part 7 (other than section 68) applies to a registered housing association as if—

- (a) the registered housing association were a registered housing co-operative; and
- (b) a reference to subsidised premises were a reference to premises of the registered housing association acquired, developed or improved with the assistance of the Authority; and
- (c) the following subparagraph were inserted after subparagraph (iii) of section 66(2)(a):

(iiia) to an associated land owner;,

and subject to such other modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

9—Powers of investigation

Part 8 applies in relation to registered housing associations.

10—Special powers of intervention

- (1) The Authority may, if satisfied that it is appropriate to do so, by notice in writing to a registered housing association, declare that there are grounds for intervention in the affairs of the housing association under this clause.
- (2) The grounds on which the Authority may make a declaration under subclause (1) in relation to a registered housing association are—
 - (a) that it appears that the association is no longer a housing association that is eligible for registration under this Act, or has ceased to carry on operations as a housing association; or
 - (b) that serious irregularities or difficulties have occurred or arisen in the management of the housing association or the administration of its affairs; or
 - (c) that the members of the committee of management have acted in the affairs of the housing association in their own interests rather than in the interests of the members as a whole, or in any other manner that appears to be unfair or unjust to other members; or
 - (d) that the housing association is experiencing serious internal disputes or otherwise is not functioning in a proper manner; or
 - (e) that the housing association has insufficient members to operate efficiently and effectively; or
 - (f) that there are insufficient committee members to form a quorum of the committee of management; or
 - (g) that the rules of the housing association contain an unreasonable provision that affects the rights of members, tenants or other persons; or

- (h) that the housing association has failed to comply with a term of an agreement between the Authority and the housing association under Part 7; or
 - (ha) that an associated land owner has failed to comply with a term of an agreement between the Authority and an associated land owner under clause 1 of Schedule 2; or
 - (i) that the housing association has intentionally committed a serious breach of this Act or the rules of the housing association; or
 - (j) that the housing association has committed a breach of this Act or the rules of the housing association and the housing association has, after notice by the Authority of the breach, failed, within the time referred to in the notice, to remedy the breach; or
 - (k) that the housing association is insolvent or in danger of becoming insolvent or has taken unreasonable action contrary to the interests of its creditors; or
 - (l) such other grounds as may be prescribed by the regulations.
- (3) Before the Authority makes a declaration under this clause, the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter.
- (4) The investigator or investigators must give the housing association a reasonable opportunity to make submissions in relation to the matter.
- (5) If the Authority makes a declaration under this clause in relation to a registered housing association, the Authority may do one or more of the following:
- (a) order an audit of the affairs of the housing association by an auditor approved by the Authority at the expense of the housing association;
 - (b) require the members of the committee of management to take specified action to ensure that the housing association is acting efficiently, effectively and fairly;
 - (c) require the housing association to take specified action to ensure compliance with this Act or the rules of the housing association;
 - (d) require the housing association to correct specified irregularities or to reverse specified action;
 - (e) require the housing association to apply specified management practices;
 - (f) stipulate principles in accordance with which the affairs of the housing associations are to be conducted;
 - (g) require the housing association to alter its rules;
 - (h) with the approval of the Minister—
 - (i) remove a committee member from office; or
 - (ii) prohibit or restrict the raising of funds by the housing association or the exercise of other powers of the housing association;
 - (i) if the housing association is a subsidised housing association—
 - (i) appoint an administrator (who must not be a member of the staff of the Authority) to conduct the affairs of the housing association; and

- (ii) require the housing association to dispose of specified property of the housing association in accordance with directions of the Authority;
 - (j) require members of the housing association to attend a conference called by a person nominated by the Authority with a view to overcoming problems within the housing association by discussion and conciliation;
 - (k) with the approval of the Minister—cancel the registration of the housing association under this Act;
 - (l) recommend to the Minister that the housing association be wound up;
 - (m) take such other action as may be prescribed by the regulations.
- (6) If a housing association is required to alter its rules, the housing association is not required to do so by any form of resolution or to obtain the approval of its members.
- (7) If an administrator is appointed under subclause (5)(i)(i), section 72 applies as if the housing association were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.
- (8) A direction under subclause (5)(i)(ii) may include a direction that property be transferred to the Authority.
- (9) If the registration of a subsidised housing association is cancelled under subclause (5)(k), the Minister may, in relation to property that is subject to the charge under Part 7—
 - (a) order that steps be taken to transfer the property—
 - (i) to the Authority; or
 - (ii) to another registered housing association; or
 - (iii) to an agent or instrumentality of the Crown; or
 - (b) order that steps be taken to sell the property on the open market,and, in that case, sections 66(3)–(12) will apply as if the housing association were a registered housing co-operative subject to the operation of that section, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.
- (10) If the Authority—
 - (a) appoints an investigator under subclause (3); or
 - (b) declares that there are grounds for intervention in the affairs of a housing association under this clause,

the Authority must furnish a report on the matter to the Corporate Affairs Commission.

11—Winding up

- (1) It will be taken to be a provision of the Act under which a registered housing association is incorporated that the housing association may be wound up on the certificate of the Minister under this Act.

- (2) The ground on which the Minister may issue a certificate for the winding up of a registered housing association is that the Authority has, pursuant to this Schedule, recommended that the housing association be wound up.
- (3) The winding up of a registered housing association on the certificate of the Minister commences on application to the Supreme Court by the Minister and lodgment with the Court of a copy of the certificate and is to proceed as if the housing association had by special resolution resolved that it be wound up by the Supreme Court.

12—Removal of name from register

If—

- (a) a registered housing association is dissolved; or
- (b) the registration of a housing association under this Act is cancelled,

the name of the housing association will be removed from the register of housing associations under this Act.

13—Assistance to tenants

Section 83 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

14—Appeals

Part 11 applies—

- (a) to a registered housing association; and
- (b) to a member or tenant of a registered housing association,

as if the registered housing association were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

15—Miscellaneous

The following sections of Part 12 apply, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, with respect to registered housing associations as if they were registered housing co-operatives:

- (a) section 85;
- (b) section 88;
- (c) sections 91 to 106.

16—Regulations

Without limiting the operation of section 107, the Governor may, by regulation—

- (a) make provision in relation to the form of accounting records and financial statements kept or prepared by registered housing associations;
- (b) require registered housing associations to keep registers relating to their tenants and members that contain such information as the regulations may prescribe, and make provision for, or in relation to, the inspection of those registers and the provision of extracts from those registers;

- (c) require registered housing associations to furnish prescribed information to the Authority in prescribed circumstances;
- (d) make provision for, or in relation to, the form or content of any agreement between the Authority and registered housing associations;
- (e) make any provision in relation to the administration of a housing association by an administrator appointed under this Act;
- (f) make any provision in relation to the winding up of registered housing associations.

Schedule 2—Associated land owners

1—Financial transactions

- (1) The Authority may, before entering into a transaction with a registered housing association involving the construction, development or improvement of housing on land of an associated land owner, require the associated land owner to enter into an agreement with the Authority that contains (with or without modification or addition) one or more terms prescribed by the regulations for the purposes of this clause.
- (2) An agreement under subclause (1)—
 - (a) must provide for its review on a periodical basis; and
 - (b) may be altered by agreement between the Authority and the associated land owner.

2—Creation of statutory charge

- (1) The Authority may, in order to secure the enforcement of—
 - (a) an agreement with an associated land owner under clause 1; and
 - (b) an agreement with a registered housing association under Division 3 of Part 7 that applies in relation to subsidised premises on land of the associated land owner,impose a charge under Division 4 of Part 7 on the land of the associated land owner.
- (2) For the purposes of the imposition of a charge under subclause (1), the Authority may deliver to the Registrar-General a notice, in a form determined by the Registrar-General—
 - (a) setting out or incorporating the terms of the charge; and
 - (b) setting out the real property over which it is to exist; and
 - (c) requesting the Registrar-General to make a notation under this section in the Register Book.
- (3) The notice may provide for the imposition of the charge over the whole of an allotment notwithstanding that the subsidised premises only comprise a part of that allotment.
- (4) On receipt of a notice under subclause (2), the Registrar-General must, in relation to the real property referred to in the notice, enter an appropriate notation in the Register Book.

- (5) When an entry is made under subclause (4), a charge over the real property is created.
- (6) While a charge exists over real property, the Registrar-General must not register an instrument affecting the property unless—
 - (a) the instrument was executed before the charge was created or relates to an instrument registered before the charge was created; or
 - (b) the instrument is an instrument of a prescribed class; or
 - (c) the Authority consents to the registration in writing; or
 - (d) the instrument is expressed to be subject to the charge; or
 - (e) the instrument is a duly stamped conveyance that relates to the transfer or sale of the real property under clause 3.
- (7) Subject to this Division, an instrument registered under subclause (6)(a), (b), or (c) has effect, in relation to the charge, as if it had been registered before the charge was created.
- (8) If an instrument is registered under subclause (6)(e), the charge will be taken to be cancelled and the Registrar-General must make the appropriate entries in the Register Book to give effect to the cancellation.
- (9) The Authority may, on its own initiative, by further notice to the Registrar-General under this section, cancel the charge.
- (10) Where the Authority delivers a notice to the Registrar-General under this section, the Authority must send a copy of the notice to the associated land owner and the registered housing association.
- (11) In this clause—

allotment means the whole of the land comprised in a certificate of title;

subsidised premises means premises of a registered housing association acquired, developed or improved with the assistance of the Authority.

3—Enforcement of statutory charge

- (1) If a registered housing association or associated land owner fails to comply with the terms of an agreement secured by a charge under this Schedule, the charge may be enforced as follows:
 - (a) the Authority must, by notice in writing, inform the housing association and associated land owner of the breach and give them at least one month to remedy the breach; and
 - (b) if the breach is not remedied within the time allowed in a notice under paragraph (a), the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter; and
 - (c) the investigator or investigators must give the housing association and associated land owner a reasonable opportunity to make submissions in relation to the matter; and

- (d) where, on the report of the investigator or investigators, it appears reasonable to enforce the charge, the Authority may apply to the Minister for an order under subclause (2) in relation to the property subject to the charge.
- (2) The Minister may, on application under subclause (1), in relation to the property that is subject to the charge—
- (a) order that steps be taken to transfer the property—
- (i) to the Authority;
- (ii) to another registered housing association or associated land owner;
- (iii) with the agreement of the person or persons occupying the property—to the South Australian Housing Trust; or
- (b) order that steps be taken to sell the property on the open market.
- (3) The associated land owner must comply with the terms of the order within a reasonable time.
Maximum penalty: \$10 000.
- (4) If the property is transferred pursuant to an order under subclause (2)(a), the value of the property will be taken to be its current market value.
- (5) If the property is transferred to the Authority, the Authority must, as soon as is reasonably practicable, divest itself of the property.
- (6) If the property is sold pursuant to an order under subclause (2)(b), the money received in respect of the sale must be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs of a prescribed kind;
- (b) secondly—in discharging any liabilities secured by instrument registered before the charge was created, or that is taken to have such effect by virtue of clause 2;
- (c) thirdly—in discharging the amount or amounts secured by the charge over that property;
- (d) fourthly—in discharging any other liabilities secured by registered instruments;
- (e) fifthly—in discharging any other liabilities that exist in relation to that property of which the Authority has notice;
- (f) sixthly—in payment to the Fund.
- (7) The title obtained on the sale of the property will be free of—
- (a) any charge under this Schedule; and
- (b) all other liabilities discharged under subclause (6); and
- (c) any other liability that may exist on account of any mortgage, charge or encumbrance.
- (8) If the associated land owner does not comply with the terms of an order under subclause (2) within a reasonable time, the Minister may take such steps as are necessary to give effect to the order.

- (9) The power of the Minister to act under subclause (8) includes the power to rescind any contract and to deal with or dispose of the property to which the order relates, and the power to make, execute, sign and give such contracts, instruments and documents as the Minister thinks necessary.
- (10) If the Minister acts under subclause (8), a conveyance executed by the Minister will, on registration or enrolment, operate to vest title to the property in the body named in the conveyance as transferee.
- (11) The Registrar-General must, on production of a conveyance executed under subclause (10), register the conveyance and, notwithstanding the *Real Property Act 1886*, production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee).
- (12) If an order is made under this clause for the transfer or sale of property, the Authority must take such steps as are reasonably practicable—
 - (a) to protect the interests of creditors of the housing association; and
 - (b) to protect the interests of creditors of the associated land owner with debts or claims arising from transactions related to the property or obligations of the associated land owner under this Act; and
 - (c) to assist any tenant whose tenancy is affected or who is otherwise inconvenienced by virtue of the order.

4—Creation of option

- (1) A charge over real property under this Schedule also constitutes an option to the Authority to purchase the property in the event of a proposed sale by the associated land owner (being an option that prevails over any other option that may exist in relation to the property).
- (2) If an associated land owner proposes to sell real property that is subject to such an option (other than in pursuance of an order under clause 3), the associated land owner must give the Authority at least two months notice, in writing, of the proposed sale.
- (3) The Authority must then decide, within the two month period, whether or not to exercise the option.
- (4) If the Authority decides to exercise the option, the value of the property will be taken to be the current market value of the property.
- (5) If the Authority decides not to exercise the option, the associated land owner may proceed to sell the property on the open market (subject to the charge on the property being discharged by the associated land owner on completion of the sale).
- (6) If the Authority acquires property from an associated land owner pursuant to this clause, the Authority must, as soon as is reasonably practicable, divest itself of the property.

5—Powers of investigation

Part 8 applies in relation to associated land owners.

6—Appeals

Subject to the regulations, an associated land owner that is directly affected by an act or decision of the Authority under this Act may make an application for relief under section 84 and, for that purpose, Part 11 applies in relation to the associated land owner as if the associated land owner were a registered housing association, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

7—Service on associated land owners

- (1) Service of any process, notice or other document may be effected on an associated land owner—
 - (a) personally; or
 - (b) by post addressed to the associated land owner's address for service; or
 - (c) by transmission by facsimile transmission or electronic mail to the associated land owner's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) An associated land owner's address for service is the postal address of which the Authority has been last notified in writing as the person's address for service.

8—Remission from taxes etc

Section 104 applies to an associated land owner as if—

- (a) the associated land owner were a registered housing association; and
- (b) a reference to a tenant-member of the housing association were a reference to a tenant of the registered housing association with which the land owner is associated,

and subject to such other modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

9—Misrepresentation as to being associated land owner

A person must not, in order to gain an advantage for himself or herself or any other person, falsely represent that a body is an associated land owner.

Maximum penalty: \$10 000.

10—Miscellaneous

Sections 92, 93, 94, 96(2) and (5), 98, 99, 100, 101, 102, 105 and 106 apply, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, with respect to associated land owners as if they were registered housing associations.

11—Regulations

Without limiting the operation of section 107, the Governor may, by regulation—

- (a) require associated land owners to furnish prescribed information to the Authority in prescribed circumstances;

- (b) make provision for, or in relation to, the form or content of any agreement between the Authority and associated land owners.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Housing Co-operatives Act 1991

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	64	<i>Housing Co-operatives Act 1991</i>	5.12.1991	13.1.1992 (<i>Gazette 9.1.1992 p2</i>) except ss 4 & 51—61— 1.9.1994 (<i>Gazette 11.8.1994 p408</i>)
1995	101	<i>Housing Co-operatives (Housing Associations) Amendment Act 1995</i>	14.12.1995	1.1.1996 (<i>Gazette 21.12.1995 p1751</i>) except s 6—18.1.1996 (<i>Gazette 18.1.1996 p348</i>) and except ss 4(c), (d), 8, 12—18 and Schs 1—3— 15.2.1996 (<i>Gazette 15.2.1996 p1116</i>) and except s 7—14.12.1997 (s 7(5) <i>Acts Interpretation Act 1915</i>)
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 12 (s 18)—3.7.1997 (<i>Gazette 3.7.1997 p4</i>)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 49)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 29 (ss 99—104)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 (<i>Gazette 21.6.2001 p2270</i>)
2001	34	<i>South Australian Co-operative and Community Housing (Associated Land Owners) Amendment Act 2001</i>	3.8.2001	17.1.2002 (<i>Gazette 15.1.2002 p187</i>)

2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 70 (s 222)—4.9.2006 (Gazette 17.8.2006 p2831)
2007	20	<i>Statutes Amendment (Affordable Housing) Act 2007</i>	14.6.2007	Pt 3 (ss 21—84) & Sch 1—1.7.2007 (Gazette 28.6.2007 p2826)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 1	substituted by 101/1995 s 3	1.1.1996
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	4.9.2006
s 3		
s 3(1)		
associated land owner	inserted by 34/2001 s 3(a)	17.1.2002
Authority	substituted by 101/1995 s 4(a)	1.1.1996
Department	inserted by 101/1995 s 4(b)	1.1.1996
<i>the Fund</i>	<i>deleted by 101/1995 s 4(c)</i>	15.2.1996
Fund	inserted by 101/1995 s 4(c)	15.2.1996
housing association	inserted by 101/1995 s 4(c)	15.2.1996
property	inserted by 34/2001 s 3(b)	17.1.2002
registered housing association	inserted by 101/1995 s 4(d)	15.2.1996
	amended by 34/2001 s 3(c)	17.1.2002
SAHT	inserted by 101/1995 s 4(e)	1.1.1996
statutory corporation	inserted by 101/1995 s 4(f)	1.1.1996
s 3(6)	inserted by 34/2001 s 3(d)	17.1.2002
s 6	substituted by 23/2001 s 99	15.7.2001
Pt 2		
s 8		
s 8(1)	substituted by 101/1995 s 5	1.1.1996
s 9		
s 9(1)	substituted by 101/1995 s 6(a)	18.1.1996
s 9(4)	<i>deleted by 101/1995 s 6(b)</i>	18.1.1996
s 10		
s 10(2)	amended by 101/1995 s 7	14.12.1997
s 13		
s 13(2) and (4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 14	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 16		

South Australian Co-operative and Community Housing Act 1991—4.9.2006 to 30.6.2007

Legislative history

s 16(1)	amended by 101/1995 s 8(a)—(k)	15.2.1996
s 16(4)	amended by 101/1995 s 8(l)	15.2.1996
s 18		
s 18(1)	substituted by 101/1995 s 9	1.1.1996
s 18(2)	<i>deleted by 101/1995 s 9</i>	<i>1.1.1996</i>
Pt 2 Div 5	heading substituted by 101/1995 s 10	1.1.1996
ss 18A—18C	inserted by 101/1995 s 11	1.1.1996
Pt 2 Div 6		
s 21		
s 21(1)	amended by 101/1995 s 12	15.2.1996
Pt 3		
s 27		
s 27(2)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 4		
s 36		
s 36(4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 5		
s 38		
s 38(1)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 39		
s 39(4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 42		
s 42(2) and (4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 44		
s 44(1)—(4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 47		
s 47(6)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 50		
s 50(1) and (2)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 6		
s 51		
s 51(12)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 52		
s 52(1)	amended by 30/1997 s 18	3.7.1997
	amended by 33/1999 Sch (item 49)	1.7.1999
s 52(2) and (3)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 53		
s 53(4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 57		
s 57(9)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 59	substituted by 23/2001 s 100	15.7.2001
Pt 7		
s 63		

s 63(1)	substituted by 101/1995 s 13(a)	15.2.1996
s 63(3)	amended by 101/1995 s 13(b)	15.2.1996
s 63(4)	amended by 101/1995 s 13(c)—(f)	15.2.1996
s 63(5)	amended by 101/1995 s 13(g)	15.2.1996
s 66		
s 66(3)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 8		
s 70		
s 70(5)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 72		
s 72(6)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 10		
s 73		
s 73(1)	substituted by 23/2001 s 101	15.7.2001
s 74		
s 74(2)	substituted by 23/2001 s 102	15.7.2001
s 74(7)	amended by 17/2006 s 222	4.9.2006
s 82	substituted by 23/2001 s 103	15.7.2001
Pt 11	heading substituted by 101/1995 s 14	15.2.1996
s 84		
s 84(a1)	inserted by 101/1995 s 15(a)	15.2.1996
s 84(2)	amended by 101/1995 s 15(b)	15.2.1996
s 84(3)	substituted by 101/1995 s 15(c)	15.2.1996
<i>s 84(4) and (5)</i>	<i>deleted by 101/1995 s 15(c)</i>	<i>15.2.1996</i>
s 84(6)	amended by 101/1995 s 15(d)	15.2.1996
s 84(7)	amended by 101/1995 s 15(e)	15.2.1996
s 84(8)	substituted by 101/1995 s 15(f)	15.2.1996
s 84(9)	amended by 101/1995 s 15(g)	15.2.1996
s 84(11)	amended by 101/1995 s 15(h)	15.2.1996
s 84(12)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
Pt 12		
s 85		
s 85(2)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 91	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 92(5)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 93(1) and (3)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 94(4)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 97	amended by 34/2001 s 4	17.1.2002
s 98	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 100	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 107(2)	amended by 101/1995 s 18 (Sch 2)	15.2.1996
s 107(3)	amended by 101/1995 s 16	15.2.1996
Sch 1	Sch substituted by 101/1995 s 17 (Sch 1)	15.2.1996

	Sch redesignated as Sch 1 by 34/2001 s 5	17.1.2002
cl 4		
cl 4(1)		
prescribed association	amended by 23/2001 s 104	15.7.2001
cl 4(4)	amended by 34/2001 s 5(a)	17.1.2002
cl 8	amended by 34/2001 s 5(b)	17.1.2002
cl 10		
cl 10(2)	amended by 34/2001 s 5(c)	17.1.2002
Sch 2	inserted by 34/2001 s 6	17.1.2002

Transitional etc provisions associated with Act or amendments

Housing Co-operatives (Housing Associations) Amendment Act 1995, Sch 3— Transitional Provisions—Registered Housing Associations

- 1 The Governor may, by proclamation, declare that a specified association incorporated under the *Associations Incorporation Act 1985* becomes, on the commencement of this Schedule, a registered housing association under the principal Act.
- 2 A proclamation made under cl 1 is subject to such conditions as are specified in the proclamation.

Historical versions

- Reprint No 1—1.1.1996
- Reprint No 2—15.2.1996
- Reprint No 3—3.7.1997
- Reprint No 4—14.12.1997
- Reprint No 5—1.7.1999
- Reprint No 6—15.7.2001
- Reprint No 7—17.1.2002