

(Reprint No. 1)

**SOUTH AUSTRALIA**

**HOUSING IMPROVEMENT ACT, 1940**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 August 1991.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

## PART I

## PRELIMINARY

Section	
1.	Short title
2.	Commencement of Act
3.	Arrangement of Act
4.	Interpretation

## PART II

## ADMINISTRATION AND FINANCIAL PROVISIONS

5.	Administration of Act
6.	Constitution of Housing Trust
7.	Constitution of body corporate to execute this Act
8.	Validity of acts of housing authority
9.	Travelling expenses of members
10.	Officers
11.	Housing authority to hold property on behalf of Crown
11a.	Application of Public Service Act
11b.	Report to Minister
11c.	Duty to furnish papers, etc.
12.	Accounts
13.	Audit
14.	Triennial investigation
15.	Annual Report
16.	General powers of the housing authority
16a.	Additional powers of housing authority
16b.	Power to buy land
17.	Exemption of gifts from succession duty
18.	Housing Improvement Fund
19.	Power of Treasurer to make loans to housing authority
20.	Power of bodies corporate to make grants or loans for housing purposes
21.	Power of Treasurer to borrow
21a.	Power of Treasurer to lend £100 000
22.	Power of housing authority to carry out conditions of gift

## PART III

## IMPROVEMENT OF SUB-STANDARD HOUSING CONDITIONS

23.	Power to declare houses unfit for habitation
24.	Appeal
25.	Power of housing authority
27.	Advances to owners
28.	Advance to be a charge on land
29.	Power to take further security
30.	Recovery of moneys owing by owner by attachment of rent payable by occupier
31.	Provision as to owners who are trustees
32.	Power to acquire lands

## PART IV

## CLEARANCE OF AREAS

33.	Power to declare clearance area
34.	Acquisition of land in clearance area
35.	Powers of housing authority as to demolition
36.	Powers of housing authority as to clearance area
37.	Streets opened by housing authority
38.	Notice to vacate buildings in reclamation area
39.	Closing streets and extinguishing easements and covenants
40.	Effect of closing street
41.	Cancellation of existing grant, etc., when land is under Real Property Act
42.	Construction of this Part

## PART V

## PROVISION OF HOUSING FOR PERSONS OF LIMITED MEANS

43.	Construction of houses
44.	Letting of houses
44a.	Letting of houses to widows of members of the armed forces
45.	Power to sell houses
46.	Rentals
47.	Regulations as to houses

## PART VI

## ASSISTANCE TO HOUSING CORPORATIONS

48. Power to transfer or lease land to body corporate

## PART VII

## CONTROL OF RENTALS OF SUB-STANDARD HOUSES

49. Application of Part  
 50. Interpretation  
 51. Classification of houses  
 52. Application of rent control to houses  
 53. Appeal from declaration of housing authority  
 54. Classification and fixing of maximum rentals of sub-standard houses  
 55. Alteration of rent or classification  
 56. Rentals payable for classified house  
 56a. Penalty for demanding rent in excess of that fixed  
 56b. Record of rents  
 56c. Duty to give receipt for rent  
 56d. Interference with use or enjoyment of premises  
 57. Subletting of classified house  
 58. Rentals of furnished houses  
 58a. Notice of rent, etc., to be displayed in certain cases  
 59. Penalty for making sale of furniture a condition of letting  
 60. Provision of certain information by housing authority  
 60a. Notices to quit void in certain cases  
 61. Orders for possession  
 61a. Duty of vendor to disclose to purchaser if house substandard  
 61b. Offence in connection with sale of substandard house

## PART VIII

## MISCELLANEOUS

63. Acquisition of land for purposes of Act  
 64. Basis of compensation  
 65. Allowance to certain displaced occupiers  
 66. Co-operation with departments and councils  
 67. Powers of entry and inspection  
 68. Obstruction, etc., of officers, etc.  
 69. Offences by occupiers and others  
 70. Power to occupier or registered mortgagee to do matters ordered to be done by owner  
 70a. House declared or which may be declared, substandard—Owner may not require occupier to do certain works, etc.  
 71. Disposition of occupiers failing to vacate premises when required to do so  
 72. Procedure at hearing and execution of warrant  
 73. General penalty  
 74. Service of notices and orders, etc.  
 75. Proof of notices, orders or documents  
 76. Continued operation of orders and notices  
 77. References to "owner" or "occupier"  
 78. Appearance of housing authority in legal proceedings  
 79. Protection of housing authority and members and officers from personal liability  
 80. Notice of action  
 81. Power to housing authority to authorize proceedings  
 82. Simplification of proof in certain cases  
 83. Documents signed by chairman, deputy chairman, or secretary to be evidence  
 84. Proof of ownership  
 84a. Arrangements to evade Act  
 85. Regulations as to standard of houses  
 86. General power to make regulations  
 87. Provision as to regulations  
 89. Proceedings  
 89a. Limitation of time for bringing proceedings  
 90. Construction of Act

## SCHEDULES

# HOUSING IMPROVEMENT ACT, 1940

being

Housing Improvement Act, 1940, No. 56 of 1940 [Assented to 5 December 1940]<sup>1</sup>

as amended by

Housing Improvement Act Amendment Act, 1942, No. 15 of 1942 [Assented to 5 November 1942]  
Housing Improvement Act Amendment Act, 1943, No. 22 of 1943 [Assented to 16 December 1943]  
Housing Improvement Act Amendment Act, 1946, No. 28 of 1946 [Assented to 5 December 1946]  
Housing Improvement Act Amendment Act, 1947, No. 20 of 1947 [Assented to 6 November 1947]  
Housing Improvement Act Amendment Act, 1950, No. 19 of 1950 [Assented to 2 November 1950]  
Housing Improvement Act Amendment Act, 1958, No. 48 of 1958 [Assented to 27 November 1958]  
Housing Improvement Act Amendment Act, 1961, No. 16 of 1961 [Assented to 2 November 1961]  
Housing Improvement Act Amendment Act, 1965, No. 31 of 1965 [Assented to 2 December 1965]  
Statutes Amendment (Housing Improvement and Excessive Rents) Act, 1966, No. 84 of 1966 [Assented to 1 December 1966]  
Housing Improvement Act Amendment Act, 1970, No. 19 of 1970 [Assented to 24 September 1970]  
Age of Majority (Reduction) Act, 1971, No. 15 of 1971 [Assented to 8 April 1971]<sup>2</sup>  
Housing Improvement Act Amendment Act, 1971, No. 64 of 1971 [Assented to 21 October 1971]  
Statutes Amendment (South Australian Housing Trust and Housing Improvement) Act, 1973, No. 78 of 1973 [Assented to 6 December 1973]  
Housing Improvement Act Amendment Act, 1978, No. 21 of 1978 [Assented to 30 March 1978]<sup>3</sup>  
Housing Improvement Act Amendment Act, 1983, No. 74 of 1983 [Assented to 10 November 1983]<sup>4</sup>  
Statutes Amendment (Public and Environmental Health) Act, 1987, No. 37 of 1987 [Assented to 23 April 1987]<sup>5</sup>

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

**An Act to provide for the improvement of sub-standard housing conditions, to provide for housing of persons of limited means, to regulate the rentals of sub-standard dwellinghouses in the metropolitan area and in certain other parts of the State, and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

## PART I

### PRELIMINARY

#### Short title

1. This Act may be cited as the *Housing Improvement Act, 1940*.

#### Commencement of Act

2. This Act shall come into operation on a day to be fixed by proclamation.

---

<sup>1</sup> Came into operation 19 December 1940: *Gaz.* 19 December 1940, p. 1551.

<sup>2</sup> Came into operation 15 April 1971: *Gaz.* 15 April 1971, p. 1598.

<sup>3</sup> Came into operation 1 December 1978, being the day on which the Residential Tenancies Act, 1978, came into operation: *Gaz.* 9 November 1978, p. 1477.

<sup>4</sup> Came into operation 1 April 1986: *Gaz.* 27 March 1986, p. 662.

<sup>5</sup> Came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1776.

**Arrangement of Act**

3. The provisions of this Act are arranged as follows:—

- PART I—Preliminary.
- PART II—Administration and financial provisions.
- PART III—Improvement of sub-standard housing conditions.
- PART IV—Clearance of areas.
- PART V—Provision of housing for persons of limited means.
- PART VI—Assistance to housing corporations.
- PART VII—Control of rentals of sub-standard houses.
- PART VIII—Miscellaneous.

**Interpretation**

4. In this Act, unless the context or subject matter otherwise requires—

- “council” means a municipal or district council:
- “fund” means the Housing Improvement Fund:
- “house” means any building (including any tent, edifice, structure or erection whether temporary or permanent) or any part thereof which is used or intended to be used as a dwelling, and includes any yard, garden, outbuilding and appurtenances belonging thereto or usually enjoyed therewith:
- “land” includes any right over land:
- “landlord” includes any person from time to time deriving title under the original landlord:

\* \* \* \* \*

“metropolitan area” means the portion of the State comprised within the municipalities of Adelaide, Brighton, Burnside, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Port Adelaide, Prospect, St. Peters, Thebarton, Unley, and Woodville, and the district council districts of Campbelltown, Enfield, Marion, Mitcham, Payneham, Walkerville, and West Torrens, and the Garden Suburb:

“Minister” means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor:

“owner”, in relation to any building or land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land or building, whether in possession or reversion, and includes also a person holding or entitled to the rents and profits of the building or land under a lease registered pursuant to *The Real Property Act, 1886-1939*, or the *Registration of Deeds Act, 1935*:

“registered mortgagee” means the mortgagee or encumbrancee under a mortgage or encumbrance registered pursuant to *The Real Property Act, 1886-1939*, or the *Registration of Deeds Act, 1935*:

“street” includes any street, road, lane, footway, square, court or alley, whether a thoroughfare or not:

“tenant” includes any person from time to time deriving title under the original tenant.

## PART II

## ADMINISTRATION AND FINANCIAL PROVISIONS

**Administration of Act**

5. (1) The Governor may from time to time by proclamation declare that the powers and duties vested in or imposed by this Act upon the housing authority shall be vested in and imposed upon the South Australian Housing Trust or shall be vested in and imposed upon a body corporate constituted in manner provided by this Part.

(2) The Governor may from time to time by proclamation declare that the said powers and duties shall cease to be vested in or imposed upon the South Australian Housing Trust and shall be vested in and imposed upon a body corporate constituted as aforesaid, and may declare that all property, rights, and liabilities vested in or possessed or incurred by the South Australian Housing Trust for the purposes of the execution of this Act shall be vested in, and attach to, and be deemed to have been made or done by or on behalf of the body corporate aforesaid; and all such rights and liabilities and any rights and remedies in respect thereof may be had and enforced by or against the said body corporate. A proclamation shall not be made under this subsection unless and until a resolution of both Houses of Parliament is passed approving the making of the proclamation.

(3) The Governor may from time to time by proclamation declare that the said powers and duties shall cease to be vested in or imposed upon the body corporate constituted as aforesaid and shall be vested in and imposed upon the South Australian Housing Trust and may declare that all property, rights, and liabilities vested in or possessed or incurred by the body corporate shall be vested in, and attach to, and be deemed to have been made or done by or on behalf of the South Australian Housing Trust; and all such rights and liabilities and any rights and remedies in respect thereof may be had and enforced by or against the South Australian Housing Trust. If any proclamation is made pursuant to this subsection the body corporate shall be deemed to be abolished. A proclamation shall not be made under this subsection unless and until a resolution of both Houses of Parliament is passed approving the making of the proclamation.

(4) Every reference in this Act to the "housing authority" shall be deemed to be a reference to the South Australian Housing Trust or to the body corporate constituted pursuant to this Division, as the case may be.

**Constitution of Housing Trust**

6. (1) For the purpose of the execution of this Act, the Governor may from time to time by regulation—

- (a) vary the number of members of the South Australian Housing Trust and fix the quorum thereof, and notwithstanding the provisions of the *South Australian Housing Trust Act, 1936-1937*, the South Australian Housing Trust as so varied shall continue to exercise the powers given to the said trust by the said Act:
- (b) provide for the appointment by the Governor of a deputy chairman or deputy chairmen of the South Australian Housing Trust:
- (c) declare that the South Australian Housing Trust may appoint committees of its members in manner provided by regulation and may delegate, subject to anything prescribed by regulation, to any such committee any powers and duties of the South Australian Housing Trust under any Act:

(d) provide that the members of the South Australian Housing Trust shall be paid such fees and salaries as are from time to time fixed by the Governor and that any part of such fees as is fixed by the Governor may, notwithstanding any provision of the *South Australian Housing Trust Act, 1936-1937*, be paid out of any fund constituted under the *South Australian Housing Trust Act, 1936-1937*:

(e) provide for any matters consequential upon or incidental to any of the matters mentioned in this subsection.

(2) Any regulation made pursuant to this section shall be as valid and effectual for all purposes as if the matters therein provided for had been provided for in this Act.

#### **Constitution of body corporate to execute this Act**

7. (1) For the purpose of the execution of this Act, the Governor may from time to time by regulation—

(a) constitute a body corporate to carry this Act into execution:

(b) determine the membership of the body corporate and provide for the manner of the appointment and the term of office of the members thereof:

(c) fix the quorum thereof:

(d) provide for the appointment of, the term of office of, and the voting powers of the chairman thereof:

(e) provide that the body corporate is to have a common seal, may sue and be sued, and may acquire and dispose of real and personal property as provided by this Act:

(f) provide that the members of the body corporate shall be paid such fees and salaries as are from time to time fixed by the Governor:

(g) declare that the body corporate may appoint committees of its members in manner provided by regulation, and may delegate, subject to anything prescribed by regulation, to any such committee any powers and duties of the body corporate under this Act:

(h) provide for any matter consequential upon or incidental to any of the matters mentioned in this subsection.

(2) Any regulation made pursuant to this section shall be as valid and effectual for all purposes as if the matters therein provided for had been provided for in this Act.

#### **Validity of acts of housing authority**

8. No act or proceeding of the housing authority shall be invalid on the ground only of any vacancy in the office of any member of the housing authority, or of any defect in the appointment of any such member.

#### **Travelling expenses of members**

9. Every member of the housing authority shall be entitled to receive reasonable travelling and other out-of-pocket expenses.

**Officers**

10. (1) The housing authority may employ such officers and servants as it requires at such remuneration as it fixes.

(2) With the approval of the Minister administering any department of the public service, the housing authority may employ or make use of the services of any person employed in that department upon any terms and conditions which are agreed upon between the Minister and the housing authority. Notwithstanding section 11, any such person shall continue for all purposes to be a member of the public service.

(3) With the approval of any local board or council, the housing authority may make use of the services of any person employed by the local board or council, upon any terms and conditions which are agreed upon between the local board or council and the housing authority.

**Housing authority to hold property on behalf of Crown**

11. All real and personal property of the housing authority shall be held by the housing authority for and on behalf of the Crown.

**Application of Public Service Act**

11a. Any member, officer, or employee of the housing authority shall not, as such, be subject to the *Public Service Act, 1967*.

**Report to Minister**

11b. The housing authority shall within fourteen days after making any decision for any capital expenditure from any moneys of the housing authority, furnish the Minister with a copy of that decision.

**Duty to furnish papers, etc.**

11c. (1) The housing authority shall furnish the Minister with such reports, documents, papers, and minutes as may be required by Parliament pursuant to any Act or pursuant to any resolution of either House of Parliament.

(2) The housing authority shall also furnish the Minister with all information on any business of the housing authority as may be required by him.

**Accounts**

12. The housing authority shall keep books of account in such manner and form as is in accordance with approved methods of accountancy and at the end of each financial year shall produce a financial statement showing accurately and in detail its receipts and expenditure and profit and loss account, and a balance-sheet.

**Audit**

13. (1) The Auditor-General shall make an annual audit of the housing authority's accounts and for the purpose of any audit may exercise any of the powers which he could exercise for the purpose of auditing the accounts of a Government department.

(2) The housing authority shall pay to the Treasurer a reasonable fee of an amount approved by the Treasurer for every audit.

**Triennial investigation**

14. Once in every three years, the Government shall cause an investigation to be made into the operations and administration of the housing authority in the execution of this Act, and a report thereon to be supplied to the Governor.

**Annual Report**

15. (1) The housing authority shall within three months after the close of each financial year prepare and present to the Treasurer the financial statement and balance-sheet aforesaid and a report on its operations during that financial year, and the report shall as soon as practicable after the receipt thereof be laid before both Houses of Parliament.

(2) The housing authority shall, within fourteen days after presenting its report and financial statement and balance-sheet to the Treasurer, file a copy thereof in the office of the Registrar of Companies; and the Registrar of Companies shall, without fee, permit any person to inspect the same at any time during office hours.

**General powers of the housing authority**

16. (1) For the purposes of and subject to this Act the housing authority may—

- (a) borrow money for the purpose of building houses in the execution of this Act;
- (b) mortgage, charge or enter into any other transaction for making any of its property security for any loan;
- (c) buy, sell, let, exchange, hire or otherwise dispose of real and personal property of any kind;
- (d) build, alter, enlarge, repair and improve houses or enter into contracts under which houses will be built, altered, enlarged, repaired or improved on behalf of the housing authority;
- (e) convert buildings into houses;
- (f) let houses and exercise in relation to any houses of the housing authority any power which a landlord has by statute or otherwise;
- (g) insure any property belonging to the housing authority;
- (h) pay bonuses or make allowances to tenants of houses of the housing authority, who show special diligence and care; and
- (i) exercise any other power necessary or convenient for carrying this Act into effect.

(2) The housing authority shall not borrow any money pursuant to this Act or mortgage or charge any of its property or give any of its property as security for any loan except with the consent in writing of the Minister.

(3) Without limitation of any other power conferred by this Act the housing authority, if satisfied that, for the development of any locality in which any housing estate of the housing authority is or is intended to be situated, it is necessary or desirable so to do, may buy any land for any purpose other than the provision of housing and may for any such purpose sell or exchange any land.

(4) The housing authority may erect houses on any land of the housing authority for disposal as provided by subsection (6). The housing authority may erect houses on land other than land of the housing authority for any person or approved body and may erect houses or buildings of any kind on land other than land of the housing authority for any department or instrumentality of the Commonwealth or of the State.

(5) With the consent of the Governor the housing authority may:—

- (a) erect on any land of the housing authority any shop, workshop, or building of any kind which, in the opinion of the Governor, it is desirable to erect for the service and convenience of persons occupying houses erected by the housing authority;
- (b) erect on any land of the housing authority any factory and any addition to a factory; provided that no factory or addition to a factory shall be erected under this paragraph unless the erection thereof is recommended by the Industries Development Committee within the meaning of the *Industries Development Act, 1941-1958*;

and

- (c) on the recommendation of the Industries Development Committee, purchase any factory and any land used in connection with that factory.

(6) The housing authority may, for such term and upon such conditions as it thinks fit let any house erected pursuant to subsection (4) of this section on land of the housing authority, or any shop, building, workshop, factory, or addition to a factory erected pursuant to subsection (5) of this section on land of the housing authority, or any factory purchased pursuant to subsection (5) of this section together with any land used in connection therewith respectively, or may sell the same upon such conditions as the housing authority thinks fit.

(7) The housing authority shall, before undertaking the erection of any house, on land other than land of the housing authority, make such arrangements as it thinks fit for payment to the housing authority for undertaking such erection.

(8) The housing authority shall in all cases provided for by this section take proper and adequate measures to secure the payment to the housing authority of any moneys due to the housing authority and remaining unpaid together with interest thereon.

(9) In this section “approved body” means a municipal or district council, or any company, firm, charitable organization or society approved either generally or specifically from time to time by the Governor on the recommendation of the housing authority.

(10) The housing authority may use, for the purposes of subsections (4) and (5) of this section, any moneys in the Housing Improvement Fund.

(11) Notwithstanding anything contained in this Act, the housing authority shall be deemed to have and to have had at all times power to erect any shops, workshops, factories, halls or buildings of any kind on land other than land of the housing authority the erection of which had been commenced or completed prior to the commencement of the *Housing Improvement Act Amendment Act, 1961*.

#### **Additional powers of housing authority**

**16a.** The housing authority may, with the consent of the Governor, carry out or cause to be carried out any work or undertaking (not otherwise authorized by this Act) which, in the opinion of the Governor, is necessary or desirable to render suitable for housing purposes any land acquired or agreed to be acquired by the housing authority or which, in the opinion of the Governor, is associated with the development of any such land. The housing authority may use any moneys in the Housing Improvement Fund for the purpose of any such work or undertaking.

**Power to buy land**

**16b.** In order to give effect to any purpose referred to in this Act or to carry out or cause to be carried out any work or undertaking referred to in this Act, the housing authority may purchase or agree to purchase any land; any such purpose, work or undertaking shall be deemed to be a purpose of this Act.

**Exemption of gifts from succession duty**

**17.** No succession duty shall be payable upon any property given, devised or bequeathed to the housing authority.

**Housing Improvement Fund**

**18. (1)** The moneys of the housing authority for the purposes of this Act shall be held by the Treasurer in a fund called the "Housing Improvement Fund".

(2) The fund shall consist of—

- (a) all moneys which are granted or lent to the housing authority by the Treasurer pursuant to this or any other Act;
- (b) all moneys given or bequeathed to the housing authority for the purposes of this Act or realized from the sale or investment of any property given, devised or bequeathed for such purpose;
- (c) all rents and other moneys paid by tenants of houses of the housing authority erected pursuant to this Act;
- (d) all other moneys arising out of transactions of the housing authority in relation to houses erected pursuant to this Act or any other property of the housing authority under this Act;
- (e) all moneys paid to the housing authority in repayment of any advances made under Part III or in payment of any interest on any such advances;
- (f) any moneys appropriated by Parliament for the purposes of this Act.

(3) The fund shall, without any further appropriation than this Act, be expended by the housing authority for the purposes of the execution and administration of this Act.

(4) The housing authority may invest in any securities of the Commonwealth or the State, or in any securities guaranteed by the Commonwealth or the State, any moneys in the Housing Improvement Fund which have been set aside as a reserve by the housing authority for the purpose of providing for future sinking fund payments in respect of any amounts advanced to the housing authority by the Treasurer.

**Power of Treasurer to make loans to housing authority**

**19.** The Treasurer may lend to the housing authority any money provided by Parliament for the purpose, for such period and on such terms and at such rate of interest as are mutually agreed upon between the Treasurer and the housing authority.

**Power of bodies corporate to make grants or loans for housing purposes**

**20. (1)** Every body corporate is hereby authorized and empowered—

- (a) to make grants of money to the Treasurer from time to time for the purpose of the provision of housing pursuant to this Act;

(b) to lend money to the Treasurer from time to time for the purpose of the provision of housing pursuant to this Act, at such low or nominal rate of interest and for such term and on such conditions as the body corporate deems fit,

notwithstanding that, apart from the provisions of this section, the body corporate has not power to make such grants or loans.

(2) Without any further appropriation than this section, the Treasurer may grant or lend to the housing authority, on such terms and conditions as are mutually agreed upon between the Treasurer and the housing authority, any money granted or lent to the Treasurer as aforesaid.

#### **Power of Treasurer to borrow**

21. (1) Without limitation of any other provision of this Act, the Treasurer may arrange to borrow, for the purposes of this Act, fifty thousand pounds in accordance with the agreement approved by the *Financial Agreement Act, 1927*.

(2) Without any further appropriation than this section, the Treasurer may lend to the housing authority any money so borrowed, for such period and on such terms and at such rate of interest as are mutually agreed upon between the Treasurer and the housing authority.

#### **Power of Treasurer to lend £100 000**

21a. Notwithstanding any provision of any other Act to the contrary and without any further appropriation than this section, the Treasurer may, from the surplus disclosed in the revenue accounts of the Treasurer for the financial year ended on the thirtieth day of June, 1943, lend to the housing authority for the purposes of this Act the sum of one hundred thousand pounds. The said sum shall be lent for such period and on such terms and subject to such conditions as the Treasurer may from time to time decide and the whole or any part thereof may, if the Treasurer so decides, be lent free of interest for any period.

#### **Power of housing authority to carry out conditions of gift**

22. If the housing authority receives any gift, devise or bequest for the purpose of assisting it to provide houses for persons of limited means, and that gift, devise or bequest is subject to any trust, condition or stipulation which cannot by reason of any other provision of this Act be given effect to, the housing authority may, notwithstanding that provision, give effect to the trust, condition or stipulation, if it is otherwise in accordance with law.

## PART III

## IMPROVEMENT OF SUB-STANDARD HOUSING CONDITIONS

**Power to declare houses unfit for habitation**

23. (1) Where a council, after making due inquiries and obtaining such reports as it deems necessary, is satisfied that any house is undesirable for human habitation or is unfit for human habitation, the council may declare that the house—

- (a) is undesirable for human habitation; or
- (b) is unfit for human habitation.

(2) Where the council so declares any house undesirable for human habitation or unfit for human habitation, the council—

(a) shall serve on the owner a copy of the declaration together with a statement in writing setting out particulars in respect to which the house is deficient, and in writing direct him within a specified time (being not less than one month after the service of the declaration)—

(i) to carry out such work in respect of the house (including, if so directed, the partial demolition of the house) as is directed in the notice; or

(ii) if the council is of opinion that it is impracticable to make the house desirable for human habitation or fit for human habitation, to demolish the house; and

(b) shall serve a copy of the declaration, statement and direction on the occupier (if any) of the house and on every registered mortgagee of the land on which the house is situate; and

(c) may, if the direction requires the house to be demolished, serve on the occupier (if any) of the house a notice in writing requiring the occupier to vacate the house within a specified period being not less than one month after the service thereof; and

(d) may, if the direction requires any work to be carried out in respect of the house pursuant to subdivision (i) of paragraph (a) hereof, serve on the occupier (if any) of the house, a notice in writing to vacate the house within a specified period, being not less than one month after the service thereof, unless the house is, to the satisfaction of the council, made to comply with the directions given by the council before the expiration of the specified period.

(3) Every person who after the expiration of the period specified in any notice served pursuant to paragraph (c) or paragraph (d) of subsection (2), inhabits or occupies the house to which the notice relates or permits or suffers any person to inhabit or occupy such house, unless the council has first certified in writing that the house has been made to comply with the directions given as aforesaid by the council, shall be guilty of an offence against this Act.

(4) Every owner who fails to comply with any direction under this section within the time specified in the direction shall be guilty of an offence against this Act unless he satisfies the court that he did not have the means to comply with the direction.

(5) If any owner fails to comply with any direction under this section within the time specified in the direction the council—

- (a) may do anything that is necessary to make the house comply with the direction or (as the case requires), may demolish the house:

- (b) may recover from the owner any expenses thereby incurred by the council:
- (c) may sell or dispose of any material taken from the house by the council, but shall if necessary first cause all such material to be cleansed or disinfected:
- (d) shall apply the proceeds of any such sale for or towards the expenses of the council aforesaid and pay the surplus (if any) in discharge of the mortgage or encumbrance of any registered mortgagee of the land upon which the house was situate or if there is more than one such registered mortgagee in accordance with the respective priorities thereof and shall pay any balance thereof remaining to the owner.

\* \* \* \* \*

(7) This section is in addition to, and not in derogation of, the powers of an authority acting under the *Public and Environmental Health Act, 1987*.

### Appeal

24. (1) Any owner of a house or registered mortgagee of the land on which a house is situate who feels aggrieved by any declaration of the council that the house is undesirable for human habitation or unfit for human habitation may within one month after a copy of the declaration has been served on him appeal therefrom to the local court of full jurisdiction nearest to the house.

(2) The court shall hear and inquire into the appeal and may either allow or dismiss the appeal and for that purpose may do all such matters and things relating thereto and in the same manner and to the same extent as it is empowered to do in the exercise of its ordinary jurisdiction, and the decision of the court shall be final and conclusive. The powers of the court shall include power to award costs.

(3) While any such appeal is pending the provisions of subsection (3), (4), and (5) of section 23 shall be suspended with respect to the house.

(4) When any such appeal is allowed, the declaration of the council that the house is undesirable or unfit for human habitation and any notice or direction served in connection with such declaration shall be deemed to be and to have been void and of no effect.

### Power of housing authority

25. (1) Where the housing authority, after making due inquiries and obtaining such reports as it deems necessary, is satisfied that any house is undesirable for human habitation or unfit for human habitation, the housing authority, after consulting with the council of the district in which the house is situated, may by notice in writing require the council within the time specified in the notice to make a declaration pursuant to section 23 with respect to the house in the form required by the housing authority and to give any direction or notice or otherwise exercise any power under the said section in the manner required by the housing authority.

(2) If the council omits to comply with any notice given as aforesaid by the housing authority, the housing authority shall have and may exercise any of the powers given to councils by section 23. The provisions of this Part shall apply with respect to any such exercise of the said powers.

(3) If the council omits to enforce any direction or notice given by it pursuant to section 23, the housing authority may enforce the direction or notice and for that purpose shall have and may exercise any of the powers given to councils by the said

section. The provisions of this Part shall apply with respect to any such exercise of the said powers.

\* \* \* \* \*

#### Advances to owners

27. (1) Where a council or the housing authority has pursuant to this Part given any direction to the owner of any house to carry out any work in respect of the house (other than a direction for the demolition of the house), the housing authority may, at the request of the owner, make an advance to the owner for such purpose from the fund.

(2) Every such advance shall be by way of loan upon such conditions as the housing authority determines and shall bear interest at such rate as the housing authority with the consent of the Treasurer determines.

(3) No such advance shall be made to any owner unless the housing authority is satisfied that, unless the advance is made, the owner would not be able without suffering undue hardship to provide the money necessary to make the house comply with the direction.

(4) At least seven days before making any such advance to any owner, the housing authority shall give to every registered mortgagee of the land upon which the house is situate notice in writing of the request to make the advance, but the failure to give any such notice shall not affect the power of the housing authority to make the advance nor affect the operation of sections 28, 29, and 30.

#### Advance to be a charge on land

28. (1) Every such advance with interest thereon at the rate determined as aforesaid by the housing authority shall be as from such date as the housing authority determines and until paid to the housing authority shall remain a charge on the land on which is situate the house in respect of which the advance was made. If every registered mortgagee of the land upon which the house is situate consents in writing to the making of the advance and to the charge being a first charge on such land, the charge shall be a first charge on such land. If every such registered mortgagee does not consent in writing as aforesaid, the charge on such land shall be subject to every mortgage or encumbrance of such land which is registered under *The Real Property Act, 1886-1939*, or, as the case may be, the *Registration of Deeds Act, 1935*, prior to a memorandum of the charge being endorsed or a memorial of the charge being registered as provided by this section.

(2) Forthwith upon any land being charged with an advance as aforesaid, the housing authority shall give notice thereof in writing under the seal of the housing authority to the Registrar-General, who shall endorse or cause to be endorsed on the appropriate folio of the register book a memorandum of the charge.

(3) If any default is made in the payment of any advance, or any instalment thereof, or any interest thereon, or any part thereof, the housing authority shall have in respect of the land referred to in the memorandum of charge, the same powers of sale as are given by *The Real Property Act, 1886-1939*, to a mortgagee under a mortgage in respect of which default has been made in the payment of the principal money or interest or any part thereof, and for such purpose the balance of the advance then unpaid shall be deemed to be the principal money secured by the charge.

(4) Upon any advance and interest thereon being fully paid to the housing authority, the housing authority shall give notice thereof in writing under the seal of the housing authority to the Registrar-General who shall endorse or cause to be endorsed on the appropriate folio of the register book, a memorandum of the removal of the charge.

(5) If any land charged with any advance is not under *The Real Property Act, 1886-1939*, the housing authority shall register in the General Registry Office a memorial of the charge or discharge thereof, as the case may be.

(6) The housing authority shall in the cases aforesaid, pay to the Registrar-General such fees as are fixed from time to time by the Registrar-General. All such fees shall be paid to the housing authority by the applicant owner.

(7) The provisions of this section shall apply notwithstanding the provisions of *The Real Property Act, 1886-1939*.

#### **Power to take further security**

29. Notwithstanding anything in this Part the housing authority may—

- (a) require any owner to whom an advance is made pursuant to this Part to give to the housing authority any security which the housing authority thinks proper for the repayment to the housing authority of any advance or instalment thereof or the payment of interest thereon; and
- (b) recover any such advance, instalment or interest as a debt due to the housing authority.

#### **Recovery of moneys owing by owner by attachment of rent payable by occupier**

30. (1) Where under any provision of this Part any moneys are payable to the housing authority by the owner of any house, and the housing authority is satisfied that the owner is not making satisfactory arrangements for the payment of such moneys, the housing authority may by notice in writing served on the occupier of the house require the occupier to pay to the housing authority, until the amount of moneys payable to the housing authority by the owner as aforesaid is satisfied, any moneys which are payable by the occupier by way of rent to the owner or to some other person on behalf of the owner.

(2) The occupier shall pay to the housing authority all rent accrued due at or accruing due after the service of the notice.

(3) Until full satisfaction of the moneys payable to the housing authority by the owner by the receipt of rent as aforesaid, the housing authority may, with regard to any arrears of rent, exercise all remedies which may be enforced by a landlord against a tenant for recovery of rent in arrear.

(4) In any case where—

- (a) the housing authority has given notice as aforesaid to any such occupier; and
- (b) the housing authority has also given to the owner aforesaid notice in writing of the giving of the said notice to the said occupier; and
- (c) the said occupier pays any such rent to the said owner and the said owner does not within twenty-four hours of the payment pay the rent to the housing authority,

the said owner shall, unless he pays to the housing authority all the said moneys payable by him to the housing authority, be guilty of an offence against this Act.

(5) This section shall be read and construed as in aid of and not in derogation from the provisions of the two last preceding sections.

**Provision as to owners who are trustees**

31. Where any owner of a house being a trustee within the meaning of the *Trustee Act, 1936*, is directed to comply with any direction given pursuant to this Part, the trustee may, notwithstanding anything to the contrary contained in the instrument (if any) creating the trust—

- (a) make the house so comply with such direction:
- (b) demolish the house and, if the trustee thinks fit, erect another house in substitution therefor or sell the land on which the house was situate:
- (c) if the area of the land upon which any house demolished as aforesaid was situate is such that a dwelling-house could not, by reason of the provisions of the *Building Act, 1923-1935*, or any other Act, be erected on the land, purchase any other land adjoining the same for the purpose of providing an allotment or allotments of land of the area required under the provisions of such Act:
- (d) pay or apply any capital money subject to the trust for or towards any such purpose:
- (e) raise any money required for or towards any such purpose by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

**Power to acquire lands**

32. (1) Where a council or the housing authority has, pursuant to this Part, directed the demolition of any house as undesirable for human habitation or unfit for human habitation, the housing authority may purchase or compulsorily acquire the land on which the house is or was erected.

(2) Where the area of any land purchased or acquired under subsection (1) is such that a dwelling-house could not, by reason of the provisions of the *Building Act, 1923-1935*, or any other Act, be erected on the land, the housing authority may purchase or acquire compulsorily any other land adjoining the same for the purpose of providing an allotment or allotments of land of the area required under the provisions of such Act.

(3) Where any land has been purchased or acquired by the housing authority under this section the housing authority may—

- (a) remove or demolish the buildings or erections (if any) on the land and sell the materials of any such buildings or erections so removed or demolished:
- (b) deal with the land or any part thereof pursuant to Part V or Part VI:
- (c) on such terms and conditions and subject to such exceptions and reservations as it thinks fit, sell the whole or any part of any such land, and any buildings or erections thereon.

(4) The provisions of section 38 shall *mutatis mutandis* apply to any house on any land purchased or acquired by the housing authority under this section.

PART IV  
CLEARANCE OF AREAS

**Power to declare clearance area**

33. (1) Where in any area there are any houses which—

- (a) in the opinion of the housing authority are unfit for human habitation; or
- (b) are in the opinion of the housing authority in any respect insanitary or unhealthy or likely to affect detrimentally the well-being of the inhabitants of the area by reason of the excessive number of buildings within the area or the bad arrangement or narrowness of streets or the insanitary condition of the area or the unsuitability of the area for human habitation or for any other reason,

and the housing authority considers that housing conditions within the area cannot be dealt with satisfactorily unless the area is dealt with under this Part as a clearance area, the housing authority may cause the area to be defined on a map and may recommend to the Governor that the area so defined should be constituted a clearance area.

(2) Before making any such recommendation the housing authority shall be satisfied that insofar as suitable accommodation for the persons of limited means who will be displaced by the clearance of the area does not already exist, the housing authority can provide, or can arrange for the provision of, such accommodation in advance of the displacements which will from time to time become necessary as the demolition of houses in the area, or in different parts thereof, proceeds.

(3) The housing authority shall—

- (a) at least twenty-eight days before submitting any such recommendation to the Governor—
  - (i) consult with every council in the municipality or district of which any part of the proposed clearance area is situate; and
  - (ii) serve on every owner and every registered mortgagee of any house, building or land in the proposed clearance area a notice describing the boundaries of the proposed clearance area and naming a convenient place where a copy of the recommendation and a plan of the proposed clearance area may be inspected at all reasonable hours, and stating that the recommendation will be submitted to the Governor:
- (b) before submitting such recommendation as aforesaid consider any objections made to the housing authority by any such council or by or on behalf of any such owner or registered mortgagee within twenty-one days after such consultation or service.

(4) When the housing authority has made such a recommendation with respect to any area, the Governor may by proclamation declare the area to be a clearance area and thereupon the area shall be constituted a clearance area.

(5) Upon any clearance area being proclaimed, the housing authority may proceed to secure the clearance of the area in one or other of the following ways, or partly in one of those ways and partly in the other of them, that is to say—

- (a) by ordering the demolition of any houses in the area; or
- (b) by acquiring any of the land comprised in the area and by undertaking or otherwise securing the demolition of the buildings thereon.

**Acquisition of land in clearance area**

34. The housing authority may purchase or compulsorily acquire any land within or adjacent to a clearance area.

**Powers of housing authority as to demolition**

35. The housing authority shall have and may exercise within a clearance area all the powers given by Part III to a council and the provisions of that Part shall apply with respect to any such exercise of the said powers.

**Powers of housing authority as to clearance area**

36. (1) The housing authority may in respect of any clearance area—

- (a) demolish, repair or reconstruct any houses, buildings or erections on the land in such area which has been purchased or taken compulsorily by the housing authority:
- (b) maintain in good repair any houses, buildings or erections on such land:
- (c) subject to this Part secure the closing of any street or part thereof or the extinguishment of any easement or restrictive covenant affecting any such land:
- (d) open any new street on any such land:
- (e) alter the levels of any such land and of streets on or adjoining such land:
- (f) make provision with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts and fixtures on or under such land or streets:
- (g) re-plan, re-subdivide and improve (subject to the provisions of the *Planning and Development Act, 1966-1967*), such area or any part thereof:
- (h) on such terms and conditions and subject to such exceptions and reservations as the housing authority thinks fit, sell such land or any part thereof and any houses, buildings or erections thereon:
- (i) deal with such land or any part thereof pursuant to the provisions of Part V or Part VI.

(2) The housing authority, before it commences to deal with any clearance area under the powers conferred on it by this section, shall consult with every council in the municipality or district of which any part of such area is situate or the representatives of any such council concerning the proposed scheme for re-subdividing and improving such area.

**Streets opened by housing authority**

37. If pursuant to the powers conferred by this Part the housing authority opens any new street, the street shall be deemed to be a public street within the meaning of the *Local Government Act, 1934-1939*, and notwithstanding anything in section 319 or section 328 or any other provision of that Act, the council shall not be entitled to recover from owners of property abutting on the street any of the cost of carrying out any of the works mentioned in those sections.

**Notice to vacate buildings in reclamation area**

38. (1) The housing authority may serve a notice in writing on the occupier of any house or building situate on any land which has been purchased or taken compulsorily by the housing authority within a clearance area requiring him to vacate the house or building within a specified period not less than one month after the service thereof.

(2) Every person who after the expiration of the period specified in the notice as aforesaid inhabits or occupies such house or building or permits or suffers any person to inhabit or occupy such house or building shall be guilty of an offence against this Act.

**Closing streets and extinguishing easements and covenants**

39. If the housing authority—

(a) is of opinion that for the effective re-planning or re-subdivision of any clearance area or any part thereof it is expedient that any street or any part of a street should be closed or that any easement or restrictive covenant should be extinguished; and

(b) has served on the owner of any land which the housing authority, after making inquiry into the matter, considers is likely to be substantially affected by such closing of a street or part of a street or extinguishment of an easement or restrictive covenant, notice of such proposed closing or extinguishment and has given to all such owners an opportunity of setting forth their objections to such closing or extinguishment; and

(c) has made provision—

(i) with respect to pipes, wires, apparatus, sewers, drains, tunnels, conduits, poles, posts, and fixtures lawfully upon, over, across, or under any such street or part thereof;

(ii) for access to any land likely to be prejudicially affected by any such closing or extinguishment;

(iii) for the payment of compensation to any person (other than a council) in whom the land comprised in any such street or part thereof is vested and to any owner of land which in the opinion of the housing authority is likely to be substantially affected by any such closing or extinguishment; and

(iv) for the rectification or other alteration of documents of title to lands the descriptions of which are likely to be affected by any closing or extinguishment,

the housing authority may, after considering all objections made pursuant to paragraph (b) of this section and if of opinion that such closing or extinguishment will not substantially injure the public or any person so objecting, make a recommendation to the Governor and the Governor may, by proclamation, close such street or part thereof or extinguish such easement or restrictive covenant accordingly.

**Effect of closing street**

40. (1) On the publication in the *Gazette* of any such proclamation closing a street or part thereof, the street or part thereof (whether it is the property of the Crown or not) shall cease to be a street and thereupon all rights, easements, or privileges existing or claimed as regards the land comprised therein either in or by the public or any person or body of persons whomsoever or whatsoever as incident to any past dedication or supposed dedication thereof or by express grant or by statute or by any past user thereof

or by any fiction of law shall cease and determine and the land comprised therein shall be vested in fee simple in the housing authority freed and discharged from all trusts, encumbrances, limitations or, restrictions whatsoever.

(2) On the publication of any such proclamation extinguishing an easement or restrictive covenant, such easement or restrictive covenant shall cease and determine.

(3) The housing authority shall, after the publication of any such proclamation, give to the Registrar-General notice thereof in writing under the seal of the housing authority.

#### **Cancellation of existing grant, etc., when land is under Real Property Act**

41. (1) Where the land comprised in any street so closed or any part thereof is land under *The Real Property Act, 1886-1939*, the Registrar-General is hereby directed and empowered to cancel the existing grant or certificate of title therefor and any instrument, entry, or memorial in the register book and any plan of subdivision altogether or to such extent as is necessary in consequence of the proclamation and the Registrar-General may issue to the housing authority a certificate of title in respect of any such land.

(2) In cancelling any grant, certificate of title, instrument, memorial, or entry in the register book or any plan of subdivision in pursuance of the power hereby conferred on him in that behalf the Registrar-General shall endorse thereon a memorandum stating the circumstances and authority under which the cancellation is made.

(3) If any such proclamation for closing a street or part thereof or extinguishing an easement or restrictive covenant affects the right, estate or interest of the registered proprietor of land under *The Real Property Act, 1886-1939*, included in any certificate of title in respect of any easement or restrictive covenant appearing thereon or implied by statute appurtenant to such land the Registrar-General shall cancel such easement or restrictive covenant to the extent to which it has been determined or extinguished upon the original of such certificate, and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Lands Titles Registration Office for the purpose of any dealing with the land comprised therein.

(4) The Registrar-General may call in such duplicate certificate of title for the purpose of such cancellation and may retain the duplicate until such cancellation is effected and refuse to register any dealing with the land comprised therein or any part thereof until the duplicate has been so brought in and lodged.

(5) Where the description of any land under *The Real Property Act, 1886-1939*, or any certificate of title is or may be affected by any proclamation closing a street or part thereof or extinguishing an easement or restrictive covenant the Registrar-General is hereby empowered to make an amendment in such description or certificate which is in his opinion necessary or desirable.

(6) Where the land comprised in any street so closed or any part thereof is not land under *The Real Property Act, 1886-1939*, the Registrar-General may, upon request in writing from the housing authority, and upon payment of such fees and charges as would have been payable if the request had been an application to bring the land under *The Real Property Act, 1886-1939*, issue to and in the name of the housing authority a certificate of title under *The Real Property Act, 1886-1939*, for the said land. Before issuing a certificate of title as aforesaid the Registrar-General may require the housing authority to deposit with him a plan or map of the land, as if the request had been an application to bring the land under *The Real Property Act, 1886-1939*.

(7) No provision of this Part shall be read and construed as disentitling the Registrar-General to demand any fees specified in or under *The Real Property Act, 1886-1939*.

---

(8) The provisions of this Part shall apply notwithstanding the provisions of *The Real Property Act, 1886-1939*.

**Construction of this Part**

42. The provisions of this Part shall be read and construed cumulatively with and not in exclusion of or derogation from the provisions of any other Act.

## PART V

## PROVISION OF HOUSING FOR PERSONS OF LIMITED MEANS

**Construction of houses**

43. (1) For the purpose of providing housing accommodation for persons of limited means the housing authority may—

- (a) purchase any land:
- (b) construct houses on or set apart for gardens, parks, open spaces or places of recreation or lay out as streets any land purchased as aforesaid or purchased or acquired by the housing authority pursuant to Part III or Part IV:

\* \* \* \* \*

- (d) purchase or take on lease any house:
- (e) maintain, repair, and generally control and manage all such houses and buildings and the land on which they are situate:
- (f) do all matters and things incidental to any of the matters aforesaid.

(2) The Governor may by regulations made on the recommendation of the housing authority determine the maximum cost of construction of any house or class or type of house or of any building to be constructed pursuant to this section.

**Letting of houses**

44. (1) The housing authority may on such terms and for such periods and subject to such covenants and conditions as the housing authority thinks fit, let or lease any house maintained by it under this Act to any person of limited means, who, in the opinion of the housing authority, after taking into account—

- (a) the existing housing accommodation of that person;
- (b) the availability of other suitable housing accommodation for such person at a rent within his means;
- (c) the number of children of the person living with him; and
- (d) such other matters as the housing authority thinks fit,

is unable to secure suitable housing accommodation otherwise than under this Act.

(2) The housing authority shall in letting or leasing any such houses give reasonable preference to persons who are displaced from houses in the execution of this Act or are occupying insanitary or overcrowded houses or have large families or are living under unsatisfactory housing conditions.

**Letting of houses to widows of members of the armed forces**

44a. (1) The housing authority may on such terms and for such periods and subject to such covenants and conditions as the housing authority thinks fit, let or lease any house maintained by it under this Act to the widow of any person who is or has been a member of any naval, military or air force of the Commonwealth or of any other part of His Majesty's Dominions or who is or has been the master or a member of the crew of any British ship and who dies from wounds inflicted, accident occurring or disease contracted whilst on service with any such force or on any such ship during any war in which His Majesty is engaged if, in the opinion of the housing authority, the widow is a person of limited means and is unable to secure suitable housing accommodation other than under this Act.

(2) The provisions of subsection (2) of section 44, shall not apply to any such letting or leasing.

#### **Power to sell houses**

45. (1) The housing authority may sell to any tenant of the housing authority any house belonging to the housing authority and erected pursuant to this Part.

(2) The sale may be either for cash or on credit, and subject to any terms and conditions which the housing authority thinks fit.

#### **Rentals**

46. (1) The housing authority shall from time to time determine the amount of rent which shall be payable by tenants of houses erected pursuant to this Part.

(2) The rental of any house shall so far as is practicable be based on the economic rental of the house and the land on which it is situate with provision for rebates in such circumstances and subject to such conditions as are determined from time to time by the housing authority.

#### **Regulations as to houses**

47. The Governor on the recommendation of the housing authority may make regulations for or with respect to the management, use, control, regulation and inspection of houses and buildings maintained by the housing authority under this Act.

PART VI

ASSISTANCE TO HOUSING CORPORATIONS

**Power to transfer or lease land to body corporate**

48. (1) For the purpose of the housing of persons of limited means, the housing authority may transfer, convey or lease to any body corporate any land of the housing authority.

(2) Any such transfer or conveyance may be voluntary or for any consideration less than the full value of the land, and any such lease may be at a nominal rental, if the housing authority is satisfied that binding arrangements have been made that the body corporate will erect houses on the land for the housing of persons of limited means and that the houses will be let at rentals suitable for the means of such persons, and that no person being a member of the body corporate will derive any profit or gain from the letting of such houses.

## PART VII

## CONTROL OF RENTALS OF SUB-STANDARD HOUSES

**Application of Part**

49. (1) This Part shall apply only within the metropolitan area and within such other parts of the State to which the Governor may by proclamation declare that this Part shall apply.

(2) The Governor may by proclamation declare that this Part shall apply to any part of the State outside the metropolitan area and may by proclamation revoke or vary any such proclamation.

**Interpretation**

50. In this Part—

“rates” means any rates or charges levied or made by a council or pursuant to the *Waterworks Act, 1932-1969*, or the *Sewerage Act, 1929-1969*.

“rent” or “rental” in relation to a house, includes any taxes or rates (other than excess water rates) payable by the tenant in respect of the house, and any amount payable by the tenant to the landlord—

(a) for the use of any furniture or accessories in or appertaining to the house;

(b) for the purpose of the repair, renovation or improvement of the house;

or

(c) for the supply or provision of electricity, gas, water, fuel or other domestic commodity, or of any domestic service, in respect of the house.

**Classification of houses**

51. The housing authority may from time to time fix classifications into which, for the purposes of the control of rentals pursuant to this Part, sub-standard houses may be classified.

**Application of rent control to houses**

52. (1) Where the housing authority, after making due inquiries and obtaining such reports as it deems necessary, is satisfied that any house is undesirable for human habitation or is unfit for human habitation, the housing authority may serve upon the owner and upon any registered mortgagee of the land on which the house is situate, a notice in writing stating that the housing authority intends to declare the house to be sub-standard for the purposes of this Part.

(2) A notice served pursuant to subsection (1)—

(a) must state the housing authority’s reasons for forming the view that the house is undesirable or unfit for human habitation;

and

(b) must fix a period of at least one month from the service of the notice during which the person served with the notice may submit to the housing authority any matters that he wishes the authority to consider before making a declaration under subsection (3).

(3) After considering all matters submitted to it pursuant to subsection (2)(b), the housing authority may, by notice published in the *Gazette*, declare the house to be substandard for the purposes of this Part.

(4) The housing authority may, without proceeding to make a declaration under subsection (3), withdraw a notice served under subsection (1).

#### **Appeal from declaration of housing authority**

53. (1) Any owner of a house or registered mortgagee of the land on which a house is situate who feels aggrieved by any declaration of the housing authority that the house is sub-standard for the purposes of this Part may within one month after the publication of the declaration in the *Gazette* appeal therefrom to the local court of full jurisdiction nearest to the house.

(2) The court shall hear and inquire into the appeal, and may either allow or dismiss the appeal, and for that purpose may do all such matters and things relating thereto, and in the same manner and to the same extent as it is empowered to do in the exercise of its ordinary jurisdiction, and the decision of the court shall be final and conclusive. The powers of the court shall include power to award costs.

(3) Whilst any such appeal is pending, the provisions of section 54 shall be suspended with respect to the house.

(4) When any such appeal is allowed the declaration of the housing authority that the house is sub-standard for the purposes of this Part, shall be deemed to be and to have been void and of no effect.

#### **Classification and fixing of maximum rentals of sub-standard houses**

54. (1) After the expiration of one month from the publication in the *Gazette* of any declaration relating to a house or, if any appeal is made in respect of any such house and is disallowed, after the determination of such appeal, the housing authority may by notice in the *Gazette*—

(a) fix the classification (if any) of the house:

(b) fix the maximum rental per week which shall be payable in respect of the house:

(c) fix the date (which shall be a date not earlier than the date of the publication of the notice in the *Gazette*) from which the notice shall come into force.

(2) Every such notice shall come into force from the date specified in the notice.

(3) In fixing the maximum rental payable in respect of any house, the housing authority shall so far as practicable, fix rentals which shall be uniform for houses of similar condition and accommodation in the same locality; and in fixing the maximum rental payable in respect of any house, the housing authority shall take into account the accommodation provided in the house, and its state of repair and general condition, and may take into account with respect to the house any of the matters mentioned in section 85, whether or not regulations have been made under that section.

#### **Alteration of rent or classification**

55. (1) The housing authority may, from time to time, after making due inquiries and obtaining such reports as it deems necessary, by notice in the *Gazette*, vary the classification of, or alter the maximum rental payable in respect of any house or part thereof, as the case may be, included in any notice under section 54, 57, or 58.

If any maximum rental is altered as aforesaid, the rental so altered shall from the date specified in the said notice (which shall be a date not earlier than the date of the publication of the notice in the *Gazette*) be the maximum weekly rental of the house or part thereof, as the case may be, for the purposes of this Part.

(2) If after making due inquiries and obtaining such reports as it deems necessary, the housing authority is of opinion that any house included in any declaration under section 52 has ceased to be undesirable for human habitation or unfit for human habitation, as the case may be, the housing authority may by notice in the *Gazette* revoke the declaration made pursuant to section 52. Upon publication as aforesaid any notice previously given fixing the maximum rental of the house, or of any part thereof, shall from the date of such publication cease to have any force.

(3) Any person interested may at any time make application in writing to the housing authority for the exercise of any of the powers given by this section.

#### **Rentals payable for classified house**

**56.** (1) During the time any notice fixing the maximum rental of any house or any part thereof is in force under this Part, and notwithstanding any change in ownership or occupation of the house or part, the maximum rent per week which shall be payable in respect of the house or part thereof, as the case may be, shall be that fixed as aforesaid by the housing authority.

(2) Any amount by which the rent of the said house or part thereof, as the case may be, is in excess of the said maximum rental shall, notwithstanding any agreement to the contrary, be irrecoverable.

(3) Where any sum has been paid on account of any rent, being a sum which by virtue of this Part would have been irrecoverable by the landlord, the sum so paid shall at any time within six months after the date of payment, be recoverable from the landlord who received the payment or his legal personal representative, by the tenant by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that tenant from any rent payable within such six months by him to such landlord.

(4) If any person in any rent book or similar document makes any entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of this Part is irrecoverable, he shall be guilty of an offence against this Act.

#### **Penalty for demanding rent in excess of that fixed**

**56a.** (1) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully recovers as rent in respect of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part, any sum which by virtue of this Part is irrecoverable, shall be guilty of an offence against this Act.

(2) Any person who is knowingly a party to any contract or arrangement under which any sum is paid or is agreed to be paid to that person as rent for any house in respect of which a notice fixing the maximum rental thereof is in force under this Part shall if that sum is, by virtue of this Part, irrecoverable, be guilty of an offence against this Act.

#### **Record of rents**

**56b.** (1) Any landlord of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part who fails, by himself or his agent, to keep or cause to be kept, a record showing the rent received in respect of that house, shall be guilty of an offence against this Act.

(2) Any landlord of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part, or any agent of any such landlord, who wilfully makes or wilfully allows to be retained, in any record showing the rent of that house, any entry which is false in a material particular, shall be guilty of an offence against this Act.

#### **Duty to give receipt for rent**

**56c.** Any person who, whether as principal or agent or in any other capacity—

- (a) receives any payment of rent in respect of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part; and
- (b) within twenty-four hours after the making of the payment, fails to give or cause to be given to the person making the payment a receipt (whether by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the premises in respect of which the payment is made,

shall be guilty of an offence against this Act.

#### **Interference with use or enjoyment of premises**

**56d.** (1) Any person who, without the consent of the tenant of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part, or without reasonable cause (proof whereof shall lie upon the defendant), does, or causes to be done, any act, or omits, or causes to be omitted any act whereby the ordinary use or enjoyment by the tenant of the house or of any furniture or other goods let therewith, or of any conveniences usually available to the tenant, or of any service supplied to or provided in connection with the house is interfered with or restricted, shall be guilty of an offence against this Act.

(2) Where the landlord, or any agent or servant of the landlord, has been convicted of an offence under subsection (1) of this section, the court may order the landlord to do such things as are necessary to enable the tenant to resume the ordinary use or enjoyment of the house, furniture, goods, conveniences, or service.

(3) Any landlord against whom an order is made under subsection (2) of this section who fails or neglects to comply with the order shall be guilty of an offence against this Act.

(4) For the purpose of this section, conveniences shall be deemed to be usually available to the tenant where, before the use of the conveniences was interfered with or restricted without his consent, he was allowed, at all times during the tenancy to use those conveniences as he desired or was allowed to use those conveniences at times permitted by the landlord.

#### **Subletting of classified house**

**57.** (1) If any notice fixing the maximum rental of any house is in force under this Part, the housing authority may by notice in the *Gazette* fix the maximum rental per week which shall be payable in respect of the letting or subletting of any part of the house. Any notice published as aforesaid shall come into force from the date specified in the notice (which shall be a date not earlier than the date of the publication of the notice in the *Gazette*).

(2) If the rental for any part let or sublet is not fixed as aforesaid, the maximum rental per week which shall be payable in respect of the letting or subletting of that part shall be a rental which bears to the maximum rental fixed for the house the same proportion as the number of rooms so let or sublet bears to the total number of rooms in the house.

(3) The maximum rental payable in respect of the letting or subletting of part of a house may be fixed in the same notice by which the maximum rental payable in respect of the whole of the house is fixed.

#### **Rentals of furnished houses**

**58.** (1) If any notice fixing the maximum rental of any house is in force under this Part, and the house or any part thereof is let at a rental which includes payments for the use of any furniture, the housing authority may by notice in the *Gazette* fix the maximum rental per week which shall be payable in respect of the house or part thereof including any payment for the use of the furniture. Any notice published as aforesaid shall come into force from the date specified in the notice (which shall be a date not earlier than the date of the publication of the notice in the *Gazette*).

(2) If the rental for the house or part thereof is not fixed as aforesaid, then the maximum rental per week thereof, including any payment for the use of the furniture, shall be the maximum rental per week fixed pursuant to section 54 or 57, as the case may be.

#### **Notice of rent, etc., to be displayed in certain cases**

**58a.** (1) If any notice fixing the maximum rental of any part of a house is in force under this Part, the housing authority may from time to time by notice in writing given to the landlord, direct that, during such time as is stated in the notice, the amount of the rental so fixed shall be shown on a notice or placard kept displayed in such part of the house.

(2) Any landlord to whom any such direction is applicable and who wilfully fails to comply with the direction shall be guilty of an offence against this Act and liable to a penalty not exceeding forty dollars.

#### **Penalty for making sale of furniture a condition of letting**

**59.** (1) A person shall not, in consideration of the grant, renewal or continuance of a tenancy of a house in respect of which a notice fixing the maximum rental thereof is in force under this Part, require the purchase of any furniture and any agreement for any such purchase shall be void. Any person who whether as principal or agent or in any other capacity makes it a condition of the grant, renewal or continuance of the tenancy of any such house that the tenant shall purchase any furniture shall be guilty of an offence against this Act.

(2) A person shall not, in consideration of the grant, renewal or continuance of a tenancy of a house in respect of which a notice fixing the maximum rental thereof is in force under this Part, require the payment of any fine, premium, or other like sum in addition to the rent and any person who whether as principal or agent or in any other capacity requires the payment of any such fine, premium, or other like sum shall be guilty of an offence against this Act.

(2a) Any person who whether as principal or agent or in any other capacity pays, gives, or recovers any consideration for obtaining or making available a key of any house in respect of which a notice fixing the maximum rental thereof is in force under this Part, shall be guilty of an offence against this Act.

(3) Any amount paid by way of any such purchase of furniture, or by way of any such fine, premium, or sum, or for obtaining or making available any such key, shall be recoverable by the person by whom it was paid from the person to whom it was paid, and may, without prejudice to any other method of recovery, be deducted from any rent payable in respect of the house by the person first-mentioned in this subsection to the person second-mentioned in this subsection.

**Provision of certain information by housing authority**

60. (1) The housing authority shall, upon receiving a written application and upon payment of the prescribed fee, provide the applicant with a statement in writing—

(a) as to whether, as at the date of the statement—

- (i) a notice stating the intention of the housing authority to declare the house described in the application to be substandard has been served upon the owner, or upon a registered mortgagee, of the land on which the house is situated and, if so, the date of service of the notice and the housing authority's reasons, at the date of the statement, for holding the view that the house is undesirable or unfit for human habitation;
- (ii) a notice declaring the house to be substandard has been published in the *Gazette* and is in force and, if so, the date of publication;
- (iii) a notice fixing the maximum rental payable in respect of the house has been published in the *Gazette* and is in force and, if so, the amount of the maximum rental;

and

(b) containing such other information as may be required by regulation.

(2) Subsection (1)(a)(i) does not apply to a notice that has been withdrawn by the housing authority.

**Notices to quit void in certain cases**

60a. (1) Where—

- (a) the housing authority has, as provided by subsection (1) of section 52 of this Act, served a notice in writing of its intention to declare a house substandard and such notice has not been withdrawn; and
- (b) notice to quit is given by or on behalf of the landlord to any tenant of the house, whether before or after the service of the notice by the housing authority but before a notice under this Act fixing the maximum rental of the house comes into force under this Part, the notice to quit shall have no force or effect unless—
  - (a) the tenant has failed to pay rental in accordance with the conditions of the tenancy; or
  - (b) the local court of full jurisdiction nearest the house confirms the giving of the notice to quit as provided for by subsection (2) of this section.

(2) A landlord who has given, or who proposes to give, any such notice to quit may apply to the local court for an order confirming the notice to quit, and the court may, if it is of opinion that, having regard to the conduct of the landlord and the tenant, the notice to quit was not given or is not about to be given, as the case may be, in consequence of or in expectation of the notice of intention to declare the house to be substandard, confirm the notice to quit.

(3) Where the notice to quit was given before the notice of intention to declare the house to be substandard was served, the local court may so confirm the notice to quit as having effect on the day that it was given.

(4) This section shall not apply to or in relation to a residential tenancy agreement within the meaning of the *Residential Tenancies Act, 1978*, to which that Act applies.

**Orders for possession**

61. (1) After the commencement of this Act, no order or judgment for the recovery of possession of a house in respect of which a notice fixing the maximum rental is in force under this Part, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the rate agreed at the time of the publication of the said notice as modified by this Part, unless—

- (a) the tenant has committed waste, or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing, suffering, or permitting the premises to be used for an immoral or illegal purpose, and the court considers it reasonable to make such an order or give such judgment; or
- (ab) the tenant has contravened or failed to comply with any condition of the tenancy and the court considers it reasonable to make such an order or give such a judgment; or
- (b) the tenant, by sub-letting the house or any part thereof, or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make such an order or give such judgment; or
- (c) the premises are required by the landlord for the occupation of the landlord or the spouse, son, daughter, son-in-law, daughter-in-law, father or mother of the landlord; or
- (d) the premises are reasonably required by the landlord for the occupation of some person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, considers it reasonable to make such an order or give such judgment; or
- (e) the landlord has entered into a contract to sell the house, under which contract he is obliged to give vacant possession of the house to the buyer, and has received not less than twenty per centum of the purchase-money; or
- (f) the tenant has given notice of his intention to quit, and in consequence of that notice the landlord has contracted to let the house or has taken other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
- (g) the house is reasonably required by the landlord for demolition, or for repair or reconstruction to a substantial extent, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it; or
- (h) the house is reasonably required by the landlord for the purpose of enabling him to comply with the requirements of a council the *South Australian Health Commission* or the housing authority; or
- (i) the tenant was in the employment of the landlord and the house was let to him in consequence of that employment, and he has ceased to be in that employment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the commencement of this Act or the coming into force of any notice under section 54 with respect to the house, and not executed, at any subsequent time, the court may stay or

suspend execution of the order or judgment or postpone the date of possession, for such period or periods as it shall think fit, either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise, as the court shall think fit, and if such conditions are complied with, the court may, if it thinks fit, discharge or rescind such order or judgment.

(3) Where an order or judgment for the recovery of possession of a house has been made pursuant to paragraph (c), (d), (g) or (h) of subsection (1) of this section, a person who, without the consent of the housing authority, lets the house otherwise than to the persons for whose occupation the house was required under paragraph (c) or (d) or lets the house before the purpose for which the order or judgment was given under paragraph (g) or (h) has been carried out, shall be guilty of an offence against this Act.

(3a) No order for costs shall be made in respect of proceedings for the recovery of possession of a house in respect of which a notice fixing the maximum rental is in force under this Part unless the court is of the opinion that the conduct of a party to the proceedings has been unreasonable, vexatious or oppressive.

(4) Notwithstanding anything in the *Local Courts Act, 1926*, or any other Act, a warrant for delivery of possession of a house which pursuant to such Act and apart from this section would remain in force for any fixed period prescribed in that behalf, shall remain in force for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such fixed period, direct.

(5) This section shall not apply to any proceedings by the housing authority or a local board pursuant to this Act.

(6) A person who, otherwise than in pursuance of the order of a court of competent jurisdiction, evicts or ejects a tenant from a house in respect of which a notice fixing the maximum rental is in force under this Part shall be guilty of an offence against this Act.

(7) This section shall not apply to or in relation to a residential tenancy agreement within the meaning of the *Residential Tenancies Act, 1978*, to which that Act applies.

#### **Duty of vendor to disclose to purchaser if house substandard**

**61a.** Where there is in force a declaration that any house is substandard for the purposes of this Part or notice has pursuant to section 52 of this Act been served on the owner stating that the housing authority intends to declare the house to be substandard for the purposes of this Part, any agreement for the sale and purchase of such house shall be voidable at the option of the purchaser unless the owner thereof gives to the purchaser notice in writing of the declaration that the house is substandard or, as the case may be, that a notice has been served as aforesaid.

#### **Offence in connection with sale of substandard house**

**61b.** Where—

- (a) there is in force a declaration that any house is substandard for the purposes of this Part; or
- (b) notice has pursuant to subsection (1) of section 52 of this Act been served on the owner of any house stating that the housing authority intends to declare the house to be substandard for the purposes of this Part and such notice has not been withdrawn by the housing authority,

any person who publishes or causes to be published any statement which—

- (i) is intended by such person or by any other person or apparently intended by such person or by any other person to promote the sale or disposal of the house; and

---

(ii) does not contain a clear reference to such declaration or to the service of such notice, as the case may require,

shall be guilty of an offence against this Act punishable upon conviction by a penalty not exceeding two hundred dollars for a first offence and four hundred dollars for any subsequent offence.

\* \* \* \* \*

## PART VIII

## MISCELLANEOUS

**Acquisition of land for purposes of Act**

63. The housing authority may acquire land for the purposes of this Act under and in accordance with the *Land Acquisition Act, 1969*.

**Basis of compensation**

64. In determining whether any, and what compensation is to be made for land acquired for the purposes of this Act, the following provisions (in addition to the provisions of the *Land Acquisition Act, 1969*) shall apply:—

- I. In the case of a house or building which the housing authority or a council has, whether pursuant to this or any other Act, directed to be demolished, the value of the house or building (except insofar as the materials thereof have any net sale value) shall be disregarded:
- II. Where any allotment of land acquired is such that a dwelling-house or other building could not, by reason of the provisions of the *Building Act, 1923-1935*, or any other Act, be erected on the allotment, that fact shall be taken into account in assessing compensation:
- III. Where in the opinion of the court assessing the compensation, the owner of the land has expended moneys on any building thereon, with the intention of increasing the amount of compensation to be claimed by the owner, an amount equal to the amount so expended or to the added value claimed by reason of the expenditure shall be disallowed in assessing compensation:
- IV. Where the court is of opinion that the rent charged for any building (having regard to the actual value of the building and the condition of repair thereof) is for any reason excessive, such portion of the rent as the court may consider to be excessive shall be disregarded in assessing compensation.

**Allowance to certain displaced occupiers**

65. (1) The housing authority may in its absolute discretion pay to any person displaced in the execution of this Act from any house or building such reasonable allowance as it thinks fit towards his expenses in removing to another house or building.

(2) Where any such person is carrying on any trade or business in such house or building the housing authority may in its absolute discretion pay to such person (whether or not in addition to any allowance under the last preceding subsection), such reasonable allowance as it thinks fit towards compensating the loss which in its opinion he will sustain by reason of the disturbance of his trade or business consequent upon his displacement from such house or building.

(3) Where any such person is the owner of such house or building, the housing authority may with the approval of the Governor pay to such person (whether or not in addition to any allowance under the preceding provisions of this section) such *ex gratia* payment as it thinks fit.

**Co-operation with departments and councils**

66. (1) Where the exercise of any powers or the discharge of any duties by the housing authority may affect the exercise of any powers or the discharge of any duties by any Government department or by a council, the housing authority shall so far as practicable, confer and co-operate with that department or council.

(2) Any question, difference or dispute, arising or about to arise between the housing authority and any such department or council with respect to the exercise of any powers or the discharge of any duties by either or both of them, may be finally and conclusively determined by the Governor.

#### **Powers of entry and inspection**

**67.** In the execution of this Act, any member of the housing authority or any officer of the housing authority or other person authorized by the housing authority and any officer of a council or other person authorized by a council, may enter into and upon any premises at any reasonable hour for the purposes of—

- (a) examining the condition, standard of sanitation and hygiene, and state of repair of the premises:
- (b) ascertaining whether any of the provisions of this Act are being or have been contravened:
- (c) executing any work authorized to be executed or made by or under this Act:
- (d) generally, enforcing the provisions of this Act.

#### **Obstruction, etc., of officers, etc.**

**68.** Every person who—

- (a) obstructs, hinders, impedes, resists or opposes; or
- (b) refuses admission to any premises to,

any member of the housing authority or any officer or person authorized by the housing authority or a council, in the performance of anything which such member, officer or person is empowered or required by or under this Act to do, shall be guilty of an offence against this Act.

#### **Offences by occupiers and others**

**69.** (1) If the occupier of any premises or any other person prevents, obstructs or hinders the owner from or in obeying or carrying into effect any of the provisions of this Act, such occupier or person shall be guilty of an offence against this Act.

(2) If the occupier of any premises when requested by or on behalf of the housing authority or a council to state the name of the owner of the premises refuses or wilfully omits to disclose or wilfully misstates the same, he shall be guilty of an offence against this Act.

#### **Power to occupier or registered mortgagee to do matters ordered to be done by owner**

**70.** (1) Where by or under this Act the owner of any house is required to do any act, matter or thing or execute any works, and such owner fails or refuses to do such act, matter or thing, or execute such works, the occupier of the house or any registered mortgagee of the land on which the house is situate may do such act, matter or thing, or execute such works.

(2) Any expenses thereby incurred by any such occupier—

- (a) shall be recoverable by the occupier from the owner as money paid to the use of the owner; or
- (b) may be deducted by the occupier from or set off against any rent then due or thereafter at any time to become due to the owner,

notwithstanding any covenant or agreement whatsoever to the contrary.

(3) Any expenses thereby incurred by any such mortgagee—

- (a) shall be recoverable by the mortgagee from the owner as money paid to the use of the owner; or
- (b) on notice in writing to the mortgagor by the mortgagee, shall be deemed to be added to the principal sum owing under the mortgage, and until repaid shall bear interest at the same rate and payable at the same times as is provided in the mortgage for the payment of interest on the principal sum owing under the mortgage,

notwithstanding any covenant or agreement whatsoever to the contrary. The provisions of this subsection shall apply notwithstanding the provisions of *The Real Property Act, 1886-1939*.

**House declared or which may be declared, substandard—Owner may not require occupier to do certain works, etc.**

**70a.** (1) If the housing authority has, as provided by subsection (1) of section 52 of this Act, served a notice in writing of its intention to declare a house to be substandard, then, notwithstanding any covenant, or agreement whatsoever to the contrary and whether or not the house has subsequently been so declared to be substandard—

- (a) it shall not be lawful for the owner of the house to require the tenant or occupier thereof to do any act, matter or thing which is, or to execute any works which are, necessary to ensure that the house will comply with the standards prescribed by regulations in force under section 85 of this Act; and
- (b) the cost of any such act, matter, thing or works shall not be recoverable from the tenant or occupier by the owner.

(2) Any person who whether as principal or agent or in any other capacity makes it a condition of the grant, renewal or continuance of the tenancy of any such house that the tenant or occupier shall do any such act, matter or thing or execute any such works shall be guilty of an offence against this Act.

**Dispossession of occupiers failing to vacate premises when required to do so**

**71.** Where any person, after he has been required under this Act by the housing authority or a council to vacate any house or building, refuses or neglects to vacate the same, any person authorized by the housing authority or, as the case may be, the council, may apply upon a complaint to be laid by him in the form set out in the first schedule to this Act or to the like effect to any justice, and the justice shall issue a summons in the form set out in the second schedule to this Act or to the like effect calling upon the occupier of such house or building to appear at a time and place to be therein specified before a court of summary jurisdiction consisting of a special magistrate sitting without any other justice or justices and such court may hear and determine the matter of the complaint in a summary way *ex parte* or otherwise.

**Procedure at hearing and execution of warrant**

**72.** (1) On the production of a copy of the notice requiring the occupier to vacate the house or building and upon proof to the satisfaction of the court at the time and place specified in the summons or at any adjourned hearing of the said complaint that the house or building referred to in the summons is the same as is referred to in the said notice, a warrant shall be issued by the special magistrate constituting the court or any other justice, which may be in the form set out in the third schedule to this Act or to the like effect.

(2) Any member of the police force or bailiff to whom the warrant is directed, may forthwith execute the same according to the tenor and exigency thereof in the same manner as any warrant of possession or writ of possession may be executed.

(3) The jurisdiction of the court shall not be taken away or deemed to be ousted by any claim of title, question of property or suggestion of right whether made *bona fide* or otherwise which may be raised at any such hearing as aforesaid.

#### General penalty

73. Every person guilty of an offence against this Act shall—

(a) be liable to the penalty expressly provided therefor; or

(b) if no penalty is expressly provided, be liable to a penalty of not more than one hundred dollars and, in the case of any offence which is continued or repeated after a conviction or order of any court in relation to the offence, to a further penalty of not more than ten dollars for every day on which the offence is so continued or repeated.

#### Service of notices and orders, etc.

74. (1) Any notice or other document by or under this Act, required or authorized to be given to, or served on any person may be so given or served—

(a) by delivering the same to such person; or

(b) by leaving the same at his usual or last-known place of abode or business; or

(c) by forwarding the same by post in a pre-paid letter addressed to such person at his usual or last-known place of abode or business.

(2) Any such notice or document if addressed to the occupier of premises may be given or served by delivering the same or a true copy thereof to some person on the premises apparently of or over the age of eighteen years, or if there is no such person on the premises to or on whom the same can be so given or served by fixing the same on some conspicuous part of the premises.

(3) Where any such notice or document is required to be given to or served on a person whose name or address is unknown, it may be given or served by publishing it three times, at intervals of not less than one week between any two publications, in the *Gazette* and in a newspaper generally circulating in South Australia.

(4) If the owner or registered mortgagee of any land is absent from South Australia, or if his address, after reasonable inquiries and searches in the office of the Registrar-General, cannot be found, any notice or document by or under this Act required to be given to or served upon such owner or registered mortgagee may be given to any agent or other person in South Australia to whom any rents or profits in respect of the land are paid or, as the case may be, to whom any payments under the mortgage or encumbrance of the registered mortgagee are paid; and if there is no such agent or person in South Australia, any such notice or document may be given or served in manner provided by subsection (3).

(5) Any notice or other document by or under this Act required to be given to or served on the owner or occupier of any premises may, if the name of the owner or occupier is not known, be addressed to him by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice or document is given or served without further name or description.

(6) If there are more occupiers than one it shall be sufficient if any such notice or other document is given to or served on any one of them, and the name of any one of them is specified with the addition of the words "and others".

(7) The failure or omission to give or serve any notice or other document to or on the owner or any mortgagee shall not affect the validity of the giving or service of the same to or on the occupier; and the failure or omission to give or serve any notice or other document to or on the occupier or any mortgagee shall not affect the validity of the giving or service of the same to or on the owner; and the failure or omission to give or serve any notice or other document to or on the owner or occupier shall not affect the validity of the giving or service of the same to or on any mortgagee.

(8) Any document may be served on the housing authority—

- (a) by delivering the same to the chairman or secretary of the housing authority;  
or
- (b) by forwarding the same by post in a prepaid letter addressed to the chairman or secretary of the housing authority.

#### **Proof of notices, orders or documents**

75. (1) In all proceedings in which any notice or other document issued, given or served under this Act has to be proved—

- (a) the defendant shall be deemed to have received notice to produce it; and
- (b) until the contrary is shown, the due issue, giving, or service thereof may be sufficiently proved by or on behalf of the complainant by the production of what purports to be a copy bearing what purports to be a certificate under the hand of an officer of the housing authority or, as the case may be, the council, that the copy is a true copy of the original and that the original was served on the date specified in the certificate.

(2) The validity of any notice or other document, or of the issue, giving, or service thereof shall not be affected by any error, misdescription, or irregularity which in the opinion of the court is not likely to mislead or which in fact does not mislead.

#### **Continued operation of orders and notices**

76. All notices or other documents required by or under this Act to be given to or served on any owner, occupier, or mortgagee shall, if the same have once been duly given to or served on any owner, occupier, or mortgagee, be binding on all persons claiming by, from or under such owner, occupier, or mortgagee and on all subsequent owners or occupiers, or transferees from such mortgagee, to the same extent as if given to or served on such persons claiming as aforesaid or subsequent owners or occupiers or transferees respectively.

#### **References to "owner" or "occupier"**

77. Whenever in any proceedings under this Act, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises without name or further description.

#### **Appearance of housing authority in legal proceedings**

78. (1) The housing authority may appear before any court or in any legal proceeding by any officer or member of the housing authority authorized by the housing authority.

(2) Any officer or member so authorized may in the name of the housing authority institute and carry on any legal proceeding which the housing authority is authorized to institute and carry on under this Act.

#### **Protection of housing authority and members and officers from personal liability**

79. (1) No contract entered into by or on behalf of the housing authority and no matter or thing done by the housing authority or by any other person whomsoever acting under the direction or authority of the housing authority, or of this Act or of any proclamation or regulation made under this Act shall (if the matter or thing was done or the contract was entered into *bona fide* for the purpose of executing this Act or the regulations) subject them or any of them personally to any action, liability, claim, or demand whatsoever.

(2) Any expense incurred by the housing authority or any such member, officer, or other person acting as aforesaid, shall be deemed to be an expense authorized by this Act.

#### **Notice of action**

80. (1) An action shall not be brought against the housing authority or any member or officer thereof or any other person for anything done or intended or omitted to be done by or under this Act until the expiration of one month after notice in writing has been served on the intended defendant stating the cause of action, and the name and place of abode or business of the intended plaintiff, and of his solicitor (if any).

(2) On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such notice.

(3) Unless such notice is proved judgment shall be entered for the defendant.

(4) Every such action shall be commenced within twelve months next after the accruing of the cause of action, and not afterwards.

#### **Power to housing authority to authorize proceedings**

81. (1) The housing authority may direct either generally or in any particular case proceedings to be taken in respect of breaches of or offences against this Act wherever committed.

(2) Any officer of the housing authority, member of the police force, or other person authorized in that behalf by the housing authority may prosecute for any breach of or offence against this Act.

#### **Simplification of proof in certain cases**

82. In any prosecution or other legal proceedings under this Act no proof shall be required—

- (a) of the persons constituting or the proper constitution of or the extent of the jurisdiction of the housing authority:
- (b) of any order or authority to prosecute:
- (c) of the particular or general appointment of any officer of the housing authority:
- (d) of the presence of a quorum of the housing authority making any order, notice, direction, declaration, recommendation, approval, or requirement at the making thereof until evidence is given to the contrary.

**Documents signed by chairman, deputy chairman, or secretary to be evidence**

83. (1) All documents whatever purporting to be issued or written by or under the direction of the housing authority, and to be signed by the chairman, deputy chairman, secretary, or acting secretary of the housing authority shall be received as evidence in all courts of law, and shall be deemed to be issued or written by or under the direction of the housing authority, without further proof unless the contrary is shown.

(2) All courts, and all persons having by law or by consent of parties, authority to hear, receive, and examine evidence, shall take judicial notice of the signature of the chairman, deputy chairman, secretary or acting secretary of the housing authority, where such signature is attached, for the purpose of verifying any document whatsoever under this Act.

**Proof of ownership**

84. (1) In any legal proceedings under this Act—

- (a) evidence that the person proceeded against is rated in respect of any land or premises to any general rate in the municipality or district council district in which such land or premises are situate; or
- (b) evidence by the certificate of the Registrar-General that any person appears from any memorial of registration of any deed, conveyance, or other instrument to be the owner, proprietor or mortgagee of any land; or
- (c) evidence by a certificate signed by the Registrar-General, that any person's name appears in any register book kept under *The Real Property Act, 1886-1939*, as owner, proprietor, or mortgagee of any land,

shall (until the contrary is proved) be evidence that such person is owner, proprietor, mortgagee or occupier (as the case may be) of such land or premises.

(2) If the person appearing to be the owner of any land is absent from South Australia, or if his address cannot after reasonable inquiries and searches in the office of the Registrar-General be found, any agent or person authorized to deal with the land in any way shall for the purposes of any legal proceedings under this Act be deemed to be such owner: Provided that—

- (a) such agent or person may recover from such owner any penalty in which he has been convicted, or any expenses to which he has been put or any sums of money or costs which he has expended in and about such land, pursuant to this Act, whether under the compulsion of legal process or not; and
- (b) nothing herein shall prejudice, exclude, or take away any other methods of proof.

**Arrangements to evade Act**

84a. Any contract or arrangement whether oral or in writing the purpose or effect of which is either directly or indirectly to defeat, evade or prevent the operation of this Act shall be null and void.

**Regulations as to standard of houses**

85. For the purpose of prescribing standards on non-compliance with which any house may be declared to be undesirable for human habitation or unfit for human habitation, the Governor, on the recommendation of the housing authority, may make regulations for or with respect to—

- (a) the drainage, sanitation, ventilation, lighting, cleanliness and repair of houses:

- (b) the construction, condition and situation of houses:
- (c) the dimensions, cubical extent and height of rooms of houses:
- (d) the protection of houses from damp:
- (e) the provision in houses of adequate water supply, and bathing, laundry, and cooking facilities and sanitary conveniences:
- (f) the freedom of houses from infestation by vermin and rats:
- (g) generally, prescribing standards of sanitation and hygiene for houses.

#### General power to make regulations

86. The Governor on the recommendation of the housing authority may make regulations providing for the execution of any matter or thing arising under and consistent with this Act, and not expressly provided for in this Act, and more fully carrying out the objects and purposes of this Act, and for guarding against evasions and violations of this Act.

#### Provision as to regulations

##### 87. Regulations under this Act—

- (a) may be made to apply or to have operation throughout the whole or any part of the State or throughout the whole or any part of any municipality or district council district:
- (b) may be of general or specially limited application according to time, place or circumstances:
- (c) may (without affecting any general power to confer powers and impose duties by regulation) confer powers or impose duties in connection with the regulations on the housing authority, officers or servants of the housing authority, members of the police force, owners or occupiers of houses, or other persons:
- (d) may leave any matter or thing to be from time to time determined, applied, dispensed with, or regulated by the housing authority or any person thereunto authorized by the housing authority:
- (e) may deal with the procedure to be followed, the conditions to be complied with, and any matters necessary or expedient to be prescribed for carrying the regulations into effect:
- (ea) may prescribe, and provide for the payment of, fees;
- (f) may prescribe forms for use under this Act (and any such form or a form to the like effect shall be sufficient in law):
- (g) may impose a penalty of not more than one hundred dollars for any contravention of or failure to comply with any regulation, and, in the case of a continuation or repetition of the offence after a conviction, a further penalty of not more than ten dollars for every day on which the offence is continued or repeated.

\* \* \* \* \*

**Proceedings**

**89.** Save as otherwise provided—

- (a) all proceedings for offences against this Act shall be disposed of summarily:
- (b) all moneys, costs and expenses made payable or recoverable by or under this Act may be recovered as a debt in any court of competent jurisdiction.

**Limitation of time for bringing proceedings**

**89a.** Notwithstanding anything contained in any other Act, proceedings for an offence against this Act may be brought within a period of two years from the time the alleged offence was committed.

**Construction of Act**

**90.** This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act would, but for this section, have been construed in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

## Housing Improvement Act, 1940

## THE SCHEDULES

## THE FIRST SCHEDULE

## FORM OF COMPLAINT AGAINST OCCUPIER FAILING TO VACATE

South [Royal Arms] Australia

(To wit)

The complaint of \_\_\_\_\_ on behalf of \_\_\_\_\_ taken this  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, before the undersigned, a Justice of the Peace for the  
 State of South Australia, who states that \_\_\_\_\_ of \_\_\_\_\_ has refused  
 or neglected to vacate a certain house or building situate at \_\_\_\_\_ after he has been  
 required pursuant to section \_\_\_\_\_ of the *Housing Improvement Act, 1940*, to vacate  
 the same.

Taken before me  
 the day and year first above-mentioned  
 at \_\_\_\_\_  
 in the said State

Justice of the Peace

## THE SECOND SCHEDULE

## FORM OF SUMMONS TO OCCUPIER FAILING TO VACATE

South [Royal Arms] Australia

(To wit)

To \_\_\_\_\_ of \_\_\_\_\_

You are hereby summoned to appear before \_\_\_\_\_ on \_\_\_\_\_ the  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the  
 noon, at \_\_\_\_\_ in the said State, before such special magistrate as  
 may then be there to answer to a complaint authorized by the \_\_\_\_\_, for that you  
 are in the illegal occupation of a certain house or building, namely, \_\_\_\_\_ which you  
 neglect or refuse to vacate, contrary to the provisions of the *Housing Improvement Act, 1940*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ in the  
 said State.

Justice of the Peace

NOTE—In case you fail to attend this summons, upon proof of reasonable notice to you of the  
 same, the complaint will be heard in your absence, and such order made as to the court shall seem  
 fit.

## THE THIRD SCHEDULE

## FORM OF WARRANT TO DISPOSSESS UNAUTHORIZED OCCUPIER

South [Royal Arms] Australia

(To wit)

To \_\_\_\_\_ in the State of South Australia, and to each and all of the constables and  
 peace officers of the said State.

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_ A.B. was adjudged by a court of  
 summary jurisdiction sitting at \_\_\_\_\_ in the said State to be in the illegal occupation  
 of a certain house or building [*here state description of house or building*] contrary to the provisions  
 of the *Housing Improvement Act, 1940*.

You are hereby commanded, without delay (*to cause the* \_\_\_\_\_ *to have possession*  
*of the said premises with the appurtenances, and*) to eject the said A.B. and all other persons  
 therefrom, for which this shall be a sufficient warrant.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ in the  
 said State.

Justice of the Peace

## APPENDIX

## Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 772.

Section 4:	definition of "local board" repealed by 37, 1987, s. 17
Section 23(1) - (3) and (5):	amended by 37, 1987, s. 18(a)
Section 23(7):	substituted by 37, 1987, s. 18(b)
Section 24(1) and (4):	amended by 37, 1987, s. 19
Section 25:	amended by 37, 1987 s. 20
Section 27(1):	amended by 37, 1987 s. 21
Section 32(1):	amended by 37, 1987 s. 22
Section 35:	amended by 37, 1987 s. 23
Section 52(1):	amended by 74, 1983, s. 3(a)
Section 52(2):	substituted by 74, 1983, s. 3(b)
Section 52(3) and (4):	inserted by 74, 1983, s. 3(b)
Section 60:	substituted by 74, 1983, s. 4
Section 60a(4):	inserted by 21, 1978, s. 3
Section 61(1):	amended by 37, 1987, s. 24
Section 61(7):	inserted by 21, 1978, s. 4
Section 64:	amended by 37, 1987, s. 25
Section 66(1):	amended by 37, 1987, s. 26(a), (b)
Section 66(2):	amended by 37, 1987, s. 26(c)
Section 67:	amended by 37, 1987, s. 27
Section 68:	amended by 37, 1987, s. 28
Section 69(2):	amended by 37, 1987, s. 29
Section 71:	amended by 37, 1987, s. 30
Section 75(1):	amended by 37, 1987, s. 31
Section 87:	amended by 74, 1983, s. 5