

South Australia

# Housing Agreement Act 1991

An Act to approve the execution on behalf of the State of an agreement between the Commonwealth, the States, the Northern Territory of Australia and the Australian Capital Territory relating to housing; and for other purposes.

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## Contents

- 1 Short title
- 2 Interpretation
- 4 Approval of execution of agreement
- 5 Loans under the Agreement
- 6 Constitution of appellate tribunal

Schedule—Form of housing agreement

Legislative history

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## The Parliament of South Australia enacts as follows:

### 1—Short title

This Act may be cited as the *Housing Agreement Act 1991*.

### 2—Interpretation

In this Act—

*the Agreement* means the agreement between the Commonwealth, the States, the Northern Territory of Australia and the Australian Capital Territory in the form, or substantially in the form, set out in the Schedule to this Act.

### 4—Approval of execution of agreement

- (1) The execution of the Agreement on behalf of the State is approved.
- (2) The Treasurer is authorised to carry out the terms of the Agreement on behalf of the State.
- (3) Any act done by the Treasurer in anticipation of the Agreement coming into force is ratified.

### 5—Loans under the Agreement

- (1) Subject to the Agreement, any loan or grant made by the Treasurer in pursuance of the Agreement must be made on terms and conditions determined by the Treasurer and approved by the Minister.

- (2) Notwithstanding any other Act or law, a body or authority to which a loan or grant is made in pursuance of the Agreement is authorised to accept the loan or grant, and to expend the money lent or granted, in accordance with the terms and conditions on which the loan or grant was made.

## **6—Constitution of appellate tribunal**

The Governor may make regulations—

- (a) that establish, or provide for the establishment of, a tribunal to hear appeals from decisions relating to the provision of housing assistance funded under the Agreement;
- (b) that provide for the jurisdiction and powers of the tribunal;
- (c) that make provision for the proceedings of the tribunal including a provision that empowers the tribunal to make rules;
- (d) that make any other provisions that are necessary or incidental to the establishment or functioning of the tribunal or that are desirable for either of those purposes.

## Schedule—Form of housing agreement

AN AGREEMENT made the \_\_\_\_\_ day of One Thousand nine hundred and between—

THE COMMONWEALTH OF AUSTRALIA of the first part,

THE STATE OF NEW SOUTH WALES of the second part,

THE STATE OF VICTORIA of the third part,

THE STATE OF QUEENSLAND of the fourth part,

THE STATE OF WESTERN AUSTRALIA of the fifth part,

THE STATE OF SOUTH AUSTRALIA of the sixth part,

THE STATE OF TASMANIA of the seventh part,

THE NORTHERN TERRITORY OF AUSTRALIA of the eighth part,

and

THE AUSTRALIAN CAPITAL TERRITORY of the ninth part.

WHEREAS:

- (A) the Commonwealth and the States of Australia have from time to time entered into agreements for the purpose of the provision by the States with financial assistance from the Commonwealth of housing;
- (B) by an agreement between the Commonwealth, the States of Australia and the Northern Territory of Australia dated the twenty-fifth day of October 1984, being an agreement in the form authorized to be executed on behalf of the Commonwealth by the *Housing Assistance Act 1984* of the Commonwealth Parliament and being the last of the agreements referred to in Recital (A), provision was so made with respect to the ten years commencing on the first day of July 1984;
- (C) the Ministers of the respective governments throughout Australia who are responsible for housing have agreed upon the provision of rental housing assistance and home purchase assistance during the ten years commencing on the first day of July 1989;
- (D) the primary principle of this agreement is to ensure that every person in Australia has access to secure adequate and appropriate housing at a price within his or her capacity to pay by seeking to:

- alleviate housing-related poverty;

and

- ensure that housing assistance is, as far as possible, delivered equitably to persons resident in different forms of housing tenure.

In implementing this principle, assistance provided under the agreement will also reflect the following detailed principles:

(a) Assistance Generally

The primary consideration in delivering housing assistance under this agreement shall be the needs of people.

In determining the eligibility of applicants for assistance under this agreement:

- assistance shall seek to provide access to housing for those unable to obtain or maintain affordable finance for adequate and appropriate housing purchase from the private sector or from other sources outside of the agreement;
- assistance provided shall be available to all sections of the community irrespective of age, sex, marital status, race, religion, disability or life situation. Persons who need support to live in the community shall be eligible for assistance. It is recognized, however, that such support is not a responsibility under this agreement;
- priority in granting assistance shall be determined by the need for assistance;
- any limits on eligibility for assistance shall be based primarily on financial circumstances. In determining this, the level of income, the value of relevant assets and the income from them, the number of dependent children and costs arising from disability or other special circumstances, shall be taken into account;

and

- to ensure consistency in the application of these eligibility principles, limits of eligibility shall be reviewed at appropriate intervals of time.

In the delivery of housing assistance, as far as is possible, people should be given an equal choice between the different forms of housing assistance programmes under this agreement.

Housing assistant programmes developed under this agreement shall be designed so that maximum social benefit is derived from previous investment in housing. Assistance shall be provided in a co-ordinated and flexible manner to meet the changing employment and other needs and circumstances of people receiving assistance. To this end and where appropriate:

- housing assistance provided under this agreement should be co-ordinated with housing and accommodation assistance programmes outside this agreement;

- the provision of assistance for people shall be co-ordinated between the specific purpose programmes within the agreement and general housing assistance under the agreement;

and

- assistance shall facilitate the portability of waiting times for applicants for assistance, and the transfer of tenants, between regions and forms of assistance within a State, and, where practicable, between States.

(b) Rental Housing

The provision of rental housing is a key element of this agreement. People in rental housing shall have security of tenure. Subject to fulfilment by the tenant of the tenancy conditions, this principle of security of tenure shall operate in a State in accordance with this Recital to ensure that:

- tenants are not to be forced to leave their home because of actions inconsistent with this agreement by a State. Where a tenant is required to move from one dwelling to another by a State, a choice of dwellings and locations appropriate to the tenant's needs is to be provided;
- a physical and locational environment appropriate to the tenant's needs is provided;

and

- recognition is accorded to the rights of applicants and tenants and other users of assistance.

Programmes and funding arrangements under this agreement should seek to develop the public housing sector as a viable and diversified form of housing choice and refrain from discrimination.

Programmes and funding arrangements under this agreement shall be developed so as to increase progressively the availability of rental housing to a level commensurate with the need for it in the community.

Rental housing should reflect general community housing standards and should be accessible to community and other services. Poor location of dwellings, an inadequate range of choice of dwellings, and stigmatisation of the status of rental housing tenants should be avoided to the maximum extent practicable.

Rental housing stock should, as far as possible, be designed to cater for the needs and preferences of current and likely future applicants. The design, style and siting of rental housing will, to the maximum extent practicable:

- reflect the need for access to employment opportunities and services;

- reflect the need for accessibility and suitability for habitation by people with disabilities, Aboriginals, youth, the elderly or other identified groups;

and

- support the energy conservation policies of the governments.

(c) Income Related Assistance to Tenants

Assistance measures in the public rental sector should be co-ordinated with assistance to private tenants and should recognize the income support nature of the assistance and the inter-relationship of this assistance with Commonwealth assistance to pensioners and other beneficiaries under the *Social Security Act 1947*.

(d) Implementation

States will be able to exercise maximum autonomy and flexibility in developing the administrative arrangements necessary to achieve these principles;

- (E) the Ministers referred to in Recital (C) recognise the relationship between the principles and policies reflected in this agreement and the need to co-ordinate these with those affecting home purchasers and tenants including tenants in private housing and in emergency and supported accommodation;
- (F) it is proposed that in order to implement the agreement of the Ministers, the Commonwealth will grant to the States financial assistance under Section 96 of the Commonwealth of Australia Constitution and like assistance to the Northern Territory of Australia and the Australian Capital Territory and that the terms and conditions on which the grant of financial assistance should be made are those set out in this agreement;
- (G) the Commonwealth and the States have decided that the agreement referred to in Recital (B) shall, save as provided for by subclause 1(3) of this agreement, cease to operate on and from the first day of July, 1989;

and

- (H) the Parliament of the Commonwealth has authorized the execution by and on behalf of the Commonwealth of this agreement and the provision of financial assistance to the States in accordance with its provisions.

NOW IT IS HEREBY AGREED as follows:

## PART I—OPERATION OF AGREEMENT

1. —

- (1) This agreement shall be deemed to have come into effect on 1 July, 1989, in respect of the Commonwealth and of a State when it is signed on behalf of the Commonwealth, and—
- (a) where the laws of a State require that its Parliament authorize the execution of or approves, the agreement, when it has been signed on behalf of the State with the authority of the Parliament of the State or, having been signed on behalf of the State without the authority is approved by the Parliament of the State;
- or
- (b) where the laws of the State do not require that its Parliament authorize the execution of, or approve, the agreement, when it has been signed on behalf of the State.
- (2) Notwithstanding that in this agreement all the States are named as parties, this agreement shall operate as an agreement between the Commonwealth and the party or parties in respect of which it comes into force as fully and effectually as if the party or parties in respect of which it comes into force were the only party or parties so named other than the Commonwealth.
- (3) Subject to obligations arising under Part VIII of the agreement referred to in Recital (B) and unperformed prior to the first day of July, 1989, that agreement shall be deemed to have ceased to operate on and from that date.

## PART II—PARTIES

2. —

- (1) A reference in this agreement to a State shall, except where the contrary intention appears and according to the requirements of the context, be deemed to include a reference to the Northern Territory of Australia and to the Australian Capital Territory.
- (2) In this agreement, subject to this clause and except where the context otherwise indicates—
- (a) "the Commonwealth" means the Commonwealth of Australia;
- (b) each State, including the Northern Territory of Australia and the Australian Capital Territory, named as a party in respect of which this agreement comes into force is referred to as a "State" and, except where the context otherwise indicates, "the States" means all of those States;
- and
- (c) "the Australian Capital Territory" means the body politic established under the Crown by that name by section 7 of the *Australian Capital Territory (Self-Government) Act 1988*.

### PART III—INTERPRETATION

3. —

(1) In this agreement—

"the Minister" means the Minister of State of the Commonwealth for the time being responsible for the administration of this agreement for the Commonwealth:

"State Minister" means the Minister of State of a State for the time being responsible for the administration of this agreement for the relevant State.

(2) A reference in this agreement to—

(a) a Minister includes the Minister or other member of the Federal Executive Council;

or

(b) a State Minister includes a Minister of the relevant State or other member of the State Executive Council,

acting on behalf of, or for the time being acting for, the Minister or State Minister referred to.

4. In this agreement unless the contrary intention appears or the context otherwise requires—

"direct costs" means costs and fees generally accepted in the private sector as related to the production or purchase of rental housing:

(a) including relevant overheads and administration costs;

and

(b) excluding stamp duties of the State:

"dwelling" means a dwelling-house or flat includes such fences, outbuildings and other improvements and such connections for sewerage, drainage, water, electricity, gas and other services as provided or are reasonably required to be provided for the dwelling-house or flat:

"existing housing agreements" means both the agreements referred to in the first Schedule to the form of agreement scheduled to the *Housing Assistance Act 1984* and the agreement dated the twelfth day of March, 1985, in the form scheduled to that Act ("the 1984 Agreement"):

"Family Allowance Supplement" means the Family Allowance Supplement for which Part IX of the *Social Security Act 1947* provides:

"home purchases" means—

(a) a person including a participant in a shared ownership scheme purchasing with assistance under Part VIII housing including rental housing;

or

(b) a person who is a rental purchaser:

"housing" means residential housing including dwellings and other forms of residential accommodation:

"person" includes a body, co-operative, group or other organization whether incorporated or not:

"previous housing arrangements" means the provisions in relation to housing—

- (a) that were made:
  - (i) by the existing housing agreements;
  - (ii) by the *States Grants (Housing) Act 1971*, the *Housing Assistance Act 1973*, the *Housing Assistance Act 1978*, the *States (Works and Housing) Assistance Act 1982*, the *States (Works and Housing) Assistance Act 1983*, the *Housing Assistance Act 1984*, the *States (Works and Housing) Assistance Act 1984 and 1985*, the *Housing Assistance Amendment Act 1987* and the *States (Works and Housing) Assistance Act 1988*;
  - (iii) under any arrangements entered into special *Employment-related Programs Act 1982*;

and

- (b) that are made by legislation passed hereafter by the Commonwealth Parliament under which financial assistance is made available to the State for housing, but on terms and conditions specified in this agreement:

"rental housing" means housing for rental which has been provided under the previous housing arrangements or is provided under this agreement and "rental dwelling" means a dwelling that is included in rental housing:

"rental purchase" means a purchase under a terms contract of sale:

"rental purchaser" means a person purchasing under a terms contract of sale:

"shared ownership" means the ownership of a share in a dwelling:

"the Commonwealth Act" means the legislation of the Commonwealth Parliament by which an agreement substantially in this form is authorized to be executed by or on behalf of the Commonwealth:

"upgrading" means improvements, excluding repairs and other maintenance, relating to a rental dwelling which is so identified in State housing authority published accounts:

"year" means a period of twelve months commencing on the first day of July.

**5.** In this agreement unless the contrary intention appears—

- (a) a reference to a Part or to a clause is to a Part or to a clause of this agreement, as the case may be;
- (b) a reference to a subclause is, unless otherwise indicated, to the relevant subclause of the clause in which the reference appears;
- (c) the Schedule referred to is the Schedule to the agreement;
- (d) words importing a gender include every other gender;
- (e) words in the singular number include the plural and vice versa;

and

- (f) a reference to a date on or by which a thing is to be done shall, if that date falls on a Saturday, Sunday, public holiday or bank holiday in the place in which the thing is to be done, be read and construed as if the reference was the day immediately preceding that day which is not a Saturday, Sunday, public holiday or bank holiday in that place.

## **PART IV—OBJECTIVE OF AGREEMENT**

6. The objective of this agreement is the provision by the States, with financial assistance from the Commonwealth, of housing assistance for rental housing and for home purchase in accordance with, and in fulfilment of, the principles set out in Recital (D).

## **PART V—FINANCIAL ASSISTANCE**

7. —

- (1) In order to assist the States in the achievement of the objective of this agreement, the Commonwealth will, upon the subject to the provisions of this agreement, out of moneys appropriated by Parliament for the purpose, provide to the States during the years of this agreement, financial assistance for housing purposes (hereinafter in this agreement referred to as "financial assistance") by way of interest free non-repayable grants ("grants").

- (2) The years of this agreement shall be the ten years commencing on the first day of July in the years 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998.

8. The Commonwealth will provide financial assistance—

- (a) in respect of the first year of the agreement—

- (i) to the States, excluding the Australian Capital Territory, totalling one thousand and ten million four hundred and four thousand dollars (\$1 010.404 million) consisting of—

- (A) two hundred and thirty three million one hundred and fifty four thousand dollars (\$233.154 million) by way of specific housing assistance under Part XII;

and

- (B) seven hundred and seventy seven million two hundred and fifty thousand dollars (\$777 250 million) by way of untied assistance;

and

- (ii) to the Australian Capital Territory, of seventeen million seven hundred and seventy two thousand dollars (\$17.772 million) by way of specific housing assistance and untied assistance;

and

- (b) in respect of each of the second year, the third year and the fourth year of the agreement—

- (i) to the States, excluding the Australian Capital Territory, being an amount equal to the first amount specified in subparagraph 8(a)(i);

and

- (ii) to the Australian Capital Territory being an amount equal to the amount specified in subparagraph 8(a)(ii), by way of specific housing assistance and untied assistance;

and

(c) in respect of—

- (i) any of the second year, the third year or the fourth year of the agreement for which the Minister determines additional financial assistance;

and

- (ii) each of the remaining years of the agreement—an amount determined by the Minister for each of those years,

in writing signed by the Minister.

**9.** The Commonwealth may provide to the States out of moneys appropriated by the Commonwealth Parliament for the purpose, financial assistance for home purchase assistance, rental housing assistance and, in accordance with Part XII, specific housing assistance.

**10.** In and for the purpose of this agreement—

(a) the following grants shall be known as "specific housing assistance grants"—

- (i) financial assistance under sub-subparagraph 8(a)(i)(A);
- (ii) so much of financial assistance provided subparagraph 8(a)(ii) as is authorized for expenditure under clause 30;
- (iii) so much of financial assistance provided under paragraph 8(b) as is authorized for expenditure under clause 30;

and

- (iv) so much of other financial assistance authorized for expenditure under clause 30;

and

(b) financial assistance to be provided other than specific housing assistance grants shall be known as "untied assistance".

**11.** Financial assistance shall be allocated between the States in such manner as is provided by the Commonwealth Act and it shall be a condition with respect to the provision of untied assistance that a State will match the amount of that financial assistance from its own resources in accordance with Part IV.

**12.** A State shall, as agreed by the Minister and State Minister, include in material for use by persons seeking or receiving housing assistance from the State funded under this agreement, particulars to be provided by the Minister sufficient to indicate that that housing assistance is provided in whole or in part with financial assistance from the Commonwealth.

## PART VI—STATE MATCHING FUNDS

### 13. —

- (1) In relation to untied assistance a State will provide from its own resources and apply funds ("matching funds") in accordance with this Part.
- (2) Subject to the subclause 13(3), the amount of matching funds to be provided in respect of a year in accordance with this Part shall be an amount equal to the amount of untied assistance provided to the State in respect of that year, determined as follows:
  - (a) at least half ("grant matching funds") shall be grants paid by the State into the Rental Capital Account;
  - (b) the balance shall be met from the value of home loans provided under Part VIII through home purchase assistance programs agreed between the Minister and State Minister;

and

- (c) an amount determined by the Minister under paragraph 36(b) shall be deemed to remain "untied assistance" for the purpose of this Part.
- (3) In respect of the first four years the level of grant matching funds otherwise to be applied to the Rental Capital Account will be phased in as follows:
  - (a) in the first year the State will match on a \$3:\$12 basis;
  - (b) in the second year the State will match on a \$4:\$12 basis;
  - (c) in the third year the State will match on a \$5:\$12 basis;

and

- (d) in the fourth year the State will match on a \$1:\$2 basis.
- (4) A State may, as agreed by the Minister and State Minister, count as grant matching funds in a year, amounts provided by it in the previous year in accordance with paragraph 13(2)(a) in excess of the level of matching funds required in subclause 13(3) for that year, up to a limit of 10 per cent of the funds so required to be provided in that previous year.
- (5) A State will have to pay no more in matching funds relating to the first \$1 028.176 million of financial assistance provided—
  - (a) in any of the years referred to in subclause 13(3) than would have been paid had the allocation and matching fund requirements to apply for the said fourth year been applied in any of those years;

and

- (b) in any year than would have been required had the level of untied assistance been \$792.931 million.
- (6) Except as to the first year, for which proposals shall be agreed by the Minister and State Minister by the thirty first day of December, a State shall, by the thirty first day of March preceding the second and each succeeding year of this agreement, furnish of the Commonwealth, in a reasonable form to be determined by the Minister after consultation with the State Minister, proposals for agreement by the Minister for the provision of matching funds during that year.

- (7) Grant matching funds shall be—
- (a) paid into the Rental Capital Account by regular monthly instalments or as otherwise agreed between the Minister and State Minister;
- and
- (b) separately identified in State budget documents or otherwise identified as agreed between the Minister and State Minister.
- (8) Matching funds will not include—
- (a) funds which have been used to match financial assistance provided by the Commonwealth otherwise than under this agreement;
  - (b) funds already paid into the Rental Capital Account;
  - (c) proceeds from the sale after the first day of July 1984 of rental housing and land acquired under previous housing arrangements and this agreement;
  - (d) any funds transferred from the Home Purchase Assistance Account to the Rental Capital Account;
- or
- (e) surpluses generated on rental housing operations.
14. Where a State in a year expends a specific housing assistance grant in accordance with the Commonwealth/State plan for that year, this expenditure shall not increase the level of matching funds required to be provided by the State in that year.

## **PART VII—FINANCIAL ASSISTANCE ARRANGEMENTS**

### **15. —**

- (1) Financial assistance in respect of a year of this agreement shall be made available to a State during that year by regular monthly instalments unless otherwise agreed between the Minister and State Minister.
- (2) If, following consultation with a State Minister, the Minister is of the opinion that it is appropriate to do so, the Minister may withhold a payment of financial assistance to a State which fails to comply with subclause 13(6), or clause 38 until the State remedies that failure.

## **PART VIII—HOME PURCHASE ASSISTANCE**

16. The Home Purchase Assistance Account of each State, for the continuance of which clause 24 of the 1984 Agreement provided, shall continue to operate. The Australian Capital Territory shall open an Account by the name within the first year of this agreement. Each of those Accounts and related Accounts are in this Part referred to as "the Account" and elsewhere as "the Home Purchase Assistance Account".
17. This Account shall be—
- (a) credited with—
    - (i) moneys received by the State in the course of home purchase assistance program operations;
    - (ii) payments referred to in paragraph 23(2)(f);

and

- (iii) any other funds, not being Commonwealth financial assistance or State grant matching funds, which the State decides to apply to home purchase assistance programs under this agreement;

and

- (b) debited with management costs and other outgoings, including repayments and payments under paragraphs 20(1)(a) and 20(1)(b), in respect of home purchase assistance program operations.

**18.** The money in this Account shall be made available for use for home purchase assistance in accordance with this Part.

**19.** A State shall develop and administer home purchase assistance programs, in accordance with Recital (D), having regard to the following principles:

- (a) the Account is to act as a basis and support for future home purchase. To this end a State shall ensure—

- (i) funds made available for use under clause 18 are to be used in a way which at least maintains their real value;

and

- (ii) that funds paid into the Account in accordance with paragraph 23(2)(f) are included in funds available for use in subparagraph 19(a)(i);

and

- (iii) that the amount of the funds available for use under paragraph 19(a)(i) are reduced by the payments made under subparagraph 20(1)(j);

- (b) the efficient use of the Account. To this end—

- (i) a State shall maximise the use of funds from sources outside the agreement for loans to home purchasers;
- (ii) subsidy assistance is to be restricted to those who require it and for the period of their need and recovered except in cases of individual hardship. Where subsidy assistance is provided, the capacity of home purchasers to repay loans to the State is to be reviewed at least triennially with repayments to be adjusted or other action to be taken where necessary. In any year other than one in which there is a review, repayments are to be indexed by the Consumer Price Index or other appropriate indicator;

and

- (iii) where a State wishes to provide subsidy assistance other than in accordance with subparagraph (ii), it may do so from funds provided by the State under subparagraph 17(a)(iii);

- (c) a State shall maximise the effectiveness of assistance provided. To this end—

- (i) the amount of a loan shall take into account market conditions, including house prices, incomes and the size of a deposit;

and

- (ii) loan repayments are to be related to the income of home purchasers, and to be affordable to those home purchasers. To this end, repayment ratios operating in the private market are to be taken into account. A State may reschedule repayments by a home purchaser in the event of individual hardship;
- (d) a State shall ensure maximum choice of assistance. To this end—
- (i) no class of persons, including single persons, shall be excluded from consideration;
  - (ii) home purchase schemes are to be accessible to existing public tenants;
  - (iii) where appropriate, shared ownership and rental purchase schemes are to be offered;

and

- (iv) schemes developed under this principle shall be consistent with the provisions in clause 27 of this agreement;

and

- (e) home purchase assistance under the agreement is to be related to other home purchase assistance programs operated by the Commonwealth and States.

**20.** —

- (1) Subject to subclause 20(2), a State may use moneys in the Account in accordance with the principles set out in Recital (D) and clause 19 for—
- (a) making repayments of principal and payments of interest falling due in the then current year in respect of loan assistance by the Commonwealth to the State under previous housing arrangements which has been allocated for home purchase assistance under those arrangements;
  - (b) making repayments of principal and payments of interest in respect of any State funds borrowed for the purpose of this Part allocated for home purchase assistance;
  - (c) meeting expenditure by the State in providing and administering home purchase assistance;
  - (d) facilitating borrowings of private bodies for home purchase assistance under this agreement, including participation in joint ventures and mortgage funds such as secondary mortgage market trusts;
  - (e) making loans and grants to:
    - (i) terminating building societies or co-operative housing societies;
    - (ii) a lending authority of the State approved by the State Minister;
    - (iii) registered co-operative organisations including permanent building societies approved by the State Minister;
    - (iv) such other class or classes of bodies or organisations as are from time to time agreed upon between the Minister and State Minister;

and

- (v) a class or classes of home purchasers, for the provision of home purchase assistance;
  - (f) financing the construction and purchase of dwellings, including the purchase of dwellings from the home purchasers, and financing purchases by home purchasers who are borrowers;
  - (g) purchasing housing, including private housing, for sale to rental purchasers and financing such sales;
  - (h) the acquisition by the State of replacement housing of a value equal to the amount for which the State sells rental housing to home purchasers;
  - (i) urban renewal, housing advisory services and research and policy development in relation to matters not funded by the Australian Housing Research Council;
  - (j) making payments into the Rental Capital Account;
  - (k) making loans to participants in shared ownership schemes;
  - (l) such other purposes as are from time to time agreed upon by the Minister and State Minister.
- (2) Moneys paid into the Account under paragraph 23(2)(f) are to be used only for home purchase assistance programs approved by the Minister for public tenants and persons eligible for rental housing, with preference to be given to shared ownership schemes.

## **PART IX—RENTAL HOUSING ASSISTANCE**

- 21.** A State will establish a Rental Capital Account (in this Part referred to as "the Account" and elsewhere as "the Rental Capital Account") which shall be operated by the State in accordance with this Part. All moneys in the Account are to be fully expended or committed in the year in which they are credited to the Account.
- 22.** A State will pay into the Account—
- (a) in each year of this agreement—
    - (i) all untied assistance paid by the Commonwealth to the State under this agreement during that year;
    - (ii) an amount of specific housing assistance grants as agreed by the Minister and State Minister;
    - (iii) grant matching funds;
    - (iv) such part of the cash surplus of revenue over outgoings arising from rental operations as it not applied to rental operations in accordance with clause 24;
    - (v) net proceeds from the sale after the first day of July 1989 of rental housing and land acquired under previous housing arrangements and the agreement referred to in Recital (b) or from the Account under this agreement;

- (vi) State moneys which the State wishes to, and may consistently with this agreement, apply under clause 23 to activities referred to in this Part;

and

- (vii) any other funds as agreed between the Minister and State Minister;

and

- (b) additionally, in the first year of the agreement, such part of financial assistance and State matching funds provided under previous housing arrangements applied by the State to rental housing assistance as is unexpected at 1 July 1989.

**23.** —

- (1) A State may use, in accordance with the principles set out in Recital (D) and the Commonwealth/State plan, moneys in the Account—

- (a) to meet the direct costs associated with the construction of rental housing;
- (b) to meet the costs of, and associated with, the acquisition, planning and development of land for rental housing development;
- (c) to make payments for, or provide bridging finance for, the provision of open space, landscaping, community facilities and for costs associated with land development, including contributions to headworks and reticulation of services, directly related to rental housing;
- (d) to make payments for the upgrading of rental housing;
- (e) to meet the direct costs associated with the purchase of housing for rental housing;
- (f) to engage in urban renewal activities related to rental housing;
- (g) to allocate funds to local government bodies for the construction or purchase of rental housing, where a State Minister considers it would be more appropriate for rental housing to be provided by those bodies;
- (h) to participate in joint ventures, co-operative enterprises or similar arrangements, other than those of an ongoing or recurrent nature, for the provision of rental housing integrated with private housing to achieve a desirable socio-economic mixture;
- (i) to meet the direct costs of construction or purchase of dwellings for rental to participants in shared ownership schemes, with both the schemes and the costs to be agreed by the Minister and State Minister, where it is not practicable to fund the construction or purchase for this purpose from funding sources outside this agreement;

and

- (j) to pay principal and interest falling due in a year on Commonwealth loans provided to the State under previous housing arrangements, the amount of the payments being phased in over three years with 50 per cent available in the first year, 75 per cent in the second year and 100 per cent in the third year or as agreed by the Minister and State Minister, having regard to the cash surplus on rental operations.

(2) The Minister shall determine for a State in a year part of the Account as a general allowance, that part being an amount equal to 20 per cent, or as agreed between the Minister and State Minister, 25 per cent, of—

(a) for the first three years of this agreement, the total of untied assistance and grant matching funds—

(i) that would be paid into the Account in the fourth year of the agreement if the total of untied assistance to all the States for that year remained at the total for the first year of this agreement;

or

(ii) that is paid into the Account in each of those years,  
as the State Minister determines;

and

(b) for the fourth year and succeeding years of this agreement, the total of untied assistance and grant matching funds paid into the Account in each of those years,

to be used by the State—

(c) to provide funds to such non-profit, charitable bodies, rental housing co-operatives, voluntary bodies, local government bodies and other housing management bodies or groups as are approved by the State Minister;

(d) where agreed by the Minister and State Minister—

(i) to lease;

(ii) to subsidise leasing of;

and

(iii) to subsidise other arrangements not of a capital nature in relation to, rental housing;

(e) to provide rental subsidies for renting private housing for those who are unable to obtain or maintain affordable finance for adequate and appropriate housing purchase from the private sector or from other sources outside of the agreement;

(f) for payment into the Home Purchase Assistance Account, up to the level of 15 per cent of the amounts referred to in paragraphs 23(2)(a) and 23(2)(b);

(g) to meet the costs associated with—

(i) the consulting referred to in subclause 28(5);

and

(ii) the provision of information in accord with subclause 38(6);

or

(h) for any other purposes agreed upon between the Minister and State Minister.

- (3) Any part of the general allowance determined by the Minister under subclause 23(2) for a State for a year which will not be fully expended or committed in that year for the purposes of that subclause shall be expended or committed in that year for the purposes of subclause 23(1).
- (4) Where in any year the general allowance determined by the Minister under subclause 23(2) is not fully expended or committed in the year for which it was determined, the amount of the general allowance for the succeeding year shall be increased by the amount of the general allowance not so expended or committed in the previous year up to a maximum of one half of the general allowance for that year. If the amount by which the general allowance for the succeeding year is so increased is not fully expended or committed by the State in that year, entitlement to it shall lapse.
24. Any cash surplus of revenue over outgoings arising from rental operations in a year to be applied to those operations or to the Rental Capital Account.
25. The conditions of eligibility of persons for rental housing assistance shall be determined by the State in accordance with the principles set out in Recital (D) and so that priority in granting assistance is determined by the need for assistance. No class of persons including the classes of single persons and of young persons shall be excluded from consideration.
26. —
  - (1) In determining rents for rental housing in accordance with the principles set out in Recital (D), a State shall fix rents having regard primarily to the costs to the State of providing that housing and to the capacity of tenants to afford to pay. To this end—
    - (a) where a State considers that a tenant has sufficient capacity to pay, the rent shall be not less than either that which would result from the application of the principles set out in the Schedule or market rent;and
    - (b) in other cases, the rent shall be set in accord with the tenant's capacity to pay and to assist in the alleviation of poverty or hardship.
  - (2) In determining capacity to pay rent, a State shall:
    - (a) have regard to the level of income, including income from assets of the tenant and other household members;
    - (b) take into account the number of dependent children in the tenant's household;
    - (c) ensure that tenants with similar capacity to pay, pay similar rents;
    - (d) ensure that work disincentives are minimised;and
    - (e) have regard, as agreed between the Minister and State Minister, to the receipt by any member of the tenant's household of Family Allowance Supplement.
  - (3) Rents are to be reviewed at least annually.
  - (4) Subclauses 26(2) and 26(3) and paragraph 26(1)(b) are to come into effect from 1 July 1990 and paragraph 26(1)(a) from the same date or progressively over a period of three years from that date if the State Minister so determines, unless the Minister and State Minister agree upon another period to take into account the level of rents prevailing in the private rental market.

**27.** —

- (1) A State may sell rental housing, including that the subject of shared ownership or rental purchase, but such sales, if any, shall be in accordance with the principles set out in Recital (D) and subject to the following conditions:

(a) all sales shall be made—

- (i) in the case of the sale occurring within 5 years after the date of purchase or construction of the house, at a price at least equal to the replacement cost at the time of sale of the whole or the share of the dwelling sold;

and

- (ii) in any other case, at a price equivalent to the market value or replacement cost at the time of the sale of the whole or the share of the dwelling sold,

provided however that—

- (iii) the vendor may allow a credit to the tenant in respect of the value of improvements made by the tenant;

and

- (iv) the State may, if the Minister and State Minister agree, sell rental housing to a body, co-operative, group or other organisation which makes available rental housing under this agreement, at a price that is less than the value or cost stipulated in subparagraphs 27(1)(a)(i) or 27(1)(a)(ii);

(b) in all sales of rental housing, the vendor is, at or prior to the date of the sale, to have received an amount calculated in accordance with paragraph 27(1)(a);

(c) in the case of a rental purchase, home purchase assistance funds may be used to enable the vendor to receive an amount referred to in paragraph 27(1)(b);

and

(d) net proceeds from sales of rental housing shall be used to construct or purchase replacement housing and associated land which is to be included in rental housing for the purpose of this agreement.

- (2) A State shall ensure that if any body, co-operative, group or other organisation which acquires rental housing with rental housing assistance funds or acquires at other than market value or replacement cost rental housing from the State, sells, otherwise disposes of, or uses that housing for a purpose other than rental housing as provided for under this Part—

(a) within five years of the date of purchase or construction of the housing by the State, it shall repay to the State an amount equal to what would be the net proceeds from a sale at replacement cost of the housing;

and

(b) thereafter, it shall repay to the State an amount equal to what would be the net proceeds from the sale, at market value or replacement cost, of that housing.

## **PART X—COMMONWEALTH/STATE HOUSING ASSISTANCE PLANS**

28. —

- (1) There shall be a Commonwealth/State plan in accordance with Recital (*d*), agreed by the Minister and State Minister, in respect of a State for each year of this agreement, excluding the first year, setting out the provision of housing assistance under this agreement. The plan shall have regard to the period and level of funding provided under Parts V and VI of this agreement. In each year the plan shall be agreed by the Minister and State Minister prior to the commencement of the year to which the plan refers.
- (2) Within the framework of the funds available under Parts V and VI, and the operation of other Commonwealth and State housing programs, each plan shall include:
  - (a) an assessment of housing need;
  - (b) an assessment both of the resources available to provide programs of assistance and of the assistance resulting from those programs. In assessing the resources, regard shall be had to the effect of sales of rental housing under this agreement;
  - (c) allocation priorities and targets;
  - (d) program delivery priorities and targets including priorities and targets relating to the provision of information under Part XV of this agreement;

and

- (e) other matters as agreed between the Minister and a State Minister.
- (3) A State shall draft for submission to the Joint Officers' Group the Commonwealth/State plan on the basis of the broad content and framework of the plan agreed by the Joint Officers' Group. This Group shall then consider and recommend the Commonwealth/State plan to the Minister through the State Minister for their mutual agreement.
- (4) A Joint Officers' Group shall be established in respect of a State, and shall comprise members drawn from:
  - (a) the Commonwealth;

and

- (b) the State as nominated through the agency of the State determined under clause 33.
- (5) The Joint Officers' Group shall be responsible for:
  - (a) consulting with organisations relevant to the delivery of public housing assistance;
  - (b) developing and agreeing on the broad content and framework of the Commonwealth/State plan, taking into account Commonwealth and State priorities for rental housing assistance in that year;

and

- (c) considering the Commonwealth/State plan submitted to it by the State and recommending the plan to the Minister and State Minister.

## **PART XI—USER RIGHTS AND PARTICIPATION**

- 29.** In implementation of the principles set out in Recital (d) a State shall ensure that, by way of user rights and participation:

- (a) applicants for, and recipients of, housing assistance have access to—
- (i) information about available housing assistance and its current policies on that assistance, tenancy conditions and appeal mechanisms. In providing this information, a State shall have particular regard to the special needs of people with limited abilities in relation to literacy, comprehension or command of English;

and

- (ii) an independent appeal mechanism, agreed by the Minister and State Minister, from decisions as to the provision by the State of housing assistance funded under this agreement, which is to be in force by 31 August 1990;

and

- (b) persons in receipt of rental housing assistance have maximum opportunity to participate in the management of their dwellings and estates and in the development of public housing policies.

## **PART XII—SPECIFIC HOUSING ASSISTANCE**

- 30.** The Minister may in writing authorise, subject to guidelines made consistently with this agreement and agreed between the Minister and a State Minister relating to the following programs including guidelines as to the provision of any funds by a State in relation to each program, grants to a State for expenditure on:

- (a) rental housing assistance for pensioners;
- (b) rental housing assistance for Aboriginals;
- (c) mortgage and rent relief;
- (d) crisis accommodation;
- (e) local government and community housing;

and

- (f) any other program determined by the Minister following consultation with a State.

- 31.** —

- (1) Rental housing provided with grants for specific housing assistance may be sold by a State subject to and in accordance with the provisions of clause 27.
- (2) Unless otherwise agreed by the Minister, the net proceeds of sale of rental housing provided for a specific purpose or program with grants under this Part shall only be applied to provide rental housing for the same purpose or program.

- (3) This clause shall apply to rental housing that has been provided from grants made by the Commonwealth to a State under Part III of the *Housing Assistance Act 1978* or under Part XI of both the agreement made 23 December 1981, the execution of which was authorised by the *Housing Assistance Act 1981*, and the 1984 Agreement respectively or under this Part of this agreement.

### **PART XIII—OBSERVANCE OF AGREEMENT**

32. The Commonwealth shall provide for, or secure the performance by it and its authorities of, the obligations of the Commonwealth under this agreement and each of the States shall provide for, or secure the performance by the State and its authorities of, the obligations of the State under this agreement.
33. A State shall determine an agency or agencies (including bodies or organisations that are not authorities of the State) or the performance of this agreement on behalf of the State and acts and things that are done by or with respect to the agency or agencies so determined shall, for the purposes of this agreement, be deemed to have been done by or with respect to the State.
34. If the Minister in writing informs the State Minister that the Minister is satisfied the State has failed to ensure that an amount of financial assistance provided to the State has been applied for the purposes and in the manner provided for by this agreement with respect to that financial assistance, the State will repay that amount or such part of that amount as the Minister thinks reasonable to the Commonwealth.
35. If a State fails for any reasons to meet the requirements for the provision by it of matching funds in accordance with Part VI or Part XII with respect to any financial assistance that has been provided to it, the State will upon request directed to the State Minister by the Minister in writing, repay to the Commonwealth the amount of that financial assistance or so much of that amount as is specified in the request.
36. If the Minister and a State Minister cannot agree, in a year in which it is to be agreed, on allocation or program delivery priorities and targets to be included in a Commonwealth/State plan for the subsequent year, or if a State fails to apply priorities or achieve targets included in a Commonwealth/State plan in respect of a year, otherwise than because of matters beyond its control, the Minister may, following consultation with the State Minister—
- (a) determine for the subsequent year, an amount of untied assistance which is to be expended in that year on priorities and targets determined by the Minister;
- or
- (b) determine for the subsequent year, an amount which otherwise would be untied assistance to become part of the specific housing assistance for that State for that year.

### **PART XIV—TRIENNIAL EVALUATION**

37. In accordance with the arrangements to be agreed between the Minister and State Ministers, the operation of the agreement is to be evaluated triennially.

## PART XV—SUPPLY OF INFORMATION

38. —

- (1) A State shall, not later than the thirtieth day of November preceding the beginning of a year of this agreement, provide the Minister in a reasonable form, determined by the Minister after consultation with the State Minister—
  - (a) estimates of the financial resources and program outputs in respect of rental housing and home purchase assistance programs for the year;
  - (b) revised estimates of those financial resources and program outputs for the then current year;and
  - (c) final figures for those financial resources and program outputs for the previous year.
- (2) A State shall furnish in respect of each year to the Commonwealth by the thirtieth day of November occurring after that year and in a reasonable form to be determined by the Minister after consultation with the State Minister—
  - (a) statements in respect of the operation of—
    - (i) the Rental Capital Account;and
    - (ii) the Home Purchase Assistance Account;
  - (b) statements which set out particulars of the expenditure during the year by the State of—
    - (i) amounts on home purchase assistance programs, being matching funds under paragraph 13(2)(b);and
    - (ii) grants for specific housing assistance;and
  - (c) statements which set out—
    - (i) the manner in which the State has fixed rents in accordance with clause 26;and
    - (ii) any cash surplus or deficit or revenue over outgoings arising from rental operations.
- (3) A State shall publish an audited statement on the operation in each year of the Rental Capital Account no later than nine months after the conclusion of a year.
- (4) The information to be included in a statement pursuant to subclause 38(3) will be no less than that to be furnished to the Minister on the operation of the Rental Capital Account, pursuant to subclause 38(2).
- (5) A statement furnished pursuant to subclause 38(2) is to be certified as to its correctness by a person appointed by the State Minister for that purpose.

- (6) A State shall provide in writing to the Commonwealth in respect of each year of this agreement by the thirtieth day of November occurring after that year such program and non-identifying client information as is reasonably requested by the Commonwealth to monitor achievement of the objectives of this agreement and allocation and program delivery priorities and targets identified in the Commonwealth/State plan.
- (7) The Commonwealth and the State shall provide each other with information as agreed for program development and planning purposes.

## **PART XVI—VARIATION OF AGREEMENT**

### **39. —**

- (1) The provisions of this agreement other than the principles set out in Recital (D), Part IV, Part VI, Part X and Part XI may be varied as between the Commonwealth and a State by agreement in writing between the Minister and State Minister, but only after consultation between the Minister and other State Ministers.
- (2) A copy of an agreement or copies of the documents which constitute an agreement under subclause 39(1) shall be tabled in the Parliament of the Commonwealth and, where necessary, of the State within 15 sittings days of respective Parliaments from the date upon which the agreement is made.
- (3) An agreement under subclause 39(1) shall not affect the operation of this agreement as between the Commonwealth and the States other than a State with which the agreement has been made.

## **PART XVII—REPRESENTATION AND COMMUNICATIONS**

### **40. —**

- (1) The Commonwealth shall, subject to subclause 40(2), be represented for the purposes of this agreement by the Department of Community Services and Health and the Minister shall notify State Ministers of the address of that Department and of any change at any time of that address.
- (2) In the event that the administration of this agreement for the Commonwealth is allocated to a Minister other than a Minister responsible for administering any part of the Department of Community Services and Health, the Commonwealth shall be represented by the Department administered by that other Minister and that Minister shall notify State Ministers of the address of that Department.

41. Each State shall be represented for the purposes of this agreement by the Department administered by the State Minister or such other agency of the State as the State Minister shall nominate ("Agency") and the State Minister shall notify the Minister of the address of that Department or Agency and of any change at any time of the Department or Agency or of the address.

**42.** —

- (1) A notice or other communication under or in connection with this agreement shall be duly given if it is in writing signed by or on behalf of, or attributed to, the Head of the Department or Agency by which it is given and addressed to or delivered at the address of the Department or Agency to which it is directed.
- (2) For the purpose of this clause writing includes a teleprinter message and the address for such a message shall be the teleprinter address of the receiving Department or Agency.
- (3) A notice or other communications shall be given under this clause when it is received in the appropriate form by the Department or Agency to which it is directed.

## **THE SCHEDULE**

### Clause 26

#### COST RENT PRINCIPLES

The following principles are to be used to determine real cost rents for rental housing. The principles are not to be applied to the costs of individual dwellings but rather to the total cost pool of the rental stock. In allocating the total cost pool to individual tenancies, a State will have regard to variation in housing standards and locations within the constraints of available administrative arrangements for assessing these variations.

#### **1. Recovery of operating expenses**

The costs to be recovered in this respect are ordinarily listed in the rental accounts of State housing authorities as yearly expenditure items. These include:

- (a) administration;
- (b) rates;
- (c) insurance;
- (d) specific operating expenses associated with particular types of units;
- (e) annual maintenance;
- (f) yearly allowance for rent arrears and debts written off;
- (g) yearly allowance for vacancies;
- (h) leasing expenses related to land and dwellings;
- (i) operating expenses of community facilities;

and

- (j) any other operating costs agreed between the Minister and a State Minister.

#### **2. Interest Charges**

The costs to be recovered by the State include:

- (a) interest payable by a State on loan funds invested by it in rental housing;

and

- (b) a notional amount of interest on all Commonwealth and State grants invested in rental housing from and including 1989–90. That notional amount of interest is to be calculated at a rate taken as equivalent to the assessed secondary market yields published by the Reserve Bank of Australia in periodical Statistical Bulletins for the last business day of June preceding the commencement of the year in which the grants are paid into the Rental Capital Account.

**3. Depreciation**

An amount with respect to depreciation is to be included in costs to be recovered. To this end:

- (a) the depreciation rate is to reflect a life between 40–75 years of the capital improvements on the land;
- (b) the value of capital improvement will be based on the estimated current capital improved value; and
- (c) the minimum annual depreciation rate will be not less than the rate resulting from a term of 75 years.

IN WITNESS WHEREOF etc.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Legislation repealed by principal Act

The *Housing Agreement Act 1991* repealed the following:

*Housing Agreement Act 1984*

### Principal Act

Year	No	Title	Assent	Commencement
1991	28	<i>Housing Agreement Act 1991</i>	24.4.1991	24.4.1991

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	§
<i>s 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	§