

# HOUSING (AMENDMENT) BILL.

---

## EXPLANATORY NOTES.

This Bill deals with several separate matters as follows :—

- |   |                                      |
|---|--------------------------------------|
| (i) The sale of land for housing and related purposes to be one of the objects for which the Commission was established.  | Clause 2 page 1 of the Bill.         |
| (ii) The Minister of Housing (rather than the Treasurer) to authorize the purchase or compulsory acquisition of any land.   | Clause 3 page 1 of the Bill.         |
| (iii) The sale of land by the Commission by negotiation.  | Clause 4 page 2 of the Bill.         |
| (ix) The sale of houses by the Commission   | Clause 5 page 2 of the Bill.         |
| (v) The transfer of titles to Commission houses to eligible persons and the taking of first mortgages as security for such transfers.                                   | Clause 6 pages 2 and 3 of the Bill.  |
| (vi) Conditions relating to the resale of Commission houses.  | Clause 7 pages 3 and 4 of the Bill.  |
| (vii) Provision of movable units (granny flats) for single pensioners.  | Clause 8 page 5 of the Bill.         |
| (viii) Fees for certificates under Section 61 of the <i>Housing Act</i> 1958.   | Clause 9 page 5 of the Bill.         |
| (ix) The keeping of accounts and the repayment of moneys received from the Commonwealth in relation to the Commission's activities on behalf of the Urban Land Council. | Clause 10 page 5 of the Bill.        |
| (x) The sale of land to homebuilders of limited means.  | Clause 11 page 5 of the Bill.        |
| (xi) Certificates obtained from the Commission in connection with the sale of certain classes of land.  | Clause 12 pages 5 and 6 of the Bill. |

*Clause 1.* *Sub-clause 1* sets out the short title to the Act.

*Sub-clause 2* defines the *Housing Act* 1958 as the Principal Act referred to in the Bill.

*Sub-clause 3* provides for the Act to come into operation on the day on which it receives Royal Assent.

*Clause 2.* This Clause amends Section 5 (1) (d) of the Principal Act and makes it clear that the sale of land for housing and related purposes is one of the objects for which the Commission was established. This provision will reinforce the Commission's statutory powers in relation to the sale of land, particularly with respect to its activities on behalf of the Urban Land Council.

*Clause 3.* Empowers the Minister of Housing to authorize the purchase or compulsory acquisition of any land by amending Section 22 (1) (a) of the Principal Act. The present legislation requires the Commission to obtain the consent of the Treasurer to such purchases or compulsory acquisitions and originated in the *Slum Reclamation and Housing Act 1938* (No. 4568). This position was satisfactory whilst the Commission remained a branch of the Treasury but following the proclamation of the *Housing Ministry Act 1972* (No. 8339) on the 2nd April, 1973, the Commission became part of the Ministry of Housing and the requirement that the Treasurer's consent be obtained to purchases and acquisitions of land is no longer appropriate.

*Clause 4.* Amends Section 22 (1) (i) (ii) of the Principal Act. At the present time, the Section provides that the Commission may, with the consent of the Minister, sell land by public auction or public tender and that if, after the calling of tenders or the holding of the auction the land remains unsold, the Commission may proceed to sell the land by negotiation.

The amendment proposed would enable the Commission, with the consent of the Minister, to sell land by negotiation without the necessity to go to auction or tender. These latter means of sale would remain as alternatives but not as pre-requisites to sale by negotiation.

The requirement that the sale may not be effected at a price lower than the upset price determined by the Commission after considering a report by a sworn valuator will remain.

The amendment would provide the flexibility necessary to enable the Commission to more effectively carry out the land sales policies of the Urban Land Council.

*Clause 5. Sub-clause (1)* inserts a new Division 2 (A) after Section 33 of the Principal Act.

This amendment will empower the Commission to sell houses to other than eligible persons and is necessary to enable the Commission to carry out sales policies of the Urban Land Council which does not desire to set income limits for prospective purchasers.

Under Section 34 of the existing legislation, the Commission may sell houses only to eligible persons, the Crown, the Minister of Education, Municipalities or to persons or bodies requiring houses for charitable or philanthropic purposes or for the advancement of the community.

It should be noted that the amendment will apply only to the sale of houses which have been built with funds other than Commonwealth funds provided for use in connection with the housing of eligible persons.

The amendment will delete reference to the power of the Housing Commission to sell houses to the Crown and to the other bodies referred to above as sales to all such bodies would take place under the new provision relating to the sale of houses to other than eligible persons.

*Sub-clause (2)* substitutes a new heading for Division 3 of the Principal Act and a new Sub-section 34 which provides that the Division shall apply to the sale of houses to eligible persons.

*Sub-clause (3)* amends Sub-section (2) of Section 34 and makes it clear that the matters to which the Commission shall have regard with respect to the sale of houses to eligible persons shall apply solely to sales to such persons.

*Clause 6.* Substitutes four new sub-sections in lieu of Sub-section (2) of Section 36 of the Principal Act as follows :—

*New Sub-section (2)* will enable an eligible person who is a purchaser of a Commission house under a contract of sale and who is up-to-date with his payments to the Commission to obtain a Certificate of Title in his own name and to then mortgage the land to the Commission on the same terms and conditions as contained in the contract of sale.

*New Sub-section (2A)* sets out in paragraphs (a) and (b) specific mandatory conditions for incorporation in such mortgages intended to ensure that :—

(a) the Mortgagor will not let or sub-let all or any part of the land without first obtaining the written consent of the Commission.

- (b) Moneys secured by the mortgagor are repaid to the Commission in the event of the sale of the land by the Mortgagor.

*Paragraph (c)* provides that the usual obligations of mortgagors as expressed in mortgages relative to house properties shall also be incorporated in mortgages under Section 36 of the Principal Act and that such mortgages shall provide for the observance of all obligations of the purchaser under the contract of sale and the Act.

*New Sub-section (2B)* provides that Section 4 of the *Sale of Land Act* 1962 shall not apply to a purchaser under a contract of sale to which the provisions of the proposed new Division 3 apply.

This amendment is intended to overcome the likelihood of conflict with the said Section 4 which makes provision similar to that contained in the proposed new Division 3 with respect to the rights of purchasers of land under contracts of sale to obtain certificates of title and mortgages from vendors.

*New Sub-section (2C)*. This amendment relates to the situation where a purchaser has re-sold his property on the open market and the new purchaser is an eligible person within the meaning of the *Housing Act* 1958.

In such cases, provided that the re-sale is not in breach of the limitations on re-sale imposed by the Act, the Commission may at its discretion, consent to the transfer of the mortgage to the new purchaser.

*Clause 7* Substitutes a new Section 41 comprising five sub-sections in lieu of the existing Section 41. This amendment relates to the sale of houses to eligible persons and provides as follows :—

*New Sub-Section (1)*—The whole of this proposed sub-section relates to those cases where the purchaser is the subject of a contract of sale and money is still owing to the Commission.

In order to comply with the 1973 Housing Agreement, the sub-section prohibits the sale, contracting to sell, assignment, transfer or any disposal of the house and land or any part thereof within a period of five years from the date of the contract except by way of purchase by the Commission of the purchaser's interest.

The sub-section also prevents the letting or sub-letting of the house or land (or any part thereof) by the purchaser without first obtaining the written consent of the Commission.

*New Sub-section (2)*—The whole of this proposed sub-section relates to those cases where within a period of five years from the date of the contract of sale (i.e. the period stipulated in Clause 19 of the 1973 Housing Agreement as referred to above), the purchaser has either :—

- (a) taken advantage of the procedure to take title and mortgage the land to the Commission,

Or,

- (b) has paid out the contract of sale in full i.e. without having availed himself of the transfer of title and mortgage procedure.

In such cases there is a prohibition on the sale, contracting to sell, assignment, transfer or any disposal of the house and land or any part thereof except by way of a transfer to the Commission of the purchaser's interest.

As in the proposed new sub-section (1) above, this limitation on the disposal of the property is in line with the 1973 Housing Agreement.

*New Sub-section 3* is a further provision relating to those cases where the purchaser has obtained title and mortgaged the property to the Commission or who has paid out the contract in full within the period of five years from the date of the contract of sale and intends to transfer the title to his own name.

As in either case the contract of sale would be completed, the covenants prohibiting disposal of the property within the period of five years from the date of the contract of sale, require re-statement by separate agreement.

The new Sub-section (3) requires purchasers in those cases to execute such agreements.

*New Sub-sections (4) and (5)* provides for the lodging of a caveat by the Registrar of Titles to prohibit dealings with properties in those cases where the purchaser has obtained title to the land within the period of five years from the date of the contract of sale with the Commission and for the payment of the appropriate fee for the lodging of such caveats.

As some doubt exists as to whether the interest sought to be protected by the caveat is in fact a caveatable interest, it is considered desirable that express statutory authority be given to the Registrar of Titles to lodge such caveats on behalf of the Housing Commission.

*Clause 8* This provision amends Section 54B (1) of the Principal Act to permit the provision of granny flats for single pensioners and remove the previous restriction whereby such accommodation was available only to pensioners who were married couples as at the date of taking occupation of the unit.

*Clause 9* Amends Section 61 (1) of the Principal Act to enable the fee payable for a Certificate issued by the Commission under that section to be varied from time to time at the discretion of the Minister. This provision overcomes the need for amendment of the section each time a variation of the fee is found necessary.

*Clause 10.* Amends Sections 86 (4) and 88 (2) of the Principal Act.

This amendment will require the Commission to keep accounts in respect of all funds derived from Commonwealth grants which are received by the Commission.

At the present time the Commission is required to keep accounts only in respect of Commonwealth financial assistance for housing and the amendment is considered necessary in view of the provision of Commonwealth funds for the purchase of land on behalf of the Urban Land Council.

The amendment also provides for the repayment of moneys received from the Commonwealth pursuant to the *Urban and Regional Development (Financial Assistance) Act 1974* under which funds have been received by the Commission in relation to its activities on behalf of the Urban Land Council.

*Clause 11.* Amends Section 103 of the Principal Act.

Section 103 relates to the sale of vacant land at discounted prices to home builders of limited means.

The amendment proposed will retain the present requirement that the applicant satisfy the Commission that he wishes to purchase the land as a site for a house for his own occupation but will remove the requirements in the present legislation that he also satisfy the Commission that he is not the owner of any house or land suitable for his needs and that by reason of his financial circumstances he is in need of assistance under the section. This will give greater freedom to the Commission in effecting such sales particularly in the case of sales on behalf of the Urban Land Council where restrictions as to resale are required but where it is not proposed to impose restrictions as to income.

The present need to obtain the Minister's consent to such sales will remain as will the requirement as set out in Sub-section (2) of Section 103 of the Principal Act that the price be determined by the Commission after considering a valuation by a sworn valuator, the actual cost of the land to the Commission and the cost of development works incurred by the Commission in relation to the land. The requirement that in no case shall the price be less than the total cost of the land and development works will also remain.

*Clause 12.* Amends Section 119A (1) of the Principal Act by deleting paragraph (c) of Sub-section (1) of that section and by deleting reference to Sub-section Number (1).

At the present time, solicitors acting on behalf of clients purchasing certain classes of properties as defined in Section 119A (1) of the Principal Act find it necessary to obtain a certificate and to advise their clients whether, among other things, the land is an allotment of land as specified in the said paragraph (c) by reference to Section 66 of the Principal Act, i.e. that it is less than the minimum depth width or frontage prescribed by the regulations or by any by-law of the relevant municipality in which the land is situate.

Representations have been made by the Law Institute of Victoria seeking deletion of paragraph (c) of Section 119A (1) on the grounds that there were probably thousands of allotments in areas of Melbourne and throughout the State which fell within the description and whilst it would be obvious whether a property was affected by the other matters referred to in the section, it would not be clear in most cases whether a property was less than the minimum area depth, width or frontage prescribed for the area in which the land was situated.

The Law Institute took the view that it was too great an onus on solicitors acting for vendors to ascertain prior to the drawing of contracts whether or not allotments complied with the requirement and that the said paragraph (c) should be deleted from the section.

Reference to Sub-section number (1) in Section 119A has been deleted in view of the fact that there are no subsequent sub-sections in this section.