

## Housing Societies Repeal Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

## **Housing Societies Repeal Bill 2005**

**A Bill for**

**An Act to provide for the winding up of housing societies, to repeal the *Housing Societies Act 1976* and the *Housing Loan Guarantee Act 1957*, to make consequential amendments to other Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This is the *Housing Societies Repeal Act 2005*.

### 2. Commencement

- 5 (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 3, 4 and 10 are deemed to have come into operation on preservation day.
- (3) Part 3 comes into operation on a day fixed by proclamation.
- 10 (4) A proclamation cannot be made under subsection (3) unless the Minister is satisfied that the registration of each society in existence immediately before commencement day has been cancelled.

### 3. Expressions used in this Act

- 15 (1) In this Act, unless the contrary intention appears —
- “**commencement day**” means the day on which this Act receives the Royal Assent;
- “**contributing member**” means a member of a society who, on preservation day had an advance of money made by the society out of its own funds that had not been fully repaid on preservation day;
- 20 “**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;
- “**distribute**”, in relation to the property of a society, has a meaning affected by subsection (2);
- 25 “**maximum distribution**” has the meaning given in section 10(3);
- “**membership share**” means the share or other interest in a society a person must make payments in respect of before being able to exercise rights of membership of the society;
- 30

**“preservation day”** means 21 October 2004.

- 5
- (2) In this Act, a reference to distributing property of a society to a member or director is to be read as including a reference to applying the property for the benefit of the member or director and to releasing (wholly or partly) the member or director from a liability the member or director has to the society.
- (3) A reference to a provision of the Corporations Act as applied, is a reference to that provision of the Corporations Act as applied because of section 71 of the *Housing Societies Act 1976*.
- 10 (4) Unless the contrary intention appears, other words and expressions used in this Act have the same respective meanings as they have in the *Housing Societies Act 1976*.

**4. Relationship of this Act to the *Housing Societies Act 1976* and the rules of societies**

- 15 (1) To the extent of any inconsistency between the provisions of this Act and the provisions of the *Housing Societies Act 1976* the provisions of this Act prevail.
- (2) To the extent of any inconsistency between the provisions of this Act and the provisions of the rules of a society the provisions of this Act prevail.
- 20

## **Part 2 — Winding up of societies**

### **5. Purpose of this Part**

The purpose of this Part is to ensure that —

- (a) each society is wound up; and
- 5 (b) apart from being used to pay the liabilities of the society, the property of each society is distributed so that —
  - 10 (i) each member (other than a contributing member) and each director receives no more than the refund of his or her membership share;
  - (ii) each contributing member receives no more than the refund of his or her membership share and the maximum distribution for that member; and
  - (iii) the remainder is transferred to the State.

### **6. Application of this Part**

- 15 (1) Sections 7, 8, 14 and 15 do not apply to or in relation to a society in respect of which an involuntary winding up is taking place.
- (2) In this section —  
20 **“involuntary winding up”** means a winding up other than a voluntary winding up.

### **7. Societies to cease carrying on business**

- 25 (1) A society must not commence or carry on new business after commencement day (for example, obtain a new member or issue a new loan).
- (2) A society must cease to carry on business before the end of the 60<sup>th</sup> day after commencement day except so far as is, in the opinion of the liquidator of the society, required for the winding up of that business.

**8. Societies to be wound up**

- (1) The directors of each society are to cause the society to be wound up once the society has ceased to carry on business.
- 5 (2) The winding up is to be in accordance with Part 5.5 of the Corporations Act as applied.
- (3) For the purposes of this section, the society is to be taken to have —
- (a) resolved, by special resolution, that the society be wound up; and
- 10 (b) complied with section 491(2) of the Corporations Act as applied.

**9. Minister may intervene**

- (1) If a society has not appointed a liquidator to wind up the society before the end of the 60<sup>th</sup> day after commencement day, the
- 15 Minister may appoint a liquidator to wind up the society.
- (2) The Minister may replace the liquidator or liquidators of a society (whether or not appointed by the Minister) if —
- (a) the winding up of the society has not been completed within 12 months after commencement day or the
- 20 Minister is satisfied that the winding up of the society is unlikely to be completed within that time;
- (b) the Minister is satisfied that the circumstances that gave rise to the delay in winding up the society were within the control of the liquidator or liquidators; and
- 25 (c) the Minister is satisfied that it is appropriate to do so.

**10. Distribution of property of societies on or after preservation day**

- (1) The distribution of property of a society to its members or directors on or after preservation day, whether on or before the

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winding up of the society and whether on one or more than one occasion, is limited to —

- 5
- (a) for a member (other than a contributing member) or director of the society — the amount the member or director paid for his or her membership share; and
  - (b) for a contributing member of the society — the sum of the amount the member paid for his or her membership share and the maximum distribution for that member.
- 10
- (2) On the winding up of a society, on or after preservation day, the property of the society must be distributed (subject to the limits set out in subsection (1)) in the following order —
- 15
- (a) first, in satisfaction of its liabilities;
  - (b) secondly, by paying to each person who was a member or director of the society at the time the winding up commenced the amount the person paid for his or her membership share;
  - (c) thirdly, by paying to each person who was a contributing member of the society on preservation day the maximum distribution for that person;
  - 20 (d) fourthly, by paying the remainder to the Minister.
- (3) The maximum distribution for a contributing member of a society is the lesser of —
- 25
- (a) \$4 000; and
  - (b) the amount of the advance of money made by the society to the member that is outstanding on preservation day.
- (4) An amount to be paid to the Minister under subsection (2)(d) is a debt due to the State and may be recovered in a court of competent jurisdiction.

**11. Application of certain distributions after commencement**

A distribution to a contributing member referred to in section 10(1)(b) or (2)(c) must be applied as follows —

- 5
- (a) first, in reduction of the amount of any loan to the person by the society (including a loan that, during the course of the winding up of the society, is assigned to another person);
  - (b) secondly, by paying any remaining amount to the person.

10 **12. Recovery of distributions not in accordance with this Part**

- (1) This section applies to and in relation to a society in existence on preservation day, whether or not the society is wound up or ceases to exist before commencement day.
- 15 (2) If property of the society is distributed to its members or directors on or after preservation day other than in accordance with the limits set out in section 10(1), each member and each director who has received more than the member or director is entitled to under section 10(1) must pay to the Minister an amount equal to the value of the excess amount received by the member or director.
- 20 (3) An amount to be paid to the Minister under subsection (2) is a debt due to the State and may be recovered in a court of competent jurisdiction.
- 25 (4) If, because the property of the society has not been applied in accordance with section 10, a contributing member has not received the amount the member is entitled to under section 10(1), the Minister may pay to the member an amount worked out so that the member will be in the same position as he or she would have been had the property been applied in accordance with section 10.
- 30 (5) Payments under subsection (4) are charged to the Social Housing Account.

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**13. Payments into and out of the Social Housing Account**

- (1) An account called the Social Housing Account is established as part of The State Housing Commission Fund referred to in section 62(2) of the *Housing Act 1980*.
- 5 (2) Each amount paid to the Minister under section 10(2)(d) or section 12(2) must be credited to the Social Housing Account.
- (3) The Social Housing Account may be applied by the Minister, but only for the following purposes —
- 10 (a) social housing purposes;
- (b) payments under section 12(5).
- (4) If the Minister is satisfied that no money will be credited to the Social Housing Account and that all amounts in the account have been applied, the Minister may, by notice in the *Gazette*, close the account referred to in section 13(1).
- 15 (5) To the extent of any inconsistency between the provisions of this section and the provisions of the *Housing Act 1980* the provisions of this section prevail.

**14. Liquidator's report**

20 The liquidator or liquidators of a society must give to the Minister the account the liquidator is, or liquidators are, required to make under section 509(1) of the Corporations Act as applied as soon as the affairs of the society are fully wound up.

**15. Extent of application of provisions of the Corporations Act**

- 25 (1) To the extent of any inconsistency between the provisions of this Part and the provisions of the Corporations Act as applied, the provisions of this Part prevail.
- (2) Despite section 71 of the *Housing Societies Act 1976* —
- 30 (a) section 502 of the Corporations Act does not apply in relation to a liquidator of a society;

- 5
- (b) section 508 of the Corporations Act does not apply in relation to a society; and
  - (c) section 509 of the Corporations Act does not apply in relation to a society to the extent to which that section relates to holding a meeting of the society.
- (3) Section 503 of the Corporations Act as applied applies to a liquidator of a society as if the reference in it to the Court were a reference to the Minister.

**16. *Housing Societies Act 1976* amended**

- 10 (1) The amendments in this section are to the *Housing Societies Act 1976*\*.

[\* *Reprinted as at 9 November 2001.*  
*For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 212.*]

- 15 (2) Section 59(4a) is repealed and the following subsections are inserted instead —

“

- 20 (4a) Where a society has less than 5 directors, or less than the number of directors that the Registrar has approved under subsection (2), the Registrar may appoint as a director such person or persons as he thinks fit.
- (4b) The duty to fill a vacancy in the office of a director within 60 days under subsection (4) ceases once the Registrar has made an appointment under
- 25 subsection (4a).

”.

**17. Transitional regulations**

- 30 (1) If there is no sufficient provision in this Act for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.

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(2) Any regulations made under this section must be made within 12 months after commencement day.

(3) In subsection (1) —

5                    **“transitional matter”** means a matter of a transitional or savings nature in connection with the winding up of societies because of this Act or with the repeal of the *Housing Societies Act 1976* by this Act.

10           (4) If the regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.

(5) If the regulations contain a provision referred to in subsection (4), the provision does not operate so as —

15           (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or

20           (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

### Part 3 — Repeal of Acts and consequential amendments to other Acts

**18. *Housing Societies Act 1976* repealed**

The *Housing Societies Act 1976* is repealed.

5 **19. *Housing Loan Guarantee Act 1957* repealed**

The *Housing Loan Guarantee Act 1957* is repealed.

**20. *Civil Judgments Enforcement Act 2004* amended**

- (1) The amendments in this section are to the *Civil Judgments Enforcement Act 2004*\*.

10 [\* *Act No. 28 of 2004.*]

- (2) Section 45 is amended in the definition of “financial institution” as follows:

(a) after paragraph (c) by inserting —  
“ or ”;

15 (b) by deleting paragraph (d) and “or” after it.

**21. *Companies (Co-operative) Act 1943* amended**

- (1) The amendments in this section are to the *Companies (Co-operative) Act 1943*\*.

[\* *Reprinted as at 14 January 2000.*

20 *For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 74.*]

- (2) Section 46(3a) is amended by deleting paragraph (a) and “or” after it.

25 (3) Section 172(1) is amended by deleting paragraph (a) and “or” after it.

- (4) Section 176A(1)(c) is deleted.

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- (5) Section 366 is amended in the definition of “Company” by deleting “, or a society registered under the *Housing Societies Act 1976*”.

**22. Country Housing Act 1998 amended**

- 5 (1) The amendment in this section is to the *Country Housing Act 1998*\*.
- [\* Reprinted as at 13 December 2002.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 99-100 and Act No. 49 of 2004.*]
- 10 (2) Section 43 is repealed.

**23. Credit (Administration) Act 1984 amended**

- (1) The amendment in this section is to the *Credit (Administration) Act 1984*\*.
- 15 [\* Reprint 2 as at 6 August 2004.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 103.*]
- (2) Section 7(1)(h) is deleted.

**24. Credit Act 1984 amended**

- 20 (1) The amendment in this section is to the *Credit Act 1984*\*.
- [\* Reprinted as at 6 April 2001.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 103-04.*]
- 25 (2) Section 18(1) is amended by deleting “, or a society registered under the *Housing Societies Act 1976*,”.

**25. Criminal Property Confiscation Act 2000 amended**

- (1) The amendment in this section is to the *Criminal Property Confiscation Act 2000*\*.

[\* *Act No. 68 of 2000.*

5        *For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 112 and Act No. 84 of 2004.]*

- (2) The Glossary is amended in the definition of “financial institution” by deleting paragraph (d).

10    **26. Equal Opportunity Act 1984 amended**

- (1) The amendments in this section are to the *Equal Opportunity Act 1984*\*.

[\* *Reprint 4 as at 1 April 2005.*

*For subsequent amendments see Act No. 59 of 2004.]*

- 15    (2) Section 35N(1) is amended as follows:

(a) after paragraph (b) by inserting —

“ or ”;

(b) after paragraph (c) by deleting “; or” and inserting a full stop;

- 20    (c) by deleting paragraph (d).

- (3) Section 66ZS(1)(a) is amended as follows:

(a) after subparagraph (ii) by inserting —

“ or ”;

(b) after subparagraph (iii) by deleting “or”;

- 25    (c) by deleting subparagraph (iv).

- (4) Section 69(1)(b) is amended as follows:

(a) after subparagraph (ii) by inserting —

“ or ”;

(b) after subparagraph (iii) by deleting “or”;

(c) by deleting subparagraph (iv).

**27. Finance Brokers Control Act 1975 amended**

(1) The amendment in this section is to the *Finance Brokers Control Act 1975*\*.

5 [\* Reprinted as at 3 March 2000.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 157-8.*]

(2) Section 5(1)(c) is deleted.

**28. Housing Act 1980 amended**

10 (1) The amendments in this section are to the *Housing Act 1980*\*.

[\* Reprinted as at 27 May 1999.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 209.*]

15 (2) Section 52(1) is amended in the definition of “lending institution” by deleting paragraph (a).

(3) Section 55(5) is amended by deleting “or on termination of the lending institution in the case of a housing society;”.

**29. Real Estate and Business Agents Act 1978 amended**

20 (1) The amendments in this section are to the *Real Estate and Business Agents Act 1978*\*.

[\* Reprint 5 as at 8 April 2005.  
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 381.*]

25 (2) Section 131A is amended in the definition of “lending institution” as follows:

(a) after paragraph (a) by inserting —  
“ or ”;

(b) by deleting paragraph (c) and “or” after it.

- (3) Section 131O(1) is amended as follows:
  - (a) after paragraph (b) by inserting —  
“ and ”;
  - (b) by deleting paragraph (e) and “and” after it.

5   **30.   *Stamp Act 1921 amended***

- (1) The amendments in this section are to the *Stamp Act 1921*\*.  
[\* *Reprint 14 as at 12 September 2003.*  
*For subsequent amendments see Western Australian  
Legislation Information Tables for 2004, Table 1, p. 426.*]

- 10   (2) The Third Schedule is amended by deleting items 3(2) and 7(11).

**31.   *Western Australian Treasury Corporation Act 1986 amended***

- (1) The amendment in this section is to the *Western Australian Treasury Corporation Act 1986*\*.

15   [\* *Reprinted as at 5 January 2001.*  
*For subsequent amendments see Western Australian  
Legislation Information Tables for 2004, Table 1, p. 499.*]

- (2) Schedule 1 item 4 is deleted.
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