

HOUSING SOCIETIES REPEAL BILL 2005

EXPLANATORY MEMORANDUM

The purpose of this bill is to repeal the *Housing Societies Act 1976* and allow for the winding up of the two remaining housing societies registered pursuant to the *Housing Societies Act 1976*. The bill sets out how the reserves of the remaining two housing societies will be distributed amongst its members. The Bill also includes the Repeal of the *Housing Loan Guarantee Act 1957* and consequential amendments to other Acts.

The housing societies, which were formally known as terminating building societies, have been in operation since the late 1950's. Initially a society would be formed to cater for groups of people with some sort of common community thread. There have been nearly 700 societies registered pursuant to the Housing Societies Act, 1976. A society would assist its members attain a low deposit, concessional interest rate home loan to construct or purchase a home.

Under the normal circumstance of winding up a society any surplus reserves of the society are distributed to the remaining members. However, as a result of the general consolidation of many societies administered by management companies, the winding up and distribution of reserves to members did not regularly occur. This policy over previous decades has resulted in the current position of only 2 remaining housing societies having consolidated reserves of nearly \$7.1 million. Housing society membership has reduced from over 35,000 in the past to now less than 6,000 current members of which approximately 520 are "on balance sheet" members who have a loan with a society.

Government funds or guarantees under the *Housing Loan Guarantee Act, 1957* were provided to housing societies giving them a lower cost of finance than from traditional funding sources like banks, building societies or credit unions. Because of government's intrinsic role in the housing society industry, the *Housing Societies Repeal Bill 2004* introduced by Government to wind up the operations of the housing societies and repeal the *Housing Societies Act, 1976* includes a distribution of \$1.95 million of reserves to "on balance sheet" members of the housing societies and also perpetuates a significant portion of the housing society reserve funds, approximately \$5.15 million to be used for assisting other low income families into affordable housing.

The \$1.95 million, will be distributed to "on balance sheet" members of a society who have a current loan with their society or had a loan with their society as at 21 October 2004 which is deemed as the preservation day for purposes of the Bill. The distribution is upto a maximum of \$4,000 per "on balance sheet" member.

A distribution to Keystart members who have only a nominal relationship with the society for the purpose of the society acting, as agent for Keystart would not be consistent as they have not contributed to the reserves of the society they are a member of..

Similarly a full distribution amongst the residual “on balance sheet” members of a society will result in an unjust enrichment of those members as it gives no regard to the thousands of other “on balance sheet” members who have repaid their society home loan and as a result relinquished membership of the society.

The balance of reserves (\$5.15 m) will be repatriated to government for use in future housing programs and will be administered via a Social Housing Account by the State Housing Commission. The Social Housing Account will assist low to moderate income earners in Western Australian attain housing accommodation and is consistent with the principles of the housing societies cooperative nature.

CLAUSE NOTES

PART 1 – PRELIMINARY

Clause 1 Short Title

Citation of the Act.

Clause 2 Commencement

Subclause 1 provides that the Act will commence on the day it receives Royal Assent. Subclause 2 makes provision that Sections 3, 4 and 10 come into date on 21 October 2004. This preserves contributing members right to a distribution of their society’s surplus reserves. It also addresses the issue of any inconsistency between the *Housing Societies Act 1976* or the housing society’s rules. This clause also provides that any distribution by a society after the preservation date must be in accordance with the limits of this Bill.

Subclause 3 makes provision for Part 3 of the Act, which relates to Repeal of Acts and consequential amendments to come into effect on a day fixed by proclamation.

Subclause 4 ensures that a proclamation cannot be made that will enact Part 3 of the Bill until all the housing societies have been wound up.

Clause 3 Expressions used in this Act

Subclause 1 is self explanatory.

Subclause 2 defines the distribution of the property of a society for the purposes of the Act.

Subclause 3 & 4 confirms that the references and intentions used in this Act and the *Housing Societies Act 1976* have the same meaning.

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

Subclause 1 & 2 defines the relationship between this Act and the *Housing Societies Act 1976* and confirms that where there are inconsistencies between the *Housing Societies Act 1976* or the societies rules, this Act will prevail.

PART 2 Winding up of societies

Clause 5 Purpose of this part

This clause directs that the societies be wound up and that following the payment of all society liabilities, the property of the society is then distributed in accordance with the Act. Each member of the society including a director of the society is entitled to a refund of their nominal membership share in the society. A “contributing member” of a society as defined in the Act is entitled to a distribution of \$4,000 or if a contributing member’s loan balance is below \$4,000, the loan balance will be the value of the distribution. The balance of funds is to be transferred to the State.

Clause 6 Application of this Part

This clause addresses the event where an involuntary winding up is occurring and directs that clauses which apply to a voluntary wind up of a society do not apply.

Clause 7 Societies to cease carrying on business

The commencement day is the day that Royal Assent is given to the Act. A society is not to commence any new business from that day forward. A society is to cease to carrying on business after 60 days, except where the business being carried out is in the opinion of appointed liquidator of the society necessary for the wind up of a society. This clause limits a society from conducting new business to result in a drawn out process to wind down the affairs of a society.

Clause 8 Societies to be wound up

The directors of a society are to implement the steps to wind up the affairs of the society in accordance with Part 5.5 of the Corporation Act as applied. Part 5.5 of the Corporations Act is to be applied in respect of section 71 of the *Housing Societies Act 1976*. Section 71 of the *Housing Societies Act 1976* addresses the winding up of societies either voluntarily or by the court or upon a certificate of the Registrar of Housing Societies.

The purpose of this clause is that the directors have taken a decision and resolved to commence winding up the society. The Act also requires that section 491 (2) of the Corporations Act has been complied with [the requirement to print and lodge the

resolution with the Registrar of Housing Societies within 7 days and publish the notice in the *Gazette*.]

Clause 9 Minister may intervene

This clause provides for the Minister to appoint or replace a liquidator to wind up the society. The Minister may appoint a liquidator if the society has not taken action to do so before 60 days after commencement of the Act. The Minister may replace a liquidator if the wind up of the society is not complete within 12 months, and if the delay beyond 12 months is the fault of the liquidator and if the Minister is satisfied that such action is appropriate.

Clause 10 Distribution of property of societies on or after preservation day

Subclause 1 ensures that the distribution of surplus reserves upon winding up or prior to wind up of a society is the amount the member or director of a society paid for his or her membership share. A contributing member shall also be entitled to the sum paid for their membership share and a distribution of reserves in accordance.

There cannot be multiple distributions to members or contributing member that will exceed the cost of their membership for a share paid, and in the case of a contributing member the maximum distribution set in subclause 3 of this section.

Subclause 2 lists the order for the distribution of property of a society in the winding up process.

Subclause 3 sets out the distribution limits to contributing members. A contributing member may receive the lesser of \$4,000 or the amount of their outstanding loan balance if their loan balance is less than \$4,000 as at preservation date, which is 21 October 2004.

Subclause 4 provides that if a society does not distribute property in accordance with subclause 2, and distributes more than it is entitled to do so, the excess [that should have been paid to the Minister under subclause 2(d)] is a debt to the State and is recoverable in Court.

Clause 11 Application of certain distributions after commencement

Subject to the maximum distribution amount the distribution of reserves to a contributing member must go firstly to reducing their loan. If there is an amount remaining, that amount is paid to the contributing member.

Clause 12 Recovery of distributions not in accordance with this Part

This section ensures that there are recovery clauses in place if distributions are made which are outside of the provisions set down in the Act.

If a distribution of society property to directors and members of a society exceeds the maximum distribution limits specified in the Act subclause 2 and 3 provide that the amount that exceeds the limit will become a debt due to the State. The debt to the State may be recovered through a legal process.

Subclause 4 provides for the circumstance of where a distribution of society property has occurred and a society has wound up and the amount distributed is less than that in clause 10. The Minister may pay to a member an amount so that the member will be in the same position as they would have been had they been allocated a distribution of society property in accordance with section 10. The Social Housing Account is to be used for any payments.

Additional Note:

As the two remaining societies have combined surplus reserves of \$7.1 million it is unlikely that a distribution if entered into on or after preservation date will arise. One society has agreed not to do any distributions of society reserves until August 2005 in light of the proposed Act. The other society's directors are also committed to awaiting the outcome of the legislation before a decision is made in respect of the society's future operations and distributions of property.

Clause 13 Payments into and out of the Social Housing Account

The establishment of a Social Housing Account under this clause has regard to the current and previous members of the housing societies who as a consequence of being an "on balance sheet" member of a society have contributed to the build up of society reserves. The Act continues with the cooperative spirit of societies in that funds will be used in providing housing assistance through the use of the Social Housing Account.

The use of the account is only for the purpose of providing social housing assistance. The State Housing Commission will administer the fund, which is the entity responsible for applying the *Housing Act 1980* and is the Act under which the account will be established. Once the funds in the account have been expended, the Minister may, by notice in the Gazette close the account.

Clause 14 Liquidator's report

This clause requires that the liquidator of a society provide a certificate to the Minister that displays the society has been wound up and includes an account of how the winding up has been conducted and how the property of the society has been used to meet liabilities and a distribution amongst members.

Clause 15 Extent of application of provision of the Corporations Act

Where the Corporations Act provisions are being used as the method and process for winding up a society, where inconsistencies arise, the provisions of this Act will prevail.

Sections in the Corporations Act requiring a general meeting of a society are not applied as the wind up of a society is required as part of the Act. A housing society could not convene a meeting and resolve not to wind up the society.

Subclause 3's intent is that the Minister is referred to as opposed to the Court when 503 of the Corporations Act as applied is used under this Act. This clause is linked to Part 2 Clause 9 of this Act. The Minister may appoint or replace a liquidator to wind up the society if the wind up of the society is not complete within 12 months, and if the delay beyond 12 months is the fault of the liquidator and if the Minister is satisfied that such action is appropriate.

Clause 16 ***Housing Societies Act 1976 amended***

The housing societies are regulated pursuant to the *Housing Societies Act 1976* Section 59 4(a) of that Act permits the Registrar of Housing Societies to appoint directors to a society if a vacancy is not filled within 60 days and the number of directors is less than 5 or less than the number of directors approved by the Registrar of Housing Societies. The Registrar of Housing Societies has power to permit a society to operate with 3 directors. The repeal of section 59 4 (a) of the *Housing Societies Act 1976* and replacement with section 59 (4a) and 59 (4b) enables the Registrar of Housing Societies to appoint a director without having to wait for the 60 day period to elapse.

Clause 17 **Transitional regulations**

This clause provides for the Governor to make transitional regulations if needed.

The purpose of the clause is to cater for any unforeseen requirement that may arise in the event an issue has not been sufficiently covered by the Bill or to cover a state of affairs that is taken to have existed, on a specified day.

Part 3 **Repeal of Acts and consequential amendments to other Acts**

Clause 18 - ***Housing Societies Act 1976***

The clause is self explanatory.

Clause 19 ***Housing Loan Guarantee Act 1957***

Up until 1991 the Housing Loan Guarantee Act Scheme operated to assist societies to access funds from the private sector for onlending to moderate income families. The Keystart Loan Scheme replaced this scheme. The government pursuant to the *Housing Loan Guarantee Act 1957* guaranteed that the society would repay the loan to the lending authority. The government also indemnified the society from any losses arising from the sale of the member's property. This provided the society member with a saving of approximately \$800 as under normal circumstances because of the low deposit a member

would be required to take out private mortgage insurance.

Under the *Housing Loan Guarantee Act, 1957* the government has not paid out on any guarantee to a lending authority. However, under the indemnities it has paid out to the housing societies approximately \$1.46 million for losses arising from mortgages sales. The last claim for an indemnity was in the 2000/2001 financial year. There is \$2.5 million of indemnities outstanding under the *Housing Loan Guarantee Act 1957* and the Department of Housing and Works will assume the responsibility for losses that may arise on possible future mortgage sales. However, it is assessed that due to the maturity of the loans and the recent significant increases in property values there is unlikely to be losses eventuating.

The Housing Loan Guarantee Act Scheme has also been used for other indemnity type schemes for permanent building societies, which assisted home buyers enter into home ownership. There are no indemnities remaining under these schemes. It is now appropriate that the scheme close and the *Housing Loan Guarantee Act 1957* is repealed.

Clause 20 ***Civil Judgements Enforcement Act 2004***

These amendments delete reference to a society within the meaning of the *Housing Societies Act 1976*.

Clause 21 ***Companies (Co-operative) Act 1943***

These amendments delete reference to a society within the meaning or registered under the *Housing Societies Act 1976*.

Clause 22 ***Country Housing Act 1998 amended***

Section 43 of *Country Housing Act 1998* is deleted, this section permitted a society to offer loans to farmers or retired farmers and the society was indemnified for any loss that may arise in respect to that loan.

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

This deletes reference to a society registered under the *Housing Societies Act 1976*.

Clause 24 ***Credit Act 1984 amended***

This deletes reference to a society registered under the *Housing Societies Act 1976*.

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

This deletes reference to a society which the *Housing Societies Act 1976* applies.

Clause 26 ***Equal Opportunity Act 1984 amended***

These amendments delete reference to the rules of a society registered under the *Housing Societies Act, 1976*.

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

This deletes reference to a society registered under the *Housing Societies Act 1976*.

Clause 28 ***Housing Act 1980 amended***

This deletes reference to a society registered under the *Housing Societies Act 1976* and amends another clause in respect of the termination of a housing society.

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

This deletes reference to a society registered under the *Housing Societies Act 1976* and reference to the Director of the Federation of Housing Societies.

Clause 30 ***Stamp Act 1921 amended***

This deletes reference to a society registered under the *Housing Societies Act 1976* where an instrument or charge is issued by a society.

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

This deletes reference to a society registered under the *Housing Societies Act 1976*.