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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE HOUSING AUTHORITY BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence,
the Hon. Kim Beazley, M.P.)

DEFENCE HOUSING AUTHORITY BILL 1987

OUTLINE

The Bill creates a Defence Housing Authority to undertake the management of Defence housing. The Authority is designed to streamline existing arrangements.

The primary functions of the Authority include the management, construction, upgrading and maintenance of Defence housing and the disposal of surplus stock.

The objectives of the Authority are to provide adequate and suitable housing to meet the operational needs of the Defence Force and the requirements of the Department of Defence as determined by the Minister for Defence. The Authority will be given maximum flexibility and commercial freedom to meet its objectives. It will be exempt from the Lands Acquisition Act and will not be required to use Government agencies to undertake its activities.

Arrangements for appointment of the Chairperson and Members to the Authority will ensure that business acumen is brought to the management task.

The Authority will receive from the Commonwealth the full commercial market rent for its houses, and the proceeds from disposal of surplus assets.

It will be required to earn a reasonable rate of return on its assets and maintain the Commonwealth's level of equity.

Planning and oversight arrangements will ensure a proper degree of Ministerial responsibility and accountability, and ensure that the Authority will remain responsible to Government.

The Authority's activities will be guided by a corporate plan

which will include forecasts of receipts and expenditure and financial targets for profit, rate of return and dividend, approved by the Minister.

The Authority will be subject to audit by the Auditor General.

The Authority will have the option of employing staff under the Public Service Act and engaging consultants.

FINANCIAL IMPACT STATEMENT

The commercial rent to be charged to the Commonwealth by the Housing Authority for each house available to Defence tenants will represent a new charge to Budget Outlays. In 1987/88 this is estimated at \$120m. The saving by removal from Budget Outlays of payments now to be the responsibility of the Authority is estimated to total \$84m. These include payments to the States and Territories for housing provided under the Commonwealth State housing agreements and related agreements, repairs and maintenance to Defence owned houses, and payments in lieu of rates to local government. The estimated net effect on recurrent Budget Outlays is an additional \$36m. In addition, revenue from the disposal of surplus housing will be retained by the Housing Authority and will no longer be a credit to Consolidated Revenue. In 1986/87 this is estimated at \$5m.

The Housing Authority will be required to use profits from operations towards capital acquisitions and improvements. Consequently the demands for capital from the Budget for investment (\$65.8m in 1986/87) will be reduced. It is expected that some supplementation from annual Budgets will be required in order to meet the Government commitment of \$750 million over the next decade to upgrade the Defence housing stock. The requirement for supplementation will be determined in the context of the Authority's corporate and financial plans which will be agreed by the Minister for Defence in consultation with the Minister for Finance.

The Authority will be required to meet its operating expenses from revenue. Some immediate offsetting reductions in staffing levels will occur in the Department of Defence. Public Service staffing levels can be expected to be reduced to the extent that the Authority engages the private sector to undertake work currently undertaken by Commonwealth agencies.

The re-organisation of Defence housing management arising from the creation of the Authority will result in more efficient program delivery and the associated overall administrative costs can be expected to be reduced over time.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 : Short Title

Provides mode of citation of the Act.

Clause 2 : Commencement

The legislation will come into force on a day to be fixed by Proclamation.

Clause 3 : Interpretation

Sub-clause (1) defines certain terms used in subsequent clauses of the Bill.

Sub-clause (2) requires that the provisions of the Companies Act 1981 be used to determine whether or not a company is a subsidiary of the Authority.

Sub-clause (3) defines dealing with securities. Clauses 8, 37 and 41 refer to the raising of funds in this manner.

PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Clause 4 : Establishment

Establishes the Defence Housing Authority

Clause 5 : Function

Generally defines the functions of the Authority that will enable it to provide Defence housing in accordance with the needs and requirements of the Defence Organisation, as specified by the Minister.

Clause 6 : Manner of performing functions

Requires the Authority to endeavour to perform its functions in accordance with Commonwealth Government policies and sound commercial practice.

Clause 7 : Powers

Sub-clause (1) empowers the Authority to do all things necessary or convenient to be done in the performance of its functions. These include the acquisition, disposal, building and renovation of houses, the letting of houses and the determination of rents.

Sub-clause (2) requires the Authority to obtain Ministerial approval before entering into contracts involving the payment by the Authority of an amount exceeding \$6,000,000.

Clause 8 : Limitations on formation of companies, etc

Sub-clause (1) requires the Authority to obtain Ministerial approval before it purchases an interest in a company or forms subsidiaries.

Sub-clause (2) allows such Ministerial approval to be general or specific, and include conditions or restrictions.

Sub-clause (3) requires a statement of reasons for the purchase of an interest in a company to be laid before Parliament.

Sub-clause (4) limits the powers that can be exercised by companies in which the Authority has a controlling interest to those exercisable by the Authority.

Sub-clauses (5) to (8) specifically apply corresponding limitations to any borrowings or raising of monies by companies in which the Authority has a controlling interest.

Clause 9 : Limitations on formation of partnerships

Sub-clause (1) requires the Authority to obtain Ministerial approval before entering into a partnership.

Sub-clause (2) allows such Ministerial approval to be general or specific, and include conditions or restrictions.

Sub-clause (3) requires a statement of reasons for the partnership to be laid before Parliament.

Sub-clause (4) limits the powers of partnerships that the Authority controls to those exercisable by the Authority.

Clause 10 : Limitations on participation in joint ventures.

Sub-clause (1) requires the Authority to obtain Ministerial approval before it participates in a joint venture.

Sub-clause (2) allows such Ministerial approval to be general or specific, and include conditions or restrictions.

Sub-clause (3) requires a statement of reasons for the joint venture to be laid before Parliament.

Sub-clause (4) limits the powers of joint ventures that the Authority controls to those exercisable by the Authority.

PART III - CONSTITUTION AND MEETINGS OF AUTHORITY

Clause 11 : Authority body corporate etc

Sub-clause (1) states the Authority is a body corporate with perpetual succession, shall have a common seal, and may sue and be sued in its corporate name.

Sub-clause (2) requires the Authority to control the use of its seal.

Sub-clause (3) provides for courts, judges and persons acting judicially to take note of the imprint of the Authority's seal affixed to a document and presume that the document was duly sealed.

Clause 12 : Constitution

Sub-clause (1) sets out the membership of the Authority as: the Chairperson and three other appointed members (appointed by the Governor-General under clause 14); three members of the Defence Force and one officer of the Public Service, holding the appointments or the office, respectively, designated by the Governor-General; and the Managing Director. Sub-clause (2) permits the Authority to act when there is a vacancy, or are vacancies, in its membership.

Clause 13 : Chairperson may be referred to as Chairman or Chairwoman

Enables the Chairperson to be referred to as Chairman or Chairwoman.

Clause 14 : Appointment of members

Sub-clause (1) allows for members of the Authority to be appointed by the Governor-General.

Sub-clause (2) sets out qualifications for appointed members.

Sub-clause (3) sets an upper age limit of 65 for appointees.

Sub-clause (4) avoids invalidity where there has been a defect in connection with an appointment.

Clause 15 : Term of office of appointed members

Sub-clause (1) specifies a maximum period of appointment of three years and enables re-appointment.

Sub-clause (2) enables appointment of a person to complete the term of a member who has ceased to hold office.

Sub-clause (3) prohibits a term of appointment extending beyond the appointee's 65th birthday.

Clause 16 : Appointed members hold office on part-time basis.

Restricts appointed members to part-time tenure.

Clause 17 : Remuneration and allowances of appointed members

Sub-clause (1) provides for the remuneration of appointed members to be determined by the Remuneration Tribunal.

Sub-clause (2) enables allowances to be prescribed.

Sub-clause (3) makes the section subject to the Remuneration Tribunals Act 1973.

Clause 18 : Leave of absence

Sub-clause (1) provides for the Minister to grant leave of absence to the Chairperson.

Sub-clause (2) provides for the Chairperson to grant leave of absence to other members.

Clause 19 : Resignation of appointed members

Enables appointed members of the Authority to resign by notifying the Governor-General in writing.

Clause 20 : Disclosure of interests

Sub-clause (1) requires a member to disclose any direct or indirect pecuniary interest in a matter being considered by the Authority.

Sub-clauses (2) and (3) outline the procedure to be followed where such an interest is disclosed.

Sub-clause (4) provides that tenancy of an Authority house is not a pecuniary interest.

Clause 21 : Termination of appointment

Sub-clause (1) allows the Governor-General to terminate the appointment of a member for misbehaviour or physical or mental incapacity.

Sub-clause (2) specifies various reasons for which the Governor-General shall terminate the appointment of a member of the Authority, including bankruptcy, unapproved absence from Authority meetings or failing to comply with obligations concerning disclosure of pecuniary interests.

Clause 22 : Terms and conditions of appointment not provided for by Act.

Enables the Minister to determine terms and conditions where the Act does not otherwise provide for them.

Clause 23 : Acting appointments

Sub-clause (1) allows the Minister to appoint an appointed member to act as Chairperson.

Sub-clause (2) allows the Minister to appoint persons to act as members of the Authority in the event of casual or temporary vacancies.

Sub-clause (3) enables acting appointments to have effect in specific circumstances.

Sub-clause (4) restricts acting appointments to a maximum period of six months.

Sub-clause (5) enables an acting appointment to continue for a maximum period of six months after the office becomes substantively vacant.

Sub-clause (6) provides for persons holding acting appointments to exercise the powers and perform the duties of the appointments.

Sub-clause (7) provides for the Minister to determine the terms and conditions of appointment, including remuneration, of persons holding acting appointments. The Minister may terminate an acting appointment at any time.

Sub-clause (8) allows a person holding an acting appointment to resign.

Sub-clause (9) preserves the validity of things done by persons holding acting appointments notwithstanding possible formal defects.

Clause 24 : Meetings

Sub-clauses (1), (2), (3) and (4) require the Authority to hold meetings necessary for the efficient performance of its functions and provide for them to be convened by the Chairperson or the Minister.

Sub-clauses (5) and (6) provide for the Chairperson to preside and, in his absence, for members present to appoint one of their number to preside.

Sub-clause (7) sets the quorum at six members and gives the presiding member a casting vote.

Sub-clause (8) requires minutes to be kept.

Sub-clause (9) enables non-members to be invited to meetings.

Clause 25 : Resolutions without meetings.

Enables the Authority to pass resolutions without formal meetings, provided agreement is unanimous and each member signs the resolution.

Clause 26 : Committees

Sub-clauses (1), (2) and (3) enable the Authority to establish committees, constituted either wholly or partly by members, and to specify quorums for its committees.

Sub-clauses (4) and (5) enable the Minister to determine remuneration and allowances for committee members who are not members of the Authority.

Sub-clause (6) applies the disclosure of interest provisions to committee members.

PART IV - OPERATION OF AUTHORITY

Clause 27 : Corporate plan

Requires the authority to develop a corporate plan for the performance of its functions, to include a statement of objectives for three financial years. The first plan is to be developed as soon as practicable after the commencement of the Act and the plan is to be reviewed and revised periodically.

Clause 28 : Financial plans

Details aspects of the financial plan to be associated with development or revision of the corporate plan. These include a requirement to have regard to objectives and policies of the Commonwealth Government and directions of the Minister; the needs to earn a reasonable rate of return on assets, to maintain the extent of the Commonwealth's equity and to maintain a reasonable level of reserves; and the Commonwealth's expectation that the Authority will pay a reasonable dividend.

Clause 29 : Copies of corporate and financial plans to be given to Minister

Copies of the original and any revised corporate plan, together with associated financial plans, are to be provided to the Minister.

Clause 30 : Minister may vary corporate and financial plans

Sub-clause (1) empowers the Minister to direct the Authority to vary its corporate and financial plans.

Sub-clause (2) lists certain matters the Minister shall consider when exercising powers under sub-clause (1).

Sub-clause (3) binds the Authority to comply with any direction made under sub-clause (1).

Clause 31 : Directions to Authority

Sub-clause (1) limits the Government's power to direct the Authority except as provided in Clause 31.

Sub-clause (2) empowers the Minister to direct the Authority with respect to the performance of its functions and the exercise of its powers if he is satisfied that it is desirable in the public interest to do so.

Sub-clause (3) requires the Authority to comply with any such direction.

Sub-clause (4) directs that the particulars of any direction be included in the Authority's annual report.

Clause 32 : Reimbursement of cost of complying with directions

Provides for the Authority to be reimbursed by the Commonwealth if it incurs financial detriment as a result of complying with directions under the previous clause, unless they are stated to be in accordance with the general policy of the Commonwealth Government.

PART V - FINANCE

Clause 33 : Capital structure of Authority

Provides for the Minister to determine the capital structure of the Authority, based on the value of the assets vested in the Authority, and provides for the possibility of some of that value being treated as a loan to the Authority from the Commonwealth.

Clause 34 : Capital of Authority

Defines the capital of the Authority. Includes a provision that interest is not payable to the Commonwealth on the capital of the Authority, but that the capital is repayable to the Commonwealth when, and in such amounts, as the Minister determines.

Clause 35 : Payment of dividend to Commonwealth

Provides for the Authority to recommend to the Minister, within four months after the end of a financial year, whether or not a dividend should be payable to the Commonwealth in respect of that financial year, and the amount of any dividend. Also provides that the Minister may either accept the recommendation or may direct the Authority to pay a dividend of a different specified amount.

Clause 36 : Borrowings from Commonwealth

Provides for the Authority to borrow money appropriated by Parliament for that purpose, on terms and conditions determined by the Minister for Finance.

Clause 37 : Borrowings otherwise than from Commonwealth

Provides for the Authority to borrow money otherwise than from the Commonwealth, or raise money otherwise than by borrowing, with the approval of the Treasurer. The controls provided by the clause extend to financing by means alternative to borrowing, such as dealing in securities.

Clause 38 : Guarantee of borrowings by Authority

Provides that the Treasurer may, on behalf of the Commonwealth, guarantee the borrowings and any interest payable on borrowings made by the Authority from sources other than the Commonwealth, and authorises contracts for this purpose.

Clause 39 : Authority may give security

Enables the Authority to give security over any or all of its land or other assets for the repayment by the Authority of any borrowings, or the raising of money otherwise than by borrowing, including any interest.

Clause 40 : Borrowings not otherwise permitted

Provides that the Authority shall not borrow, or otherwise raise money, except as provided in the legislation.

Clause 41 : Guarantee of borrowings and raisings by wholly owned subsidiaries

Sub-clause (1) limits the application of this section to borrowings by wholly-owned subsidiaries of the Authority.

Sub-clauses (2), (3) and (5) enable the Treasurer to guarantee any borrowings of a subsidiary if requested to do so by the subsidiary.

Sub-clause (4) defines the matters to be considered by the Treasurer before guaranteeing the borrowings of a subsidiary of the Authority, including the giving of certain undertakings by the subsidiary in relation to the borrowings.

Sub-clause (6) provides that the Treasurer, in guaranteeing the borrowings of a subsidiary, may agree that, in respect of overseas borrowings, court proceedings may be taken against the subsidiary in courts in countries other than Australia.

Sub-clause (7) provides that details of guarantees by the Treasurer in relation to the borrowings by a subsidiary of the Authority be laid before each House of Parliament.

Sub-clause (8) requires that some specified types of financial undertakings are to be regarded as borrowings for the purposes of this section.

Sub-clause (9) further defines what bodies corporate constitute wholly owned subsidiaries of the Authority.

Clause 42 : Delegation by Treasurer

Provides for the Treasurer to delegate all or any of his powers under sub-section 8(5) or Part V to an officer of the Department of the Treasury.

Clause 43 : Application of Division 2 of Part XI of the Audit Act

The Authority is a public authority to which Division 2 of Part XI of the Audit Act 1901 applies.

Clause 44 : Audit of subsidiaries

Provides for the Auditor-General to inspect and audit the accounts and financial transactions of the Authority's subsidiaries. Authorises the Auditor-General to perform certain acts relating to these audits, and to have access to certain information. Provides for penalties where such information is not provided to the Auditor-General.

PART VI - MANAGING DIRECTOR, STAFF AND CONSULTANTS

Division 1 - Managing Director

Clause 45 : Managing Director

Provides for a Managing Director.

Clause 46 : Duties

Requires the Managing Director to act in accordance with the Authority's policies.

Clause 47 : Appointment

Sub-clause (1) provides for the Managing Director to be appointed by the Authority.

Sub-clause (2) sets an upper age limit of 65 for appointees.

Sub-clause (3) avoids invalidity where there has been a defect in connection with an appointment.

Clause 48 : Term of office

Sub-clause (1) enables the Authority to terminate the Managing Director's appointment.

Sub-clause (2) prohibits a term of appointment extending beyond the appointee's 65th birthday.

Clause 49 : Managing Director not to engage in other paid employment

Prohibits outside paid employment, except with the Authority's approval.

Clause 50 : Remuneration and allowances

Sub-clause (1) provides for the Remuneration Tribunal to determine the Managing Director's remuneration.

Sub-clause (2) enables allowances to be prescribed.

Sub-clause (3) makes the section subject to the Remuneration Tribunal Act 1973.

Clause 51 : Leave of absence

Provides for the Chairperson to grant leave of absence to the Managing Director on terms and conditions determined by the Authority.

Clause 52 : Resignation

Enables the Managing Director to resign.

Clause 53 : Disclosure of interests

Requires the Managing Director to disclose pecuniary interests.

Clause 54 : Acting Managing Director

Provides for the Authority to appoint a person to act as Managing Director during a vacancy in the office or during any period when the Managing Director is absent or unable to perform the functions of the office. The Authority may determine the terms and conditions of appointment and may terminate the appointment. A maximum period of 12 months is set for such appointments.

Clause 55 : Exclusion of Managing Director etc from certain deliberations

Prohibits Managing Director or acting Managing Director from taking part in deliberations or decisions concerning their employment.

Clause 56 : Terms and conditions of appointment not provided for by Act.

Enables the Authority to determine terms and conditions for the Managing Director where the legislation makes no provision.

Division 2 - Staff and Consultants

Clause 57 : Staff

Sub-clause (1) provides for the Authority's staff to be comprised of persons appointed or employed under the Public Service Act 1922 and members of the Defence Force made available by a chief of staff.

Sub-clauses (2) and (3) give the Managing Director the powers of a secretary under the Public Service Act 1922.

Clause 58 : Consultants

Enables the Authority to engage consultants and to determine their terms and conditions.

PART VII - MISCELLANEOUS

Clause 59 : Rents

Sub-clause (1) enables the Authority, subject to the Minister's power of direction, to determine rents, having regard to prevailing market rents.

Sub-clauses (2) and (3) require the Authority to keep the Minister informed of the principles which it follows to determine rents.

Clause 60 : Transfer of assets to Authority

Sub-clause (1) enables the Minister or a designated officer of the Senior Executive Service to transfer to the authority real and personal property owned by the Commonwealth and to make available to the Authority real property owned or controlled by the Commonwealth.

Sub-clauses (2) and (3) avoid the requirement for conveyancing and provide for registration.

Sub-clause (4) enables the Minister to determine the conditions under which land is made available under sub-clause (1).

Clause 61 : Lands Acquisition Act

Exempts the Authority from the application of the Lands Acquisition Act 1955.

Clause 62 : Duties of Authority

Provides that the legislation does not impose on the Authority any duty enforceable by court proceedings.

Clause 63 : Exemption from taxation

Sub-clauses (1) and (4) exempt the Authority from taxation under the laws of the Commonwealth or of a State or Territory, except where the regulations provide otherwise.

Sub-clauses (2) and (3) enable the Minister, by notice in the Gazette, to exempt the Authority from stamp duty.

Sub-clause (5) ensures that tax exemptions do not extend to companies involved in partnerships or joint ventures with the Authority.

Clause 64 : Delegation by Authority

Enables the Authority to delegate powers to a committee, a member, or a staff member.

Clause 65 : Delegation by Managing Director

Enables the Managing Director to delegate powers to a member of the Authority's staff.

Clause 66 : Delegation by chiefs of staff

Enables the Chief of Naval Staff, the Chief of the General Staff and the Chief of the Air Staff to delegate their powers to officers of their respective services.

Clause 67 : Regulations

Enables regulations to be made under the Act.

