

South Australia



**HOUSING CO-OPERATIVES (HOUSING ASSOCIATIONS)
AMENDMENT ACT 1995**

No. 101 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 101 of 1995

An Act to amend the Housing Co-operatives Act 1991.

[Assented to 14 December 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Housing Co-operatives (Housing Associations) Amendment Act 1995*.

(2) The *Housing Co-operatives Act 1991* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 1

3. Section 1 of the principal Act is repealed and the following section is substituted:

Short title

1. This Act may be cited as the *South Australian Co-operative and Community Housing Act 1991*.

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "the Authority" and substituting the following definition:

"Authority" means the South Australian Community Housing Authority continued in existence under this Act;

(b) by inserting in subsection (1) after the definition of "current market value" the following definition:

"Department" means the department of the Minister to whom the administration of this Act is committed;

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- (c) by striking out from subsection (1) the definition of "**the Fund**" and substituting the following definitions:

"Fund" means the South Australian Community Housing Development Fund continued in existence under this Act:

"housing association" means an association—

- (a) which is formed principally to provide housing accommodation (not necessarily for its members); and
- (b) which does not trade for profit.;

- (d) by inserting in subsection (1) after the definition of "**principles of co-operation**" the following definition:

"registered housing association" means a housing association registered under the schedule.;

- (e) by inserting in subsection (1) after the definition of "**the rules**" the following definition:

"SAHT" means the *South Australian Housing Trust* and includes a subsidiary of the *South Australian Housing Trust*.;

- (f) by inserting in subsection (1) after the definition of "**special resolution**" the following definition:

"statutory corporation" means a body established under the *Housing and Urban Development (Administrative Arrangements) Act 1995*.

Amendment of s. 8—The Authority

5. Section 8 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The South Australian Co-operative Housing Authority is continued in existence as the *South Australian Community Housing Authority*.

Amendment of s. 9—Membership of the Authority

6. Section 9 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) The Authority consists of seven members, as follows:

(a) five will be appointed by the Governor—

- (i) four, with expertise in finance, the housing industry or community housing, being nominated by the Minister;
- (ii) one being chosen from a panel of three submitted by the Community Housing Associations Forum Incorporated;

(b) two will be elected, in the manner prescribed by the regulations, by the members of registered housing co-operatives.;

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(b) by striking out subsection (4).

Amendment of s. 10—Conditions of office

7. Section 10 of the principal Act is amended by striking out from subsection (2) "Community Housing Assistance Service of S.A. Inc." and substituting "Community Housing Associations Forum Incorporated".

Amendment of s. 16—Functions and powers of the Authority

8. Section 16 of the principal Act is amended—

- (a) by inserting "and community" after "co-operative" in subsection (1)(a)(iii);
- (b) by inserting "or housing associations" after "housing co-operatives" in subsection (1)(b);
- (c) by inserting "and housing associations" after "housing co-operatives" in subsection (1)(c);
- (d) by striking out from subsection (1)(d) "or secondary co-operative" and substituting ", secondary co-operative or housing association";
- (e) by inserting "or community" after "co-operative" in subsection (1)(e);
- (f) by striking out paragraph (f) of subsection (1) and substituting the following paragraph:
 - (f) to register housing co-operatives and housing associations under this Act and to oversee and regulate the activities of those co-operatives and associations;
- (g) by striking out from subsection (1)(g) "and secondary co-operatives" and substituting ", secondary co-operatives and registered housing associations";
- (h) by inserting "or community" after "co-operative" in subsection (1)(i);
- (i) by striking out paragraph (j) of subsection (1) and substituting the following paragraph:
 - (j) to publicise the activities of housing co-operatives and housing associations and disseminate information and statistics on co-operative and community housing;;
- (j) by inserting "or housing associations" after "housing co-operatives" in subsection (1)(k);
- (k) by striking out paragraphs (l) and (m) of subsection (1) and substituting the following paragraphs:
 - (l) to develop links and encourage communication between housing co-operatives, housing associations and other bodies or organisations that are interested in the activities of the co-operative and community housing sector;
 - (m) to promote the active involvement of people in the development of co-operative and community housing;;
- (l) by striking out from subsection (4)(a) "Treasurer" and substituting "Minister".

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Amendment of s. 18—Staff and use of facilities

9. Section 18 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsection:

(1) The Minister will, after consultation with the Chief Executive of the Department and the Authority, determine the staffing arrangements for the Authority (and such staff will, subject to this Act or unless the Minister otherwise determines, be persons who are appointed and hold office under the *Public Sector Management Act 1995*).

Substitution of heading

10. The heading to Division V of Part II is repealed and the following heading is substituted:

DIVISION V—OPERATIONAL, PROPERTY AND FINANCIAL MATTERS

Insertion of ss. 18A, 18B AND 18C

11. The following sections are inserted in Division V of Part II, immediately before section 19:

Transfer of property, etc.

18A. (1) The Minister may with the concurrence of the Treasurer, by notice in the *Gazette*—

- (a) transfer an asset, right or liability of the Minister to the Authority;
- (b) transfer an asset, right or liability of the Authority—
 - (i) to the Minister; or
 - (ii) to a statutory corporation; or
 - (iii) to SAHT; or
 - (iv) to the Crown, or to another agent or instrumentality of the Crown; or
 - (v) in prescribed circumstances, subject to prescribed conditions (if any), and with the agreement of the person or body—to a person or body that is not an agent or instrumentality of the Crown.

(2) A notice under subsection (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the relevant transfer.

(3) However, the Minister must not act under subsection (1)(b) if to do so would contravene an express agreement entered into by the Minister that limits the Minister's powers in relation to the Authority.

Tax and other liabilities

18B. (1) The Treasurer may require the Authority to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines to be equivalent in effect to income tax and other taxes or imposts that the Authority does not pay to the Commonwealth but would be liable to pay under the law of the Commonwealth if it were constituted and organised in such manner as the Treasurer determines to be appropriate for the purposes of this subsection as a public company.

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(2) Amounts determined to be payable under subsection (1) must be paid by the Authority at the times and in the manner determined by the Treasurer.

Dividends

18C. (1) The Authority must, if so required by the Minister by notice to the Authority at any time during a financial year, recommend to the Minister that a specified dividend or specified dividends be paid by the Authority for that financial year, or that no such dividend or dividends be paid by the Authority, as the Authority considers appropriate.

(2) The Minister may, in consultation with the Treasurer, by notice to the Authority—

- (a) approve a recommendation of the Authority under subsection (1); or
- (b) determine that a dividend or dividends specified by the Minister be paid, or that no dividend be paid,

as the Minister and the Treasurer consider appropriate.

(3) If a dividend or dividends is or are to be paid by the Authority, the dividend or dividends must be paid by the Authority to the Minister in the manner and at the time or times determined by the Minister in consultation with the Treasurer.

(4) If the Minister receives an amount from the Authority under this section the Minister may, in consultation with the Treasurer—

- (a) allocate that amount, or any part of that amount, in a manner determined by the Minister; or
- (b) pay that amount, or any part of that amount, for the credit of the Consolidated Account.

(5) A recommendation under this section must be made by the Authority and may not be made by a person or committee pursuant to a delegation.

Amendment of s. 21—Registers and inspection

12. Section 21 of the principal Act is amended by inserting after paragraph (a) of subsection (1) the following paragraph:

- (ab) a register of housing associations registered under this Act;

Amendment of s. 63—The Fund

13. Section 63 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) The Co-operative Housing Development Fund continues in existence at Treasury as the *South Australian Community Housing Development Fund.*;

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- (b) by inserting after paragraph (d) of subsection (3) the following paragraph:
- (da) amounts paid to the Authority on account of financial or other assistance provided to registered housing associations and other bodies involved in the community housing sector;;
- (c) by inserting "or registered housing associations" after "registered housing co-operatives" in subsection (4)(a);
- (d) by inserting "or registered housing associations" after "registered housing co-operatives" in subsection (4)(b);
- (e) by inserting ", registered housing associations" after "registered housing co-operatives" in subsection (4)(c);
- (f) by striking out from subsection (4)(f) "Treasurer after consultation with the Minister" and substituting "Minister after consultation with the Treasurer";
- (g) by striking out from subsection (5) "Treasurer after consultation with the Minister" and substituting "Minister after consultation with the Treasurer".

Substitution of heading

14. The heading to Part XI of the principal Act is repealed and the following heading is substituted:

**PART XI
APPEALS**

Amendment of s. 84—Appeals

15. Section 84 of the principal Act is amended—

- (a) by inserting before subsection (1) the following subsection:
- (a1) In this section—
- "relevant appeal authority" means—
- (a) in the case of an application under subsection (1)(a) or (b)—the Authority;
- (b) in the case of an application under subsection (1)(c)—the Minister.;
- (b) by inserting "and be addressed to the relevant appeal authority" after "form" in subsection (2);
- (c) by striking out subsections (3), (4) and (5) and substituting the following subsection:
- (3) The relevant appeal authority may only hear and determine an appeal under this section if the relevant appeal authority is satisfied that the appellant has previously made a genuine attempt to have the dispute resolved through a prescribed mediation or conciliation process and that mediation or conciliation process has failed to resolve the dispute or has failed to resolve the dispute within a reasonable period of time.;
- (d) by striking out from subsection (6) "in relation to a matter referred to the Authority under subsection (5)" and substituting "where the Authority is the relevant appeal authority";

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(e) by striking out from subsection (7) "in relation to a matter referred to the Minister under subsection (5)" and substituting "where the Minister is the relevant appeal authority";

(f) by striking out subsection (8) and substituting the following subsection:

(8) If an application is made under this section and the relevant appeal authority is satisfied that an interim order is justified by the urgent circumstances of the case, the relevant appeal authority may make an interim order to safeguard the position of a person pending the final resolution of the matter.;

(g) by striking out paragraph (a) of subsection (9) and substituting the following paragraph:

(a) has effect for such period, not exceeding two months, as the relevant appeal authority may determine and specifies in the order, and may be renewed by the relevant appeal authority for a further period of up to two months;;

(h) by striking out from subsection (11) "Review Officer, the Authority and the Minister" and substituting "relevant appeal authority".

Amendment of s. 107—Regulations

16. Section 107 of the principal Act is amended by inserting after paragraph (b) of subsection (3) the following paragraph:

(c) may make different provision according to the persons, things or circumstances to which they are expressed to apply.

Substitution of schedule

17. The schedule of the principal Act is repealed and the schedule set out in schedule 1 is substituted.

Revision of penalties

18. The principal Act is further amended in the manner set out in schedule 2.

SCHEDULE 1
*Schedule Substituted in Principal Act***SCHEDULE**
*Housing Associations***Interpretation****1. In this schedule—**

"rules" of a housing association means the constitution, rules and by-laws of the housing association;

"subsidised housing association" means a registered housing association any real property of which is subject to a charge under Part VII.

Registration

2. (1) A person duly authorised by a housing association may apply to the Authority for the registration of the housing association under this Act.

(2) The application must be made in the prescribed manner and form and must be accompanied by—

(a) the rules of the housing association; and

(b) a statutory declaration made by the applicant verifying—

(i) that he or she is authorised by the housing association to apply for registration; and

(ii) the particulars contained in the application; and

(iii) that the copy of the rules of the housing association which accompanies the application is a true copy; and

(c) the prescribed fee.

(3) The applicant must, at the request of the Authority, supply it with such further documents or information as the Authority may require.

(4) If the Authority is satisfied—

(a) that the application has been made in accordance with this clause; and

(b) that the housing association is eligible to be registered as a housing association under this Act (*see* subclause (5)),

the Authority must, subject to subclause (6), register the housing association and its rules.

(5) A housing association is eligible to be registered as a housing association under this Act if—

(a) the housing association is an incorporated body under another Act; and

(b) the housing association has a committee of management; and

(c) the association provides housing without artificial restrictions; and

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- (d) the association is managed according to principles of equity and fairness; and
 - (e) the rules of the housing association contain provisions of a prescribed kind and otherwise comply with the regulations; and
 - (f) a surplus or saving arising from the operations of the housing association is applied to the provision of housing (or housing services), or in some other manner approved by the Minister; and
 - (g) the financial year of the housing association is from 1 July to the following 30 June; and
 - (h) the housing association complies with any other condition or requirement prescribed by the regulations.
- (6) The Authority may decline to register a housing association under this Act if, in its opinion—
- (a) it would not be in the public interest to register the housing association under this Act; or
 - (b) the rules of the housing association contain unreasonable provisions affecting the rights of members, tenants or other persons; or
 - (c) there is some other good reason why the housing association should not be registered under this Act.

Property and borrowings

3. (1) In this clause—

"special resolution", in relation to a registered housing association, has the same meaning as in the *Associations Incorporation Act 1985*.

- (2) A registered housing association cannot dispose of real property unless authorised by special resolution of the housing association.
- (3) A registered housing association must not allow its borrowings at a particular time to exceed, in total, an amount equal to the current market value of all of its properties.
- (4) A contravention of subclause (3) does not affect the rights of a person who has lent money to the housing association.

Accounts and audit

4. (1) In this clause—

"prescribed association" means—

- (a) a prescribed association under the *Associations Incorporation Act 1985*; or
 - (b) an association incorporated under the *Corporations Law*.
- (2) The financial statements of a registered housing association must—
- (a) be made out in accordance with accounting standards approved by the Authority (unless to do so would not give a true and fair view of the accounts of the housing association); and
 - (b) must comply with the requirements prescribed by the regulations.

(3) A registered housing association that is not a prescribed association in a particular financial year, and the committee of management and auditor of such a housing association, must, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, comply with the requirements of Division IV of Part V as if the registered housing association were a registered housing co-operative.

(4) If the auditor of a registered housing association that is a prescribed association in a particular year, in the course of performing his or her duties as auditor, is satisfied that—

(a) there has been a contravention of, or failure to comply with—

(i) a provision of this Act; or

(ii) a rule of the housing association; or

(iii) a term of an agreement between the Authority and the housing association under Division III of Part VII; and

(b) the circumstances are such that in his or her opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the committee of management of the housing association,

the auditor must immediately report the matter to the Authority by notice in writing.

(5) The auditor of a registered housing association that is a prescribed association must, on the completion of the audit, ensure that his or her report on the audit includes, or is accompanied by, a report on any matter prescribed by the regulations.

(6) A registered housing association that is a prescribed association must furnish to the Authority, in accordance with the regulations, a copy of the audited financial statements of the housing association and the auditor's report (together with accompanying material) in relation to the audit.

Returns and other information

5. Section 49 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Right of inspection

6. Section 50 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Financial transactions

7. Division III of Part VII applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Statutory charge

8. Division IV of Part VII (other than section 68) applies to a registered housing association as if—

(a) the registered housing association were a registered housing co-operative; and

- (b) a reference to subsidised premises were a reference to premises of the registered housing association acquired, developed or improved with the assistance of the Authority,

and subject to such other modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Powers of investigation

9. Part VIII applies in relation to registered housing associations.

Special powers of intervention

10. (1) The Authority may, if satisfied that it is appropriate to do so, by notice in writing to a registered housing association, declare that there are grounds for intervention in the affairs of the housing association under this clause.

(2) The grounds on which the Authority may make a declaration under subclause (1) in relation to a registered housing association are—

- (a) that it appears that the association is no longer a housing association that is eligible for registration under this Act, or has ceased to carry on operations as a housing association; or
- (b) that serious irregularities or difficulties have occurred or arisen in the management of the housing association or the administration of its affairs; or
- (c) that the members of the committee of management have acted in the affairs of the housing association in their own interests rather than in the interests of the members as a whole, or in any other manner that appears to be unfair or unjust to other members; or
- (d) that the housing association is experiencing serious internal disputes or otherwise is not functioning in a proper manner; or
- (e) that the housing association has insufficient members to operate efficiently and effectively; or
- (f) that there are insufficient committee members to form a quorum of the committee of management; or
- (g) that the rules of the housing association contain an unreasonable provision that affects the rights of members, tenants or other persons; or
- (h) that the housing association has failed to comply with a term of an agreement between the Authority and the housing association under Part VII; or
- (i) that the housing association has intentionally committed a serious breach of this Act or the rules of the housing association; or
- (j) that the housing association has committed a breach of this Act or the rules of the housing association and the housing association has, after notice by the Authority of the breach, failed, within the time referred to in the notice, to remedy the breach; or
- (k) that the housing association is insolvent or in danger of becoming insolvent or has taken unreasonable action contrary to the interests of its creditors; or
- (l) such other grounds as may be prescribed by the regulations.

(3) Before the Authority makes a declaration under this clause, the Authority must appoint an independent investigator or investigators to carry out an investigation and report to the Authority on the matter.

(4) The investigator or investigators must give the housing association a reasonable opportunity to make submissions in relation to the matter.

(5) If the Authority makes a declaration under this clause in relation to a registered housing association, the Authority may do one or more of the following:

- (a) order an audit of the affairs of the housing association by an auditor approved by the Authority at the expense of the housing association;
- (b) require the members of the committee of management to take specified action to ensure that the housing association is acting efficiently, effectively and fairly;
- (c) require the housing association to take specified action to ensure compliance with this Act or the rules of the housing association;
- (d) require the housing association to correct specified irregularities or to reverse specified action;
- (e) require the housing association to apply specified management practices;
- (f) stipulate principles in accordance with which the affairs of the housing associations are to be conducted;
- (g) require the housing association to alter its rules;
- (h) with the approval of the Minister—
 - (i) remove a committee member from office; or
 - (ii) prohibit or restrict the raising of funds by the housing association or the exercise of other powers of the housing association;
- (i) if the housing association is a subsidised housing association—
 - (i) appoint an administrator (who must not be a member of the staff of the Authority) to conduct the affairs of the housing association; and
 - (ii) require the housing association to dispose of specified property of the housing association in accordance with directions of the Authority;
- (j) require members of the housing association to attend a conference called by a person nominated by the Authority with a view to overcoming problems within the housing association by discussion and conciliation;
- (k) with the approval of the Minister—cancel the registration of the housing association under this Act;
- (l) recommend to the Minister that the housing association be wound up;
- (m) take such other action as may be prescribed by the regulations.

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(6) If a housing association is required to alter its rules, the housing association is not required to do so by any form of resolution or to obtain the approval of its members.

(7) If an administrator is appointed under subclause (5)(i), section 72 applies as if the housing association were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

(8) A direction under subclause (5)(ii) may include a direction that property be transferred to the Authority.

(9) If the registration of a subsidised housing association is cancelled under subclause (5)(k), the Minister may, in relation to property that is subject to the charge under Part VII—

(a) order that steps be taken to transfer the property—

- (i) to the Authority; or
- (ii) to another registered housing association; or
- (iii) to an agent or instrumentality of the Crown; or

(b) order that steps be taken to sell the property on the open market,

and, in that case, sections 66(3)—(12) will apply as if the housing association were a registered housing co-operative subject to the operation of that section, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

(10) If the Authority—

- (a) appoints an investigator under subclause (3); or
- (b) declares that there are grounds for intervention in the affairs of a housing association under this clause,

the Authority must furnish a report on the matter to the Corporate Affairs Commission.

Winding up

11. (1) It will be taken to be a provision of the Act under which a registered housing association is incorporated that the housing association may be wound up on the certificate of the Minister under this Act.

(2) The ground on which the Minister may issue a certificate for the winding up of a registered housing association is that the Authority has, pursuant to this schedule, recommended that the housing association be wound up.

(3) The winding up of a registered housing association on the certificate of the Minister commences on application to the Supreme Court by the Minister and lodgment with the Court of a copy of the certificate and is to proceed as if the housing association had by special resolution resolved that it be wound up by the Supreme Court.

Removal of name from register

12. If—

- (a) a registered housing association is dissolved; or

- (b) the registration of a housing association under this Act is cancelled,

the name of the housing association will be removed from the register of housing associations under this Act.

Assistance to tenants

13. Section 83 applies to a registered housing association as if it were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Appeals

14. Part XI applies—

- (a) to a registered housing association; and
(b) to a member or tenant of a registered housing association,

as if the registered housing association were a registered housing co-operative, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed.

Miscellaneous

15. The following sections of Part XII apply, subject to such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, with respect to registered housing associations as if they were registered housing co-operatives:

- (a) section 85;
(b) section 88;
(c) sections 91 to 106.

Regulations

16. Without limiting the operation of section 107, the Governor may, by regulation—

- (a) make provision in relation to the form of accounting records and financial statements kept or prepared by registered housing associations;
(b) require registered housing associations to keep registers relating to their tenants and members that contain such information as the regulations may prescribe, and make provision for, or in relation to, the inspection of those registers and the provision of extracts from those registers;
(c) require registered housing associations to furnish prescribed information to the Authority in prescribed circumstances;
(d) make provision for, or in relation to, the form or content of any agreement between the Authority and registered housing associations;
(e) make any provision in relation to the administration of a housing association by an administrator appointed under this Act;
(f) make any provision in relation to the winding up of registered housing associations.

SCHEDULE 2
Revision of Penalties

Provision Amended	How Amended
Section 13(2)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 13(4)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 14	Strike out the penalty provision at the foot of this section and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 27(2)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000.
Section 36(4)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 38(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000.
Section 39(4)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000.
Section 42(2)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000 or imprisonment for 1 year.
Section 42(4)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$5 000 or imprisonment for 1 year.

SCHEDULE 3

Transitional Provisions—Registered Housing Associations

1. The Governor may, by proclamation, declare that a specified association incorporated under the *Associations Incorporation Act 1985* becomes, on the commencement of this schedule, a registered housing association under the principal Act.

2. A proclamation made under clause 1 is subject to such conditions as are specified in the proclamation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor