



# **Commonwealth and State Housing Agreement (Service Personnel) Act 1990**

**No. 15, 1991**

**An Act to authorise an agreement between the  
Commonwealth and the States in relation to  
housing, and for related purposes**



---

## Contents

1 Short title.....	1
2 Commencement.....	1
3 Definition .....	2
4 Execution of agreement authorised .....	2
5 Discharge of States' obligations under earlier agreements .....	2

<b>Schedule 1—Form of Agreement</b>	<b>3</b>
-------------------------------------	----------





# **Commonwealth and State Housing Agreement (Service Personnel) Act 1990**

**No. 15, 1991**

---

---

## **An Act to authorise an agreement between the Commonwealth and the States in relation to housing, and for related purposes**

*[Assented to 21 January 1991]*

### **1 Short title**

This Act may be cited as the *Commonwealth and State Housing Agreement (Service Personnel) Act 1990*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

### **3 Definition**

In this Act, unless the contrary intention appears:

***agreement*** means an agreement of the kind mentioned in section 4 and includes such an agreement as varied and in force from time to time.

### **4 Execution of agreement authorised**

The Commonwealth may enter into an agreement with a State or States substantially in accordance with the form contained in the Schedule.

### **5 Discharge of States' obligations under earlier agreements**

Where the Commonwealth and a State have entered into an agreement, the Minister may, on behalf of the Commonwealth, by notice in writing, make such waivers as are necessary to comply with clause 6 of the agreement.

---

## **Schedule 1—Form of Agreement**

### Section 4

This AGREEMENT is made between—

THE COMMONWEALTH OF AUSTRALIA (in this agreement called “the Commonwealth”) of the first part;

THE STATE OF NEW SOUTH WALES of the second part;

THE STATE OF VICTORIA of the third part;

THE STATE OF QUEENSLAND of the fourth part;

THE STATE OF SOUTH AUSTRALIA of the fifth part;

THE STATE OF WESTERN AUSTRALIA of the sixth part; and

THE STATE OF TASMANIA of the seventh part.

WHEREAS—

- (A) the Commonwealth entered into—
  - (i) an agreement with the States dated 19 November 1945 varied between it and certain of those States by agreements dated 26 November 1948, 30 December 1949, 24 November 1952 and 5 March 1954;
  - (ii) an agreement with all States except Tasmania dated 16 April 1955 intended to be supplemental to the agreement dated 19 November 1945;
  - (iii) agreements with all States dated 13 February 1957, 4 October 1961, 21 December 1966, 14 November 1972 and 26 October 1979;
- (B) various provisions in those agreements under which financial assistance was provided by way of advances to the States relate to housing for defence personnel being made available by the States (those agreements to the extent so providing being called herein “the earlier agreements”);
- (C) the Commonwealth has established by the Defence Housing Authority Act 1987 the Defence Housing Authority to provide adequate and suitable housing for members of the Defence Force and their families among others; and
- (D) in consequence the Commonwealth and the State wish to terminate the earlier agreements except as provided hereafter:

## Schedule 1 Form of Agreement

---

NOW IT IS HEREBY AGREED as follows:

1. In this agreement except where the context otherwise indicates—
  - (a) “housing stock” means the housing owned by the State in respect of which, as at the date of commencement of this agreement with a State, the Commonwealth has an entitlement under the earlier agreements to allocate to defence personnel;
  - (b) “State” means a State named as a party to this agreement in respect of which this agreement is in force;
  - (c) “State Minister” means the Minister of State of a State for the time being responsible for the administration of this agreement for the relevant State;
  - (d) “the Minister” means the Minister of State of the Commonwealth for the time being responsible for the administration of this agreement for the Commonwealth;
  - (e) the “States” means all of those States named as a party to this agreement in respect of which this agreement is in force;
  - (f) “year” means a period of twelve months commencing on the first day of July;
  - (g) words in the singular number include the plural and vice versa; and
  - (h) a reference to a date on or by which a thing is to be done shall, if that date falls on a Saturday, Sunday, public holiday or bank holiday in the place in which the thing is to be done, be read and construed as if the reference was to the day immediately preceding that day which is not a Saturday, Sunday, public holiday or bank holiday in that place.
2. (1) This agreement shall be deemed to have come into effect in respect of the Commonwealth and the States of New South Wales, Victoria, Western Australia and Tasmania on the first day of July 1989, and in respect of the Commonwealth and other States on the first day of July previous to the date when it is signed on behalf of each other State.
- (2) Notwithstanding that in this agreement all the States are named as parties, this agreement shall operate as an agreement between the Commonwealth and the party or parties in respect of which it comes into force as fully and effectually as if the party or parties in respect of which it comes into force were the only party or parties so named other than the Commonwealth.



- 
- (3) Save as to the obligations under the earlier agreements referred to in clause 7, the provisions of the earlier agreements relating to housing stock shall be deemed to have ceased to operate on and from the date of commencement of this agreement.
3. (1) The Commonwealth will surrender to a State its legal right to, and actual, possession, together with any title to, interest in, or any entitlement referred to in paragraph 1 (a), in relation to that portion of the housing stock being the portion the title to which is, under this agreement, not to be transferred by that State to the Commonwealth,
- (a) as to not less than 30% of that portion, during the first year commencing as provided for in sub-clause 2 (1) of this agreement with that State;
- (b) as to not less than a further 30% of that portion, during the second year of this agreement with that State;
- (c) as to not less than a further 14% of that portion, during the third year of this agreement with that State;
- (d) as to not less than a further 14% of that portion, during the fourth year of this agreement with that State; and
- (e) as to any remaining per centum of that portion, during the final year of this agreement with that State.
- (2) For the purpose of sub-clause (1) housing stock provided under the earlier agreements by the State the possession of which the Commonwealth has surrendered after 1 July 1981 with a right to regain possession in order to reallocate it to members of the Defence Force and their families, but of which the Commonwealth is not in possession at the date of commencement of this agreement shall be deemed to be housing stock surrendered under sub-clause (1) in the first year of the agreement.
4. The housing stock in a State will be valued as at an agreed date by a Valuer agreed by the Commonwealth and the State in which the housing stock is situated on an open market value basis.
5. (1) The State will transfer to the Commonwealth on the same date as that on which the Commonwealth performs its obligation under clause 6 all the right title and interest of the State in so much of the housing stock, valued in accordance with clause 4, as is, as near as practicable, equal to one half of the housing stock as so valued.
-

## Schedule 1 Form of Agreement

- 
5. (1) Upon the Commonwealth releasing and discharging the State in accordance with Clause 6, the State will transfer to the Commonwealth all of its right title and interest in so much of the housing stock as is, as near as practicable, equal to one half of the value, assessed in accordance with clause 4, of the housing stock in that State. Such transfer will be effected so that from time to time the value of the housing stock transferred by the State is equal to the value of housing in that State, the possession of which the Commonwealth has transferred to the State under clause 3.
- (alternative sub-clause 5 (1) which may be adopted if a State so elects)
- (2) Subject to sub-clause (1) the division of the housing stock between, housing stock the title of which is to be transferred by the State to the Commonwealth and, housing stock possession of which is to be surrendered to the State is to be made by the officers of the State and of the Defence Housing Authority.
6. Within two months after the date upon which a State signs this agreement the Commonwealth shall release and discharge that State from obligations in respect of repayment of, and payment of interest on, half of each of the advances unrepaid by that State to the Commonwealth pursuant to the earlier agreements for housing stock under this agreement.
7. The earlier agreements are hereby superseded save that there shall continue to apply the provisions of the earlier agreements—
- (a) as to the repayments of, and payments of interest on, that portion of advances made to the State by the Commonwealth which remain outstanding and are undischarged by this agreement; and
  - (b) as to the rent payable by the Commonwealth to the State for the housing stock
    - (i) possession of which has not been surrendered to the State by the Commonwealth pursuant to this agreement; or
    - (ii) title to which has not been transferred to the Commonwealth by the State pursuant to this agreement otherwise than due to the default hereunder by the State provided that the provisions of the earlier agreements relating to the payment of rent shall be read and construed subject to the provisions of clauses 8 and 9 hereof.
-

- 
8. If the Commonwealth fails in any year to surrender to the State possession, title, interest or entitlement as described in sub-clause 3 (1) of the required portion of the housing stock in accordance with clause 3, the Commonwealth shall pay to the State in respect of the value of the housing stock not so surrendered to the State in lieu of the rent otherwise payable for the year or part thereof succeeding that year a rent calculated on a daily basis in accordance with the formulae

$$B \times \frac{CPIb}{CPIa} \times 0.0003425; \text{ or}$$

$$B \times \frac{CPIb}{CPIa} \times 0.0003014$$

(the second formula applies to a State adopting the second alternative of sub-clause 5 (1))

where—

**B** is the value of the housing stock as assessed in accordance with clause 4, the possession of which the Commonwealth has, contrary to this agreement, not surrendered to the State on a day for which rent is to be calculated under this clause.

**CPIa** is the Weighted Average of Eight Capital Cities All Groups Consumer Price Index for the quarter immediately prior to the date agreed on pursuant to clause 4.

**CPIb** is the Weighted Average of Eight Capital Cities All Groups Consumer Price Index for the quarter ended 30 June of the year in which the Commonwealth failed to transfer possession of the houses to the State.

- (2) The monthly aggregate of any amount calculated under sub-clause 8 (1) shall be paid by the Commonwealth to the State within 28 days after expiry of that month. Any of that amount thereafter unpaid shall bear interest at the Commonwealth Bond 10 Year indicator rate calculated on a daily basis.
9. (1) Where the Commonwealth is maintaining and carrying out repairs of housing stock the possession of which it has not yet transferred to a State, the component of rent relating to the same under the relevant provisions of the earlier agreements is not to be included in the rent payable by the Commonwealth for that housing stock.
-

## Schedule 1 Form of Agreement

- 
- (2) On terms agreed between the parties the Commonwealth will arrange for the Defence Housing Authority to undertake repairs and maintenance of housing possession of which is to be transferred to the State whilst it remains in the possession of the Commonwealth.
10. (1) The provisions of this agreement may be varied between the Commonwealth and a State by agreement in writing between the Minister and State Minister, but only after consultation between the Minister and other State Ministers.
- (2) A copy of an agreement or copies of the documents which constitute an agreement under sub-clause 10 (1) shall be tabled in the Parliament of the Commonwealth and, where necessary, of the State within 15 sitting days of respective Parliaments from the date upon which the agreement is made.
- (3) An agreement under sub-clause 10 (1) shall not affect the operation of this agreement as between the Commonwealth and the States other than a State with which the agreement has been made.
11. (1) The Commonwealth shall, subject to sub-clause 11 (2), be represented for the purposes of this agreement by the Department of Defence and the Minister shall notify State Ministers of the address of that Department and of any change at any time of that address.
- (2) In the event that the administration of this agreement for the Commonwealth is allocated to a Minister other than a Minister responsible for administering any part of the Department of Defence, the Commonwealth shall be represented by the Department administered by that other Minister and that Minister shall notify State Ministers of the address of that Department.
12. Each State shall be represented for the purposes of this agreement by the Department administered by the State Minister or such other agency of the State as the State Minister shall nominate and the State Minister shall notify the Minister of the address of that Department or Agency and of any change at any time of the Department or Agency or of the address.
13. (1) A notice or other communication in connection with this agreement shall be duly given if it is in writing signed by or on behalf of, or attributed to, the head of the Department or Agency by which it is given and addressed to or delivered at the address of the Department or Agency to which it is directed.
-

- 
- (2) For the purpose of this clause writing includes a fax or teleprinter message and the address for such a message shall be the fax or teleprinter address of the receiving Department or Agency.
  - (3) A notice or other communication shall be given under this clause when it is received in the appropriate form by the Department or Agency to which it is directed.