

# Treasury Corporation of Victoria (Housing Finance) Bill

No.

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# LEGISLATIVE ASSEMBLY

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Read 1° 3 May 1995

*(Brought in by Mr Stockdale and Mr Smith (Polwarth))*

## A BILL

to make further provision in relation to the Home Opportunity Loans Scheme, to amend the **Treasury Corporation of Victoria Act 1992** and for other purposes.

### **Treasury Corporation of Victoria (Housing Finance) Act 1995**

**The Parliament of Victoria enacts as follows:**

#### **PART 1—PRELIMINARY**

##### ***1. Purpose***

5 The purpose of this Act is to transfer certain assets and liabilities of the Home Opportunity Loans Scheme to the Director of Housing and to make certain other provisions in relation to that Scheme.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984.**)

**2. Commencement**

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 5
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 10

**3. Definitions**

In this Act—

“**Director**” means the Director of Housing established as a body corporate under section 9 of the **Housing Act 1983**; 15

“**HOLS**” means Home Opportunity Loans Limited A.C.N. 006 825 136;

“**HOLS instrument**” means an instrument (including a legislative instrument other than this Act or the **Treasury Corporation of Victoria Act 1992** and regulations under that Act) subsisting immediately before the transfer time— 20

(a) to which HOLS was a party in its capacity as trustee for the trust; or 25

(b) that was given to or in favour of HOLS in its capacity as trustee for the trust; or

(c) that contains a reference to HOLS, being a reference (whether or not so expressed) to HOLS in its capacity as trustee for the trust; or 30

(d) under which—

(i) money is, or may become, payable to or by HOLS in its capacity as trustee for the trust; or

(ii) other property is to be, or may become liable to be, transferred to or by HOLS in its capacity as trustee for the trust;

**“instrument”** includes a document and an oral agreement;

**“liabilities”** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**“property”** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

**“rights”** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**“TCV”** means the Treasury Corporation of Victoria;

**“transfer time”** means the time immediately after the publication of an Order under section 36K of the **Treasury Corporation of Victoria Act 1992**;

**“trust”** means the Home Opportunity Loans Scheme Trust;

**“VHB”** means Victorian Housing Bonds Limited A.C.N. 006 955 577;

**“VHB instrument”** means an instrument (including a legislative instrument other than this Act or the **Treasury Corporation of Victoria Act 1992** and regulations under that Act) subsisting immediately before the transfer time—

(a) to which VHB was a party; or

(b) that was given to or in favour of VHB; or

(c) that refers to VHB; or

(d) under which—

- (i) money is, or may become, payable to or by VHB; or
- (ii) other property is to be, or may become liable to be, transferred to or by VHB.

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#### **4. *Crown to be bound***

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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#### **5. *Extra-territorial operation***

It is the intention of the Parliament that the operation of this Act should, as far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

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### **PART 2—TRANSFER OF PROPERTY**

#### **6. *Transfer of HOLS and VHB property to the Director***

(1) At the transfer time—

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- (a) all property and rights of HOLS described in Schedule 1 vest in the Director free of the trust but subject to the encumbrances (if any) to

which they were subject immediately before so vesting; and

(b) all liabilities of HOLS described in Schedule 1 become liabilities of the Director.

5 (2) At the transfer time—

(a) all property and rights of VHB described in Schedule 2 vest in the Director subject to the encumbrances (if any) to which they were subject immediately before so vesting; and

10 (b) all liabilities of VHB described in Schedule 2 become liabilities of the Director.

### 7. *Substitution of party to agreement*

15 (1) Where, under section 6, the property, rights and liabilities of HOLS under an agreement vest in, or become liabilities of, the Director—

(a) the Director becomes, at the transfer time, a party to the agreement in place of HOLS; and

20 (b) on and after the transfer time, the agreement has effect as if the Director had always been a party to the agreement.

(2) Where, under section 6, the property, rights and liabilities of VHB under an agreement vest in, or become liabilities of, the Director—

25 (a) the Director becomes, at the transfer time, a party to the agreement in place of VHB; and

(b) on and after the transfer time, the agreement has effect as if the Director had always been a party to the agreement.

### 8. *HOLS instruments and VHB instruments*

30 (1) Each HOLS instrument (unless revoked under section 14) continues to have effect according to its tenor on and after the transfer time as if a reference in the instrument to HOLS were a reference to the Director.

- (2) Each VHB instrument (unless revoked under section 14) relating to property and rights that vest in, or become liabilities of, the Director under section 6 continues to have effect according to its tenor on and after the transfer time as if a reference to VHB were a reference to the Director. 5

### **9. Proceedings**

Where, immediately before the transfer time, proceedings (including arbitration proceedings) to which VHB was a party or relating to or affecting the trust and to which HOLS was a party were pending or existing in any court or tribunal, then, on and after the transfer time, the Director is substituted for VHB or HOLS as a party to the proceedings and has the same rights in the proceedings as VHB or HOLS had. 10  
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### **10. Interests in land**

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the transfer time, HOLS is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after the transfer time— 20

- (a) the Director is to be taken to be the registered proprietor of that interest in land; and  
(b) the Director has the same rights and remedies in respect of that interest as HOLS had. 25

### **11. Amendment of Register**

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Act. 30
- (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any



memorial relating to land that are necessary because of the operation of this Part.

- 5 (3) If any land vested under this Part is not Crown land and is not under the operation of the **Transfer of Land Act 1958**, the Director must, as soon as practicable after the land vests in accordance with this Part, cause a memorial of the certificate of the Director (that complies with Part 1 of the **Property Law Act 1958**) to be delivered to the office of the Registrar-General and, for the purposes of that Part, that certificate must be taken to be an instrument affecting land.
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## 12. Taxes

15 No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given.

## 20 13. Evidence

- 25 (1) Documentary or other evidence that would have been admissible for or against the interests of HOLS as trustee for the trust or for or against VHB if this Part had not been enacted, is admissible for or against the interests of the Director.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of HOLS or VHB and to entries made in those books of account before the transfer time.
- 30 (3) In sub-section (2), “**books of account**” has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

**14. *Certain instruments***

- (1) The instruments referred to in Schedule 3 are revoked at the transfer time and cease to have any further effect.
- (2) Sub-section (1) does not affect— 5
- (a) any right or obligation accrued under an instrument referred to in Schedule 3 before its revocation; or
- (b) a financial obligation within the meaning of Part 3B of the **Treasury Corporation of Victoria Act 1992**. 10

**15. *Validity of things done***

Nothing in this Part or done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or 15
- (b) is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or 20 25
- (c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or obligation or requiring any money to be paid, or declaring any money to be payable before its stated maturity or, except as provided in section 14, modifying the operation or effect of any agreement; or 30
- (d) except as provided in section 14, is to be regarded as releasing any surety or other obligee wholly or in part from any obligation. 35

**PART 3—AMENDMENT OF TREASURY CORPORATION OF  
VICTORIA ACT 1992**

**16. *New Part 3B inserted***

After Part 3A of the Treasury Corporation of  
Victoria Act 1992 insert—

**“PART 3B—FINANCIAL OBLIGATIONS OF  
VICTORIAN HOUSING BONDS LTD.**

**36I. *Definitions***

In this Part—

“**Director**” means the Director of  
Housing established as a body  
corporate under section 9 of the  
**Housing Act 1983**;

“**financial accommodation**” means a  
financial benefit or assistance to  
obtain a financial benefit arising  
from or as a result of—

- (a) a loan;
- (b) issuing, endorsing or otherwise  
dealing in promissory notes;
- (c) drawing, accepting, endorsing  
or otherwise dealing in bills of  
exchange;
- (d) issuing, purchasing or otherwise  
dealing in securities;
- (e) granting or taking a lease of any  
real or personal property for  
financing but not for operating  
purposes;
- (f) issuing bonds under an  
instrument referred to in section  
36O;

“**financial arrangement**” means an  
arrangement entered into for the

purpose of managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or other costs of obtaining financial accommodation; 5

“financial obligation”, in relation to VHB, means—

(a) in relation to a bond issued by VHB under an instrument referred to in section 360, the liability of VHB to pay any principal, interest or other moneys owing in relation to the bond on the due date within the meaning of the instrument; 10 15

(b) in relation to any other financial accommodation obtained, or financial arrangement entered into, by VHB, the liability of VHB to make payment in respect of that financial accommodation or financial arrangement; 20

“security” includes inscribed stock and debenture, bond, debenture stock, notes or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation, whether or not constituting a charge on property; 25 30

“VHB” means Victorian Housing Bonds Limited A.C.N. 006 955 577.

**36J. Crown bound** 35

This Part binds the Crown, not only in right of the State but also, so far as the

legislative power of the Parliament permits, the Crown in all its other capacities.

**36K. Financial obligations of VHB**

- 5 (1) The Governor in Council, on the  
recommendation of the Treasurer, may, by  
Order published in the Government  
10 Gazette, declare that the financial  
obligations of VHB, or financial  
obligations included in a class of financial  
obligations of VHB, specified in the  
Order, being financial obligations that are  
governed by the law of Victoria, are to be  
taken to be liabilities of the Corporation.
- 15 (2) On the publication of an Order under  
sub-section (1)—
- (a) all rights of VHB in and in respect of  
the financial accommodation or a  
20 financial arrangement to which the  
financial obligations specified in the  
Order relate vest in the Corporation;  
and
- (b) all financial obligations of VHB in  
25 respect of that financial  
accommodation or financial  
arrangement become obligations of  
the Corporation; and
- (c) VHB ceases to have any rights or  
30 obligations in respect of that  
financial accommodation of financial  
arrangement; and
- (d) any rights or obligations in respect of  
35 that financial accommodation or  
financial arrangement which are not  
assumed by the Corporation under  
this Part are extinguished; and
- (e) in the case of a financial obligation  
relating to financial accommodation

which is evidenced by an instrument, the instrument has effect as if it were a security issued by the Corporation.

- (3) Despite the making of an Order under sub-section (1) relating to financial obligations of VHB— 5
- (a) the Director must pay to the Corporation such amounts, and at such times, as VHB would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the Director otherwise agree; and 10
- (b) the Corporation must pay to the Director such amounts, and at such times, as VHB would have been entitled to receive in respect of the financial obligations if the Order had not been made, except in so far as the Corporation and the Director otherwise agree. 15 20
- (4) An amount payable under sub-section (3) may be recovered in a court of competent jurisdiction as a debt due to the Corporation or the Director as the case requires. 25

### **36L. Guarantee**

- (1) The due satisfaction of amounts—
- (a) payable by the Corporation as a result of or in connection with the operation of section 36K; or 30
- (b) payable by the Director under section 36K (3) (a)—
- including, without limiting the generality of the foregoing, the payment of expenses of enforcing or obtaining or endeavouring 35

to enforce or obtain such satisfaction is guaranteed by the Government of Victoria.

- 5 (2) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee referred to in sub-section (1) shall be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly).
- 10 (3) Any sums received or recovered by the Treasurer from the Corporation or the Director or otherwise in respect of any sums paid by the Treasurer under a guarantee referred to in sub-section (1) shall be paid into the Consolidated Fund.
- 15 (4) A guarantee referred to in sub-section (1) may be enforced against the Crown by a proceeding under Part II of the **Crown Proceedings Act 1958**.

20 **36M. Validity of things done**

Nothing in this Part or done or suffered under this Part—

- 25 (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- 30 (b) is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or
- 35 regulating the assignment or transfer of any right or liability or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition which allows a person to terminate any agreement or obligation or modifying the operation or effect of any agreement or requiring any money to be paid, or declaring any money to be payable before its stated maturity; or 5
- (d) releases any surety or other obligee wholly or in part from any obligation. 10

**36N. Corporation to be party to certain proceedings**

- (1) If, immediately before the publication of an Order under section 36K, VHB was a party to proceedings relating to or affecting a transferred financial obligation, the Corporation is to be taken to be a party to those proceedings either in substitution for VHB or as an additional party, as the case requires. 15
- (2) In this section “**transferred financial obligation**” means a financial obligation the rights or liabilities under which, by operation of or under this Part, are rights and liabilities of, or are assumed by, the Corporation. 20  
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**36O. Instruments under which bonds issued**

For the purposes of paragraph (f) of the definition of “**financial accommodation**”, bonds were issued under the following instruments— 30

<i>Date</i>	<i>Instrument</i>	<i>Parties</i>
20 September 1988 (as Trust amended by Amending Deed dated 27 October 1988)	Deed Indexed Perpetual Bonds	VHB and The Executors and Trustees of Association of Australia Limited



<i>Date</i>	<i>Instrument</i>	<i>Parties</i>
25 May 1989	Trust Capital Indexed Bonds	Deed VHB and The Perpetual Executors and Trustees Association of Australia Limited
5 July 1990	Trust Victorian Housing Bonds Fixed Rate Bonds	Deed VHB and Perpetual Trustees Victoria Limited.

**17. Minor correction**

In section 26 of the **Treasury Corporation of Victoria Act 1992**, for “(3)” substitute “(1A)”.

**SCHEDULES**

**SCHEDULE 1**

Section 6

**Property, rights and liabilities of HOLS**

1. All property and rights of HOLS, wherever located, other than an amount of money or other assets equal in value to the amount received by HOLS in respect of the issue of shares in HOLS, being an amount or assets specified by HOLS in writing given to the Director before the transfer time.
  2. All liabilities of HOLS, wherever located, other than liabilities for breach of trust.
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**SCHEDULE 2**

Section 6

**Property, rights and liabilities of VHB**

1. All property and rights of VHB, wherever located, other than—
    - (a) an amount of money or other assets equal in value to the amount received by VHB in respect of the issue of shares in VHB, being an amount or assets specified by VHB in writing given to the Director before the transfer time; and
    - (b) rights in, and in respect of financial accommodation or a financial arrangement to which financial obligations specified in an Order under section 36k of the **Treasury Corporation of Victoria Act 1992** relate; and
    - (c) shares in Victorian Housing Bonds (Subsidiary) Pty. Limited.
  2. All liabilities of VHB, wherever located, other than its liabilities in respect of financial obligations specified in an Order published under section 36k of the **Treasury Corporation of Victoria Act 1992**.
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## SCHEDULE 3

Section 14

## Revoked instruments

<i>No.</i>	<i>Date</i>	<i>Instrument</i>	<i>Parties</i>
1	10 June 1988	Deed of Indemnity	Director of Housing, VHB, The Perpetual Executors and Trustees Association of Australia Limited and Victorian Housing Bonds (Subsidiary) Pty. Limited.
2	10 June 1988	Deed of Subordination	The Perpetual Executors and Trustees Association of Australia Limited, VHB and Victorian Housing Bonds (Subsidiary) Pty. Limited.
3	10 June 1988	Finance Agreement	Home Opportunity Loans Ltd and VHB.
4	10 June 1988	Deed of Charge	Home Opportunity Loans Ltd and The Perpetual Executors and Trustees Association of Australia Limited.
5	10 June 1988	Deed of Charge	VHB and The Perpetual Executors and Trustees Association of Australia Limited.
6	10 June 1988	Security Trust Deed	The Perpetual Executors and Trustees Association of Australia Limited, Home Opportunity Loans Ltd and VHB.
7	10 June 1988	Trustee's Deed of Covenant	Director of Housing, Home Opportunity Loans Ltd and National Mortgage Market Corporation Ltd.
8	10 June 1988	Issuer's Deed of Covenant	VHB, National Mortgage Market Corporation Ltd and Director of Housing.
9	10 June 1988	Trust Deed Home Opportunity Loans Scheme Trust	John Chester Hambly and Home Opportunity Loans Ltd.
10	20 September 1988 (as amended by Amending Deed dated 27 October 1988)	Trust Deed Inflation Indexed Bonds	VHB and The Perpetual Executors and Trustees Association of Australia Limited.

SCHEDULE 3—*continued*

<i>No.</i>	<i>Date</i>	<i>Instrument</i>	<i>Parties</i>
11	25 May 1989	Trust Deed Capital Indexed Bonds	VHB and The Perpetual Executors and Trustees Association of Australia Limited.
12	5 July 1990	Trust Deed Victorian Housing Bonds Fixed Rate Bonds	VHB and Perpetual Trustees Victoria Limited.
13	5 December 1990	Trust Deed Victorian Housing Bonds Promissory Notes	VHB and Perpetual Trustees Victoria Limited.





