WESTERN CAPE HOUSING DEVELOPMENT ACT, 1999 (Act 6 of 1999)

(Afrikaans text signed by the Premier)

as amended by
Western Cape Housing Development Amendment Act 2 of 2005

ACT

To provide for the abolition of the Western Cape Housing Development Board; to determine general principles applicable to housing in the Province of the Western Cape; to define the role of the provincial and local spheres of government in housing development; to establish a Western Cape Housing Advisory Panel and a Provincial Housing Development Fund; to ensure that housing development is integrated with all other facets of development in a holistic way, and to provide for matters incidental thereto.

[Long title substituted by sec 22 of Act 2 of 2005 wef 1 November 2005.]

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BE IT ENACTED by the Provincial Parliament of the province of Western Cape, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
   "accounting officer" means the Head of Department;
   [Definition of "accounting officer" inserted by sec 1(a) of Act 2 of 2005 wef 1 November 2005.]
   "Advisory Panel" means the Western Cape Housing Advisory Panel established in terms of section 5;
   [Definition of "Advisory Panel" inserted by sec 1(b) of Act 2 of 2005 wef 1 November 2005.]
   . . .
   [Definition of "Board" deleted by sec 1(c) of Act 2 of 2005 wef 1 November 2005.]
   "Code" means the National Housing Code;
   [Definition of "Code" inserted by sec 1(d) of Act 2 of 2005 wef 1 November 2005.]
   "Department" means the department of the Provincial Administration: Western Cape responsible for housing;
   "Fund" means the Western Cape Housing Development Fund established in terms of section 13;
   "Head of Department" means the officer at the head of the Department;
   "Housing Act" means the Housing Act, 1997 (Act 107 of 1997);
   "housing development" means the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities and social amenities in which all citizens and permanent residents of the Province will, on a progressive basis, have access to—
   (a) permanent residential structures with secure tenure, ensuring privacy and providing adequate protection against the elements; and
   (b) potable water, adequate sanitary facilities and domestic energy supply;
   "housing development project" means any plan to undertake housing development as contemplated in any national or provincial housing programme;
   "local government" means any body established under any law and performing local government functions in respect of a particular area;
   "national housing programme" means any national policy framework to facilitate housing development contemplated in the Housing Act;
   "Provincial Government" means the provincial government of the Western Cape as indicated in section 103(1)(i) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
   [Definition of "Provincial Government" inserted by sec 1(e) of Act 2 of 2005 wef 1 November 2005.]
   "provincial housing programme" means any provincial policy framework to facilitate housing development contemplated in this Act;
   "Province" means the province of Western Cape;
   "Provincial Minister" means the member of the Western Cape Provincial Cabinet responsible for housing and matters related thereto;
   [Definition of "Provincial Minister" amended by sec 1(f) of Act 2 of 2005 wef 1 November 2005.]
   "Provincial Revenue Fund" means the Provincial Revenue Fund of the Province as contemplated by the definition of 'Revenue Fund' in the Public Finance Management Act;
   [Definition of "Provincial Revenue Fund" inserted by sec 1(g) of Act 2 of 2005 wef 1 November 2005.]
   "Public Finance Management Act" means the Public Finance Management Act, 1999 (Act 1 of 1999); and
General principles applicable to housing development

2. The government of the Province must uphold the general principles referred to in or prescribed under section 2 of the Housing Act which apply to the actions of the provincial and local governments in respect of housing development in the Province.

Role of government of Province in housing development

3. (1) With due regard to the role of the national government in housing development, the government of the Province must do everything in its power to promote and facilitate the provision of housing in the Province within the framework of national policy in respect of housing development.

(2) The government of the Province must—
(a) promote and facilitate the integration of housing in the Province with other facets of development and with the framework of national and provincial policy and programmes;
(b) determine provincial policy in respect of housing and integrated development;
(c) promote the adoption of provincial legislation to ensure effective housing delivery;
(d) take all reasonable and necessary steps to support and strengthen the capacity of local governments for the effective exercise of their powers and performance of their duties in respect of housing development;
(e) take all reasonable and necessary steps to support local governments in the exercise of their powers and the performance of their duties in respect of housing development; and
(f) when a local government cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and section 49 of the Constitution of the Western Cape, 1997 to ensure the performance of such duty.

Powers and duties of Provincial Minister

4. (1) The Provincial Minister—
(a) exercises the powers and performs the functions assigned to that Minister in terms of section 132(2) of the Constitution of the Republic of South Africa, 1996, and sections 42 and 43 of the Constitution of the Western Cape, 1997;
(b) must, without derogating from the powers, duties and functions assigned under any law or by virtue of that Minister's portfolio, exercise the powers and perform the duties and fulfil the responsibilities of the government of the Province referred to in section 3;
(c) must approve a policy to co-ordinate housing development in the Province and to ensure the effective execution thereof;
(d) must approve and ensure the maintenance of a multi-year plan in respect of the execution in the Province of every national and provincial housing programme, which is consistent with national housing policy and section 3(2)(b) of the Housing Act, in accordance with the guidelines that the National Minister of Housing approves for the financing of such a plan with money from the South African Housing Fund;
[Para (d) amended by sec 3(a) of Act 2 of 2005 wef 1 November 2005.]
(e) must appoint the members of the Advisory Panel in accordance with section 8; and
[Para (e) substituted by sec 3(b) of Act 2 of 2005 wef 1 November 2005.]
(f) must administer every national housing programme and every provincial housing programme which is consistent with national housing policy and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve—
(i) any projects in respect thereof; and
(ii) any financing thereof;

(g) must determine provincial housing development priorities in accordance with national housing policy;

(h) must, in respect of housing development, apply procurement policy determined by the National Minister; and

(i) must administer the assets contemplated in section 6.

(2) The Provincial Minister may—

(a) for the purpose of regulating any matter pertaining to housing development which cannot be regulated effectively at local government level, issue policy directives or take actions that are deemed expedient;

(b) establish norms, standards, frameworks and provincial policies in order to deal effectively with any matter pertaining to housing development that requires to be dealt with uniformly across the Province;

(c) institute provincial housing programmes and housing assistance measures;

(d) publish, in the manner deemed expedient, a code to be known as the Housing Code of the Province, which applies to all housing development in the Province; and

(e) institute mechanisms or institutions or both and may use such mechanisms or institutions as well as existing institutions to ensure the proper integration of housing with all other facets of development in a holistic way.

Establishment of Western Cape Housing Development Advisory Panel

5. There is established an advisory panel to be known as the Western Cape Housing Advisory Panel.

Abolition of Western Cape Housing Development Board

6. (1) The Western Cape Housing Development Board is abolished.

(2) All movable and immovable property, including any right or claim in the latter property, and all the rights and liabilities of the Board abolished in terms of subsection (1), pass to the Provincial Government on the date on which the Western Cape Housing Development Amendment Act, 2005 comes into operation.

(3) The Registrar of Deeds must, at the request of the Head of Department and on submission by him or her of the relevant title deeds and the certificate referred to in subsection (5), make the necessary endorsements in the deeds registry and on the title deeds to give effect to the passage of immovable property referred to in subsection (2).

(4) No transfer duty, stamp duty or registration fee is payable in respect of the passage of immovable property referred to in subsection (2).

(5) The Head of Department must, for the purposes of subsection (3), issue a certificate to the effect that the immovable property, claim or right mentioned in the certificate has passed to the Provincial Government.

Duties and functions of Advisory Panel

7. (1) The Advisory Panel must—
(a) advise the Provincial Minister on provincial housing policy and strategy; and
(b) serve as a forum for informed decision-making regarding provincial housing policy and strategy;
(c) advise the Provincial Minister on housing development matters such as multiyear housing development plans and housing development proposals; and
(d) on instruction of the Provincial Minister, conduct and manage investigations for the benefit of informed decision-making.

(2) The administrative functions of the Advisory Panel are performed by officers in the service of the Department.

[Sec 7 substituted by sec 6 of Act 2 of 2005 wef 1 November 2005.]

**Composition of Advisory Panel**

8. (1) The Advisory Panel consists of not more than five members appointed by the Provincial Minister in accordance with subsection (2) and with due regard to the demography of the Province, but only persons with knowledge of, or qualifications or experience in the field of, housing development and who are resident in the Province may be appointed as members.

[Subsec (1) substituted by sec 7(b) of Act 2 of 2005 wef 1 November 2005.]

(2) The Provincial Minister must appoint members of the Advisory Panel:

(a) With due regard for consumers and with consideration to the need for the Advisory Panel to reflect broadly the race and gender composition of South Africa and the geographic composition of the Province, and

(b) only after—

(i) the Provincial Minister has through the media and by notice in the Provincial Gazette invited nominations of persons as candidates for appointment as members of the Advisory Panel, and

(ii) the Standing Committee of the Provincial Parliament responsible for housing has made recommendations to that Minister in relation thereto after a transparent and open process of considering persons so nominated.

(3) Members of the Advisory Panel are, subject to section 9(1) and (4), appointed for a term of office not exceeding three years, but a member whose term of office expires is eligible for reappointment.

(4)(a) The Provincial Minister must designate the chairperson and vice-chairperson of the Advisory Panel.

(b) When the chairperson of the Advisory Panel is absent or unable to fulfil any function of the chairperson, the vice-chairperson of the Advisory Panel must act as chairperson during such absence or incapacity.

(c) If both the chairperson and the vice-chairperson of the Advisory Panel are absent from a meeting of the Advisory Panel, the members present must elect one of their members to preside at that meeting.

(5) . . .

[Subsec (5) deleted by sec 7(c) of Act 2 of 2005 wef 1 November 2005.]

[Sec 8 amended by sec 7(a) of Act 2 of 2005 wef 1 November 2005.]

**Termination of membership of Advisory Panel**

9. (1) A member of the Advisory Panel who—

(a) resigns;

(b) without leave of the Advisory Panel, is absent from three consecutive meetings of the Advisory Panel;

(c) is sequestrated or who applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act 28 of 1966);
(d) becomes of unsound mind and has been so declared by a competent court;
(e) is convicted of an offence and sentenced to imprisonment without the option of a fine;
(f) becomes a member of Parliament, a provincial legislature, the council of a local government or the national cabinet or the Western Cape Provincial Cabinet; or
(g) is convicted of an offence in terms of subsection (2) or (3) and sentenced to a fine or imprisonment,

ceases to be a member of the Advisory Panel.

(2) A member of the Advisory Panel or any committee referred to in this Act who directly or indirectly receives money or reward from any person in connection with any matter which is dealt with by the Advisory Panel or such a committee is guilty of an offence and liable on conviction to a fine not exceeding R25 000 or imprisonment for a period not exceeding three years or to both such fine and imprisonment, and is thereafter not eligible to hold any office in terms of this Act.

(3) A member of the Advisory Panel or any such committee who, except with the permission of the Provincial Minister or when performing duties or acting as a witness in a court of law, publishes information obtained in the course of duties is guilty of an offence and liable on conviction to a fine not exceeding R30 000 or imprisonment for a period not exceeding three years or to both such fine and imprisonment, and is thereafter not eligible to hold any office in terms of this Act.

(4) The Provincial Minister may, with the approval of the Provincial Cabinet, at any time remove a member of the Advisory Panel from office for reasons which are just and fair.

Meetings of Advisory Panel

10. (1) . . .

[Subsec (1) deleted by sec 8 of Act 2 of 2005 wef 1 November 2005.]

(2) . . .

[Subsec (2) deleted by sec 8 of Act 2 of 2005 wef 1 November 2005.]

(3) The procedure at meetings of the Advisory Panel is laid down by the Advisory Panel subject to the directives of the Provincial Minister.

(4) . . .

[Subsec (4) deleted by sec 8 of Act 2 of 2005 wef 1 November 2005.]

(5)(a) A member of the Advisory Panel may not be present during or take part in any discussion of or the making of decisions on any matter before the Advisory Panel in which—
(i) that member or the spouse, an immediate family member, a business partner or associate or an employer (other than the State) of that member; or
(ii) a business partner or an associate, an immediate family member or an employer (other than the State) of the spouse of that member, has a direct or indirect financial interest.
(b) For the purposes of paragraph (a) and subsection (6)—
(i) "spouse" includes a person with whom the member lives as if they were married or with whom the member habitually co-habits; and
(ii) "immediate family member" means a parent, child, brother or sister.
(c) . . .

[Para (c) deleted by sec 8 of Act 2 of 2005 wef 1 November 2005.]

(6) A member of the Advisory Panel must, in the manner and at the intervals the Provincial Minister determines, disclose any direct or indirect financial interest which—
(a) that member or the spouse, an immediate family member, a business partner or associate or an employer (other than the State) of that member; or
(b) a business partner or associate, an immediate family member or an employer (other than the State) of the spouse of that member,

has in housing development.
(7) The decision of the majority of the members present shall be deemed to be a decision of the Advisory Panel; provided that in the event of an equality of votes on any matter, the person presiding at such meeting shall have a casting vote in addition to a deliberative vote.

Allowances of Advisory Panel members

11. A member of the Advisory Panel, other than a person who is in the full-time employment of the State, must be appointed on such terms and conditions and may be paid such allowances and be reimbursed for such expenses as are determined by the Provincial Minister in concurrence with the Provincial Minister responsible for finance.

[Sec 11 substituted by sec 9 of Act 2 of 2005 wef 1 November 2005.]

12 . . .
[Sec 12 repealed by sec 10 of Act 2 of 2005 wef 1 November 2005.]

Establishment of Western Cape Housing Development Fund

13. (1) The Western Cape Housing Development Fund is hereby established.
(2) The Fund consists of money which is due or payable to the Fund—
   (a) in terms of any provision of the Housing Act;
   (b) out of the provincial revenue account in terms of any provincial or national legislation that appropriates money for the purpose of housing-related development and integrated development; and
   (c) by means of a donation or loans for specific housing or related purposes.
(3) Money in the Fund may be used only for the attainment of the objects of this Act.
(4) The financial year of the Fund is 1 April of any year to 31 March of the following year.
(5) The Head of Department is the accounting officer of the Fund.
(6) Any money in the Fund which is not required for immediate use must be invested in the area of the Republic with financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984).
(7) The Auditor-General must audit the Fund in the manner contemplated in section 188(2) of the Constitution of the Republic of South Africa, 1996.
(8) The Auditor-General may direct any person (including any local government, utility company or other body and any person in the employ of such an authority, company or body) to make available for examination all books, registers and documents in that person's possession or under that person's control which, in the opinion of the Auditor-General, will facilitate the carrying out of the audit referred to in subsection (7).
(9) Any person who fails to comply with an instruction in terms of subsection (8) is guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both.

Duties of accounting officer

14. (1) The accounting officer of the Fund is responsible for—
   (a) the management and administration of the Fund;
   (b) determining the procedure relating to issues from and repayments to the Fund and the writing off of amounts owed to the Fund;
   (c) fixing the rates of interest to be charged in respect of monies advanced out of the Fund, which may vary according to the purpose or the case for which such monies are to be used;
   (d) determining the manner in which the accounts of the Fund are to be kept;
   (e) allocating money from the Fund—
(i) for any national housing programme established by or in terms of the Housing Act;
(ii) for any national development programme;
(iii) for any provincial housing or integrated development programme not inconsistent with a national housing or development programme which has been approved by the Provincial Minister and for which provision has been made in a provincial Act that appropriates funds for such a programme;
(iv) to defray reasonable expenditure on the maintenance of, or recurrent expenditure in respect of, assets of the Advisory Panel; or
(v) for any other matter or thing for which provision is made in this Act and the Housing Act;
(f) submitting to the Minister as soon as possible, but within three months of 31 March of each year, the annual financial statements referred to in paragraph (g);
(g) the production of annual financial statements consisting of—
   (i) a balance sheet;
   (ii) an income statement;
   (iii) a cash-flow statement; and
   (iv) notes to the annual financial statements;
(h) ensuring that the financial statements referred to in paragraph (g)—
   (i) are in conformity with generally accepted accounting practice;
   (ii) fairly reflect the state of affairs and functions of the Advisory Panel and the results thereof; and
   (iii) refer to any relevant matter not specifically prescribed by this Act which affects or is likely to affect the affairs of the Advisory Panel, by means of both figures and a descriptive report which amplify and explain that matter, where necessary; and
(i) managing any other matter considered necessary or expedient by the accounting officer to regulate in relation to the control, administration and managerial equipment of the Fund.

(2) The accounting officer of the Fund must—
   (a) collect and deposit into the Fund all money due or payable to the Fund; and
   (b) keep separate records of receipts and expenditure in respect of the respective housing and development programmes for which funds have been made available to the Fund.

Role of local government in housing development

15. (1) A local government must, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to—
   (a) ensure that—
      (i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;
      (ii) conditions not conductive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed; and
      (iii) services in respect of water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economically efficient;
   (b) set housing delivery goals in respect of its area of jurisdiction;
   (c) identify and designate land for housing development;
   (d) create and maintain a public environment conductive to housing development which is financially and socially viable;
   (e) promote the resolution of conflicts arising in the housing development process;
   (f) initiate, plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction;
(g) provide bulk engineering services, and revenue-generating services in so far as such services are not provided by specialist utility suppliers; and
(h) plan and manage land use and development.

(2)(a) Any local government may participate in a national or provincial housing programme in accordance with the rules applicable to such programme by—
(i) promoting a housing development project by a developer;
(ii) subject to paragraph (b), acting as developer in respect of the planning and execution of a housing development project on the basis of full pricing for cost and risk;
(iii) entering into a joint venture contract with a developer in respect of a housing development project;
(iv) establishing a separate business entity to execute a housing development project;
(v) administering any national or provincial housing programme in respect of its area of jurisdiction in accordance with section 10 of the Housing Act; and
(vi) facilitating and supporting the participation of other role players in the housing development process.

(b) If a local government has been accredited under section 16(2) to administer national or provincial housing programmes in terms of which a housing development project is being planned and executed, such local government may not act as developer, unless such project has been approved by the Provincial Minister.

[Para (b) substituted by sec 11 of Act 2 of 2005 wef 1 November 2005.]

(3)(a) A local government may, by notice in the Provincial Gazette, expropriate any land required by it for the purposes of housing development in terms of any national housing programme, if—
(i) it is unable to purchase the land on reasonable terms through negotiation with the owner thereof;
(ii) it has obtained the permission of the Provincial Minister to expropriate such land before the notice of expropriation is published in the Provincial Gazette; and
(iii) such notice of expropriation is published within six months of the date on which the permission of the Provincial Minister was granted.

(b) Sections 1, 6 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act 63 of 1975), apply, with the necessary changes, in respect of the expropriation of land by a local government in terms of paragraph (a), and any reference in any of those sections—
(i) to the "Minister" and the "State" must be construed as a reference to the chief executive officer of the relevant local government and the relevant municipality, respectively:
(ii) to "section 2" must be construed as a reference to this subsection; and
(iii) to "this Act" must be construed as a reference to the Housing Act.

Accreditation of local governments

16. (1) A local government situated within the Province may apply to the Provincial Minister in the form determined by that Minister to be accredited under subsection (2) for the purposes of administering one or more national or provincial housing programmes.

(2) If the Minister is satisfied that the local government which made an application under subsection (1) complies with the criteria for the accreditation of local governments as determined by the National Minister after consultation with the Provincial Minister, the Provincial Minister must accredit the local government for the purposes of administering one or more of the national or provincial or national and provincial housing programmes mentioned in the application.

(3) Despite the repeal of the Housing Arrangements Act, 1993 (Act 155 of 1993), any criteria determined under section 11B(2) of that Act are regarded as criteria determined under subsection (2), until amended or substituted in terms of that subsection.

(4) Subject to directions of the Provincial Minister consistent with the national housing policy, any local government that has been accredited under subsection (2) may administer any national or provincial housing programme in respect of which accreditation has been granted.
(5) For the purposes of the administration contemplated in subsection (4), but subject to section 18, a local government may exercise such powers and must perform such duties of the Provincial Minister as are necessary.

[Subsec (5) amended by sec 12(a) of Act 2 of 2005 wef 1 November 2005.]

(6)(a) The accreditation of a local government under subsection (2) must be regularly reviewed by the Provincial Minister on the basis of adequate performance against the criteria for accreditation referred to in that subsection.

(b) If a local government fails to perform as contemplated in paragraph (a), the Provincial Minister may intervene and take the steps necessary to ensure adequate performance.

(7) The Provincial Minister may, after consultation with the accounting officer of the Fund, out of money paid into the Fund as contemplated in section 13(2), allocate to a local government accredited under subsection (2) such amounts as that Provincial Minister considers necessary.

[Subsec (7) substituted by sec 12(b) of Act 2 of 2005 wef 1 November 2005.]

(8)(a) A local government accredited under subsection (2) must, in the performance of its functions contemplated in this section, carry out the policy directives of the Provincial Minister consistent with national and provincial housing policy, including the rules of any applicable national or provincial housing programme.

(b) If it is requested to do so by the Provincial Minister, a local government accredited under subsection (2) must report to the Provincial Minister on its activities in terms of this section.

Transfer of and accountability for money to local governments

17. (1) The accounting officer of the Fund must transfer to the local government concerned the amounts allocated in terms of section 16(7).

(2) The accounting officer of the Fund remains the accounting officer in respect of any money transferred to a local government in terms of subsection (1).

Accounting procedures for money paid to local governments

18. (1) A local government must maintain separate accounts into which money transferred in terms of section 17(1) must be deposited and out of which all disbursements in connection with the administration of the national or provincial housing programme in question must be made.

(2) Any disbursement of money transferred in terms of section 17(1) to a vendor as defined in section 1 of the Value-Added Tax Act, 1991 (Act 89 of 1991), must be made by the local government acting as the agent of the Western Cape Provincial Government.

(3)(a) The chief executive officer of such local government must as soon as possible, but within one month after 31 March in each year, submit to the accounting officer, as contemplated in section 13(5), detailed statements signed by that officer showing the results of the previous year's transactions and the balance sheets in respect of the accounts referred to in subsection (1).

(b) The accounting officer of the Fund must, within three months after the end of the provincial financial year, incorporate such statements and balance sheets into the financial statements required in terms of section 14(1)(f).

(c) Section 14(1)(g) and (h) applies, with the necessary changes, and any reference to the Advisory Panel must be construed as a reference to the council of the local government in so far as that council's involvement in housing is concerned.

(4)(a) The books and statements of account and balance sheets in respect of the money transferred in terms of section 17(1) must be audited by the Auditor-General.

(b) The Auditor-General may require any person (including any person in the employ of the local government in question) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit.
Transfer of certain property to local governments

19. (1) Any movable property that has passed to the Provincial Government in terms of section 6(2) and any rights, liabilities and obligations in respect of such movable property must, subject to this subsection and subsection (3), be transferred not later than a date determined by the National Minister, after consultation with the Provincial Minister, to the local government within whose area of jurisdiction such property is mainly utilised.

[Subsec (1) substituted by sec 13(a) of Act 2 of 2005 w.e.f. 1 November 2005.]

(2) Any immovable property which has passed to the Provincial Government in terms of section 6(2) and has not already been sold or alienated as provided in section 20(1) to (5) and any rights, liabilities and obligations in respect of such immovable property must, subject to subsections (3) and (4), be transferred not later than a date determined by the National Minister, after consultation with the Provincial Minister, by the Provincial Government to the local government within whose area of jurisdiction such property is situated.

[Subsec (2) amended by sec 13(b) of Act 2 of 2005 w.e.f. 1 November 2005.]

(3) Movable or immovable property may only be transferred to a local government in terms of subsection (1) or (2) if such local government, in the opinion of the Provincial Minister, after consultation with the local government, has the capacity to administer such movable or immovable property in accordance with national housing policy.

(4) (a) Section 22(1) to (7) applies, with the necessary changes, to any land transferred to a local government in terms of subsection (2).

(b) A reference in section 22(1) to (7) to the Provincial Government and the Fund must be construed as a reference to the relevant local government and operating account as contemplated in subsection (5), respectively.

(c) The net proceeds of any letting, sale or other alienation in terms of paragraph (a) must be utilised by the local government for housing development in accordance with national housing policy and a housing development project approved by the Provincial Minister after consultation with the Provincial Government.

[Subsec (4) amended by sec 13(b) of Act 2 of 2005 w.e.f. 1 November 2005.]

(5) A local government to which any movable or immovable property is transferred in terms of this section must maintain a separate operating account through which all matters contemplated in this section, section 10(4)(d) and section 16 of the Housing Act must be transacted.

(6) Subsections (3) and (4), with the necessary changes, apply to immovable property or a registrable claim or right transferred in terms of this section.

[Subsec (6) substituted by sec 13(c) of Act 2 of 2005 w.e.f. 1 November 2005.]

(7) (a) A local government must, in accordance with the directives of the Provincial Minister, furnish that Minister with monthly reports regarding the sale by the local government of immovable property which passes to it in terms of this Act, and regarding the sale of any asset in respect of which an encumbrance thereon has been extinguished in terms of section 14(4)(b) of the Housing Act, including the basis for the determination of selling prices.

(b) If the Provincial Minister is not satisfied with such basis for the determination of selling prices, the Provincial Minister may determine directives for this purpose.

(8) In so far as it concerns the transfer of property in terms of this section, section 15(1)(d), (2)(b) and (7) of the Housing Act applies with the necessary changes.

Writing off of certain loans

20. (1) Subject to subsection (2), if any money out of a loan, an advance or finance approved in terms of section 14(4)(b) of the Housing Act—

(a) was lent by a predecessor of the Provincial Government; or

(b) was or is lent by a local government,
to a juristic person to provide a welfare facility, the debt occasioned by such lending may with the approval of the Provincial Minister, in consultation with the Provincial Minister responsible for welfare and to the extent which those ministers determine, be written off by the Provincial Government or local government, as the case may be.

(2) If a facility referred to in subsection (1) is not utilised for the purpose for which the loan was granted, the loan may not be written off as contemplated in that subsection, and repayment of the loan must be to the Fund or the separate local government operating account, as the case may be.

[Sec 20 amended by sec 14 of Act 2 of 2005 wef 1 November 2005.]

Proceeds from local government infrastructure

21. The net proceeds derived by the Provincial Government or a local government from any local government infrastructure which passes to the Provincial Government in terms of section 6(2) or has been provided by the local government by means of a loan, an advance or other finance contemplated in section 14(4)(b) of the Housing Act must be utilised by the Provincial Government or local government, as the case may be, for housing development in accordance with the national housing policy.

[Sec 21 amended by sec 15 of Act 2 of 2005 wef 1 November 2005.]

Management of assets of Provincial Government

22. (1)(a) Any undeveloped land which has passed to the Provincial Government in terms of section 6(2) must, subject to paragraph (b), be utilised for housing development in accordance with national or provincial housing policy, and a housing development project for that land must be approved by the Provincial Minister.

(b) Any land referred to in paragraph (a) which, in the opinion of the Provincial Government, is not or will not in the future be suitable for such utilisation must be sold by the Provincial Government at a fair market value, or if it is not possible to sell it at that value, such land must be sold in the best interest of the Provincial Government at a price approved by the Provincial Minister.

(2) Any dwelling or residential erf which has passed to the Provincial Government in terms of section 6(2) and which is—

(a) suitable for letting or sale in terms of any national or provincial housing programme must be let or sold by the Provincial Government in accordance with the programme concerned;

(b) not suitable for letting or sale in terms of any national or provincial housing programme must, subject to subsection (6), be let or sold by the Provincial Government at a fair market value, or if it is not possible to so let or sell it at such a value, such dwelling or erf must be sold in the best interest of the Provincial Government at a price approved by the Provincial Minister.

(3) Any business erf or premises which have passed to the Provincial Government in terms of section 6(2) must be sold by the Provincial Government at a fair market value, or if it is not possible to sell it, such business erf or premises must be sold in the best interest of the Provincial Government at a price approved by the Provincial Minister.

(4)(a) Any erf which has passed to the Provincial Government in terms of section 6(2), and has been set aside for use in connection with any service to be provided by a department of state or provincial administration, must be sold by the Provincial Government at a fair market value to the department of state or provincial administration, as the case may be, having responsibility for the provision of the service concerned, unless that department or administration informs the Provincial Government that the erf in question is not required for such use.

(b) If it is not possible or feasible to sell an erf referred to in paragraph (a) at a fair market value, it must be sold in the best interest of the Provincial Government at a price approved by the Provincial Minister.
(c) Any such erf which is not required by that department or provincial administration may be utilised by the Provincial Government for housing development in accordance with national or provincial housing policy and a housing development project approved by the Provincial Minister.

(d) If such erf is not required by the Provincial Government for housing development, it must be sold at a fair market value, or if it is not possible to sell such erf at a fair market value, it must be sold in the best interest of the Provincial Government at a price approved by the Provincial Minister.

(5) If the Provincial Government wishes to alienate any immovable property that has passed to it in terms of section 6(2), other than property contemplated in subsections (1) to (4) or any properties acquired in terms of section 7(1)(g) or (2), the Provincial Government may do so at a fair market value, or if it is not possible for such property to be alienated at a fair market value, it must be alienated in the best interest of the Provincial Government at a price approved by the Provincial Minister.

(6) The net proceeds of any sale, letting or alienation contemplated in subsections (1) to (5)

(a) be paid into the Fund; or

(b) be utilised for housing development in accordance with national or provincial housing policy.

(7) (a) The Provincial Government must recover the debt arising from any loan, advance or finance granted to any person in the Province and which passed to the Provincial Government in terms of section 6(2).

(b) Any money recovered by the Provincial Government by virtue of the right that so passes to the Provincial Government must be paid into the Fund and must be utilised for housing development in accordance with the national and provincial housing policy and a housing development project approved by the Provincial Minister.

(8)(a) The Provincial Government may, with the approval of the Provincial Minister in consultation with the Minister responsible for welfare in the Province, absolve such juristic person from its obligation to repay the loan or any part thereof that is still outstanding and payable to the Provincial Government in respect of welfare projects.

(b) If, however, the facility is not utilised for the purpose for which the loan was originally intended, a market value must be placed on the property and the difference between the market value and the loan amount must be paid into the Fund.

(9) Any rights, liabilities and obligations of the (former) Provincial Government abolished in terms of section 6(1), which arose out of any contract entered into between that Provincial Government or its predecessor and any person in terms of any national housing programme pass to the Provincial Government.

(10) Any rights, liabilities and obligations of the (former) Board abolished in terms of section 6(1), which arose out of the agreement between the Mortgage Indemnity Fund (Pty) Ltd and mortgage lenders in terms of the national relocation assistance programme pass to the Provincial Government.

(11) For the purpose of this section any reference in any documents to the National Housing Board or Provincial Housing Development Advisory Panel of the Western Cape must be construed as a reference to the Provincial Government.

[Subsec (11) amended by sec 16(2) of Act 2 of 2005 wef 1 November 2005.]

(12) No rights, liabilities or obligations of any person are extinguished merely by reason of—

(a) the abolition of the (former) Provincial Government in terms of section 6(1);

(b) any passage referred to in section 6(2), or

(c) the extinction of any debt or other obligation in terms of section 14(4)(b) of the Housing Act.

[Sec 22 amended by sec 16 of Act 2 of 2005 wef 1 November 2005.]
Inspection of premises

23. (1) A person authorised thereto by the Head of Department may at all reasonable times and in the presence of the lessee or owner of the property concerned or a nominee of the lessee or owner enter—
   (a) upon any land acquired or project undertaken by a local government or other body by means of a loan or grant obtained from the Fund;
   (b) upon any dwelling which is let by the Provincial Government; and
   (c) upon any dwelling sold by the Provincial Government, in respect of which any amount is owing to the Fund,
to make any inspection, to perform any work, or to do anything which the Provincial Government or the Department is authorised to do under this or any other Act.

(2) Any persons authorised by a local government may at all reasonable times and in the presence of the lessee, owner or nominee enter—
   (a) upon any land acquired or project undertaken by means of a loan or grant funded by such local government;
   (b) upon any dwelling which is let by such local government; and
   (c) upon any dwelling sold by such local government, in respect of which any amount is owing to such local government,
to make any inspection, to perform any work, or to do anything which such local government is authorised to do under this or any other Act.

(3) Any person or body who fails to give or refuses access to a person referred to in subsection (1) or (2) or who hinders or obstructs an official in the performance of his or her duties is guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding twelve months or to both.

[Sec 23 amended by sec 17 of Act 2 of 2005 wef 1 November 2005.]

Delegation of powers

24. (1) The Provincial Minister may delegate any of his or her powers to the Head of Department or to an officer not lower than the rank of assistant director in the employ of the Department.

(2) . . .

[Subsec (2) deleted by sec 18 of Act 2 of 2005 wef 1 November 2005.]

(3) The Head of Department may, for the effective execution of the provisions of this Act—
   (a) delegate any power conferred on him or her by this Act, or
   (b) assign any duty imposed upon him or her by this Act,
to an officer not lower than the rank of assistant director in the employ of the Department or the chief executive officer of a local government, as the case may be.

(4) A person to whom a power has been so delegated or a duty has been so assigned must exercise such power or perform such duty subject to the conditions that the person who made the delegation or assignment considers necessary.

(5) Delegation or assignment in terms of this section—
   (a) must be in writing;
   (b) does not prevent the person who made the delegation or assignment from exercising the power or performing the duty concerned; and
   (c) may at any time be withdrawn by the person who made the delegation or assignment.

Regulations

25. (1) The Provincial Minister may make regulations regarding—
   (a) . . .

[Para (a) deleted by sec 19 of Act 2 of 2005 wef 1 November 2005.]
(b) the rates of the interest to be charged in respect of any advances out of the Fund.

(2) The Provincial Minister may make regulations regarding—
(a) any matter which must or may be prescribed in terms of this Act; and
(b) any other matter in connection with the attainment of the objects of this Act.

Annual report

26. (1) The Head of Department must annually submit to the Provincial Minister a report on activities in terms of this Act.

(2) The Provincial Minister must table a copy of a report submitted under subsection (1) in the Provincial Parliament within 14 days after receipt thereof or, if the Provincial Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

Repeal of Law

27. The Western Cape Provincial Housing Law, 1994 (Law 9 of 1994), is hereby repealed.

Short title

28. This Act is called the Western Cape Housing Development Act, 1999, and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.