



Defence Service Homes Act 1918

No. 43, 1918

Compilation No. 29

Compilation date: 14 October 2024

Includes amendments: Act No. 38, 2024

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Defence Service Homes Act 1918* that shows the text of the law as amended and in force on 14 October 2024 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the provision of assistance to members of the Defence Force and certain other persons to acquire homes, or for other purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Defence Service Homes Act 1918*.

2 Commencement

This Act shall commence on a date to be fixed by Proclamation.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

additional advance means a subsidised advance to a purchaser or borrower for a purpose referred to in subsection 18(3).

advance for essential repairs means a subsidised advance to a person referred to in section 21 for the purpose referred to in that section.

amending Act means the *Defence Service Homes Amendment Act 1988*.

approved means approved by the Minister in writing for the purposes of this Act.

Approved welfare organization means an organization approved by an appropriate authority of the Defence Force to provide welfare services (including assistance in the care of the sick or wounded) for members of the Defence Force.

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assigned advance means a subsidised advance to an assignee, in accordance with a certificate of assignment issued under section 23A.

assignee means an assignee referred to in section 23A.

assignor means an assignor referred to in section 23A.

Australian Soldier means a person who, during the First World War or the Second World War or during the warlike operations in or in connection with Korea after 26 June 1950 or the warlike operations in or in connection with Malaya after 28 June 1950:

- (a) is or was a member of the Naval, Military or Air Forces of Australia enlisted or appointed for or employed on active service outside Australia or on a ship of war; or
- (b) is or was a member of any nursing service maintained by the Commonwealth in connexion with the Defence Force of the Commonwealth or any part thereof accepted or appointed for service outside Australia; or
- (c) served in the Naval, Military or Air Forces of any part of the King's Dominions, other than the Commonwealth, and who proves to the satisfaction of the Secretary that he had, before his enlistment or appointment for service, resided in Australia or a Territory; or
- (d) was a member of any nursing service maintained by the Government of any part of the King's Dominions other than the Commonwealth, in connexion with the Naval, Military or Air Forces of that part, and who proves to the satisfaction of the Secretary that she had, before her appointment to that service, resided in Australia or a Territory;

and who, in the case of a person included in paragraph (a) or (b) in relation to service in connection with the Second World War:

- (e) was so enlisted, accepted, appointed or employed before 3rd September, 1945; or
- (f) was so enlisted, accepted, appointed or employed on or after that date and before 1 July 1951, and who has been discharged or who has ceased to be engaged on war service as defined in section 4 of the *Defence Act 1903-1945*;

and includes:

- (g) a person who, as a member of the Defence Force, rendered continuous full-time service outside Australia:
 - (i) as a member of a unit of the Defence Force that was allotted for duty, within the meaning of the *Veterans' Entitlements Act 1986* as provided in subsection 5B(2) of that Act; or
 - (ii) as a person who was allotted for duty, within the meaning of the *Veterans' Entitlements Act 1986* as provided in subsection 5B(2) of that Act;

in an operational area described in item 3A, 3B, 4, 5, 6, 7 or 8 in Schedule 2 to the *Veterans' Entitlements Act 1986* during the period specified in that item:

- (ga) a person who, as a member of the Defence Force or as a member of a unit of the Defence Force, was allotted for duty within the meaning of subsection 5B(2) of the *Veterans' Entitlements Act 1986* in the operational area described in item 9 of Schedule 2 to that Act during the period specified in that item;
- (gb) a person who, as a member of the Defence Force or as a member of a unit of the Defence Force, was allotted for duty within the meaning of subsection 5B(2) of the *Veterans' Entitlements Act 1986* in an operational area described in item 10, 11, 12, 13, 14 or 15 of Schedule 2 to that Act during the period specified in that item and whose first service in the Defence Force began on or before 14 May 1985;
- (gc) a member of the Defence Force who is taken, because of section 6D of the *Veterans' Entitlements Act 1986*, to have rendered operational service (within the meaning of that Act);
- (gd) a member of the Defence Force:
 - (i) whose first service in the Defence Force began on or before 14 May 1985; and
 - (ii) who is taken, because of section 6DB or 6E of the *Veterans' Entitlements Act 1986*, to have rendered operational service (within the meaning of that Act);

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- (ge) a member of the Defence Force:
 - (i) whose first service in the Defence Force began on or before 14 May 1985; and
 - (ii) who has rendered warlike service;
- (h) a national serviceman;
 - (i) a regular serviceman; and
- (j) a person who:
 - (i) was appointed for service outside Australia as a representative of an approved welfare organization with a body, contingent or detachment of the Defence Force;
 - (ii) as such, served outside Australia on or after the third day of September, 1939, with that body, contingent or detachment; and
 - (iii) would, if during that service he had been a member of the Defence Force allotted for duty with that body, contingent or detachment, be, by reason of that service, an Australian soldier as defined by a provision of this definition other than paragraph (h) or (i) or this paragraph.

balance has the same meaning as in the agreement.

borrower means a person who is liable to pay the outstanding amount:

- (a) of a subsidised advance in respect of which subsidy is payable; or
- (b) secured by a specified portfolio asset (other than a contract of sale) which vests in the Bank under section 6B and in respect of which subsidy is payable and includes an assignee in relation to a subsidised advance.

certificate of assignment means a certificate of assignment issued under section 23A.

certificate of entitlement means a certificate of entitlement issued under this Act.

commencing day means the day on which section 10 of the amending Act commences.

company title, in relation to land, means a right of occupancy of the land, or of a dwelling-house or part of a dwelling-house erected on the land, arising from the holding of shares in a corporation that has an interest in the land or dwelling-house.

Consumer Credit Codes commencing day means the earliest day on which any of the Consumer Credit Codes of the States or Territories comes into force.

contract of sale means a contract for the sale of a dwelling-house and land under Part IV of this Act as in force before the commencing day.

Corporation means the Defence Service Homes Corporation.

Corporation advance has the same meaning as in the Bank agreement.

court means a court of summary jurisdiction.

credit provider means:

- (a) the Bank; or
- (b) any other credit provider (within the meaning of the *Privacy Act 1988*) that is the party to an agreement (within the meaning of this Act).

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

Defence Department has the meaning given by the *Military Rehabilitation and Compensation Act 2004*.

dependent parent means a parent of a person mentioned in paragraphs (a) to (g) of the definition of **Eligible person** if:

- (a) the person so mentioned:
 - (i) is dead; and

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- (ii) at the time of death, was not legally married and did not have a de facto partner; and
- (b) one of the following subparagraphs applies:
 - (i) the parent is a widow or widower and was dependent on the person before the person became an eligible person;
 - (ii) the parent's spouse or de facto partner is so incapacitated as to be unable to contribute materially to that parent's support.

Dwelling-house includes:

- (a) a house or building used or to be used by a person, who is included in paragraph (b) or (d) of the definition of **Australian Soldier**, as a hospital, sanatorium or nursing home; and
 - (b) the appurtenances, outbuildings, fences, and permanent provision for lighting, water supply, drainage and sewerage provided in connexion with a dwelling-house;
- but does not include any land.

Eligible person means a person who:

- (a) is an Australian soldier;
- (b) is a munition worker;
- (c) is a war worker;
- (d) is a member of the Young Men's Christian Association who, during the First World War, was accepted for service with and served abroad with the Naval or Military Forces of Australia as a representative of that Association;
- (e) has been awarded, in respect of his employment during the First World War, the Australian Mercantile Marine War Zone Badge, or the British Mercantile Marine Medal; and was during such employment domiciled in Australia or a Territory;
- (f) after the commencement of the Second World War, and before the commencement of the *War Service Homes Act 1946*, was employed under agreement as master, officer or seaman, or under indenture as apprentice, in sea-going service:

- (i) on a ship engaged in trading between a port of a State or Territory and any other port, whether a port of a State or Territory or not; or
 - (ii) on a ship being a troop transport or hospital ship; and was, during that employment, domiciled in Australia or a Territory; or
 - (g) not being a person to whom the last preceding paragraph applies, was, after the commencement of the Second World War, and before the commencement of the *War Service Homes Act 1946*, employed, otherwise than as a member of the Defence Force, in sea-going service on a ship being a ship of war, troop transport or hospital ship, and was, during that employment, domiciled in Australia or a Territory;
- and includes a widow, widower or dependent parent of a person specified in any of the paragraphs (a) to (g) of this definition.

eligible recipient means a person who is:

- (a) a member of the Defence Force or a former member of the Defence Force; or
- (b) a member of a Peacekeeping Force or a former member of a Peacekeeping Force; or
- (c) a widow or widower of a person covered by paragraph (a) or (b).

eligible veteran means:

- (a) a person covered by paragraph (a) of the definition of ***veteran*** in subsection 5C(1) of the *Veterans' Entitlements Act 1986*; or
- (b) a member of the Forces (within the meaning of subsection 68(1) of that Act); or
- (c) a member of a Peacekeeping Force (within the meaning of subsection 68(1) of that Act); or

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- (d) a widow or widower (within the meaning of subsection 5E(1) of that Act) of a person covered by paragraph (a), (b) or (c) of this definition.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

further advance means a subsidised advance (other than a widow or widower advance, an advance for essential repairs or a home support advance) to a person who:

- (a) has been a purchaser or borrower as defined in this section (as in force before, on or after the commencing day), otherwise than:
- (i) merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined; or
 - (ii) merely because the person is or was a joint purchaser or borrower as so defined with the person's spouse or de facto partner and became such a purchaser or borrower on the basis that the person's spouse or de facto partner was an eligible person; and
- (b) is not such a purchaser or borrower immediately before the advance is made.

Government authority means a public authority (including a local governing body) established by or under a law of the Commonwealth, of a State or of a Territory.

granny flat means any form of residence:

- (a) that is the principal home of an eligible person; and
- (b) that is not owned, wholly or partly, by the eligible person; and
- (c) that is, or is a part of, a private residence; and
- (d) in respect of which the eligible person has a right of accommodation for an indefinite period.

guarantee includes indemnity (other than one arising under a contract of insurance).

guarantor means a person who has given or gives a guarantee to a credit provider in relation to a subsidised advance.

Holding, in relation to an applicant or borrower, means:

- (a) land of which he or she is the beneficial owner in fee simple; or
- (b) land of which he or she is the lessee under a Crown lease in perpetuity from a State; or
- (c) land of which he or she is the lessee under a lease granted for a term of not less than 99 years from a State or from a local governing body; or
- (d) land in a Territory of which he or she is the lessee under a lease from Australia or from the Administration of the Territory, being:
 - (i) a lease in perpetuity;
 - (ii) a lease granted for a term of not less than 99 years; or
 - (iii) in the case of Norfolk Island—a lease granted for a term of not less than 28 years; or
- (e) a suburban holding held by him or her under the Crown Lands Consolidation Act, 1913 of New South Wales or under that Act as amended at any time or under an Act enacted in substitution for that Act, being a suburban holding an application for which has been confirmed in accordance with the law of that State; or
- (f) a unit defined in a units plan registered in accordance with a law of the Australian Capital Territory relating to unit titles, being a unit of which he or she is the lessee under a lease from Australia; or
- (g) land which he or she holds by way of a company title; or
- (h) land of which he or she is the lessee under a lease that a credit provider considers is adequate security for a subsidised advance to be made to him or her.

Note: An interest in a holding may be a joint interest in accordance with section 4AB.

Home Loans Assistance Act means the *Defence Force (Home Loans Assistance) Act 1990*.

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home support advance means a subsidised advance to a person referred to in section 21A for a purpose referred to in that section.

initial advance means a subsidised advance for a purpose referred to in subsection 18(2) to a person referred to in subsection 18(1) who is not, and has not previously been, a purchaser or borrower as defined in this section (as in force before, on or after the commencing day), otherwise than:

- (a) merely because the person is or was the personal representative of a deceased purchaser or borrower as so defined; or
- (b) merely because the person is or was a joint purchaser or borrower as so defined with the person's spouse or de facto partner and became such a purchaser or borrower on the basis that the person's spouse or de facto partner was an eligible person.

instalment relief has the same meaning as in the agreement.

lease, in relation to land held by way of company title, includes an agreement similar to a lease.

limit has the same meaning as in the agreement.

member of a Peacekeeping Force has the same meaning as in Part IV of the *Veterans' Entitlements Act 1986*.

mortgage includes a security over an interest in shares that are shares giving rise to a company title.

mortgage includes:

- (a) any interest in, or power over, property securing obligations of a borrower or guarantor; and
- (b) a credit provider's title to land or goods that are subject to a sale by instalments.

mortgagor means a person who has given or gives a mortgage to a credit provider in relation to a subsidised advance.

Munition worker means a person who, during the First World War:

- (a) entered into an agreement with the Commonwealth or the Minister of State for Defence to proceed to Great Britain for the purpose of:
 - (i) engaging in the work of producing munitions for the Imperial Government or otherwise; or
 - (ii) serving under the Imperial Government in the Ministry of Munitions; and
- (b) engaged in the work of producing munitions for the Imperial Government or otherwise or served under the Imperial Government in the Ministry of Munitions, and whose agreement with the Commonwealth or the Minister of State for Defence was not determined by reason of his failure to observe and perform any term or condition contained in the agreement, or by reason of his dismissal from any work in Great Britain during the continuance of the agreement because of any conduct of the worker which, in the opinion of the Minister, was such as to justify the determination of the agreement.

National serviceman means a person who is a national serviceman in accordance with section 4AAB.

notice of eligibility means a notice of eligibility issued under this Act.

other portfolio agreement has the same meaning as in the Bank agreement.

Owner in relation to land includes every person who has purchased land on credit or deferred payment, and has obtained possession of the land, and, in relation to a dwelling-house, includes any person who has purchased or contracted to purchase a dwelling-house together with the land on which it is erected.

parent: without limiting who is a parent of anyone for the purposes of this Act, a person is the ***parent*** of another person if the other

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person is a child of the person within the meaning of the *Family Law Act 1975*.

portfolio asset has the same meaning as in the Bank agreement.

portfolio contract of sale has the same meaning as in the Bank agreement.

portfolio mortgage has the same meaning as in the Bank agreement.

portfolio supplementary agreement has the same meaning as in the Bank agreement.

purchaser means a person who is liable to pay the outstanding balance of the purchase money in respect of the purchase of land and a dwelling-house under a contract of sale in respect of which subsidy is payable.

Regular serviceman means a person who is a regular serviceman in accordance with section 4AAA.

retirement village means:

- (a) a retirement village registered under an approved law of a State or Territory; or
- (b) in the case of a State or Territory that has no approved law— a retirement village within the meaning of the *Veterans' Entitlements Act 1986*; or
- (c) a granny flat.

reviewable decision means a decision of the Secretary:

- (aa) under subsection 4BB(2) (revocation of surrender election);
- (a) refusing to issue a notice of eligibility, a certificate of entitlement or a certificate of assignment;
- (b) determining an amount under section 25;
- (c) cancelling subsidy under section 26;
- (d) giving the Bank a notice of the intended cancellation of subsidy under section 27;
- (da) cancelling a subsidy under section 27A;

- (e) requiring a person to pay an amount under section 29;
- (f) determining a maximum term under section 36;
- (g) refusing to extend the period for making an application for review under section 43; or
- (h) giving, or refusing to give, an approval under section 45A.

Secretary means the Secretary of the Department.

specified portfolio asset has the same meaning as in the Bank agreement.

subsidised advance means:

- (a) an advance made by a credit provider in accordance with a certificate of entitlement; or
- (b) an initial advance that the Bank is taken to have made under section 37.

subsidised advance contract means an agreement for the provision of a subsidised advance whether or not the Commonwealth has terminated the subsidy in respect of the advance.

subsidised advance loan account means:

- (a) an account established by the Bank for the purpose of administering a specified portfolio asset; or
- (b) an account established by any credit provider for the purpose of administering a subsidised advance.

subsidy means a subsidy payable under Part IV by the Commonwealth to a credit provider, being an amount calculated and payable in the manner provided in the agreement.

supplementary agreement means an agreement between the Commonwealth and the Bank, whether or not set out in a Schedule to this Act, that:

- (a) amends the Bank agreement; and
- (b) is expressed to be a supplementary agreement to the Bank agreement;

as varied and in force from time to time.

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Territory means a Territory in which this Act applies or to which this Act extends.

the agreement means whichever of the following agreements or arrangements is applicable in the circumstances:

- (a) the Bank agreement;
- (b) an agreement or arrangement in force between the Commonwealth and a credit provider other than the Bank for the provision by the credit provider of subsidised advances or other benefits under this Act.

the Bank means Westpac Banking Corporation and, as the context requires and subject to the Bank agreement, any body to which it assigns all or any of its rights or obligations under the Bank agreement, the portfolio assets or subsidised advances or any security for those advances, as provided by the Bank agreement.

the Bank agreement means the agreement made between the Commonwealth and the Bank on 9 November 1988, a copy of which is set out in Schedule 1, as varied or affected by a supplementary agreement or otherwise, and as in force from time to time.

transferee means a person to whom a certificate of entitlement has been issued under section 22.

vesting date, in relation to the portfolio assets in a State or Territory, means the date determined by the Minister under section 6B in relation to those assets.

warlike service has the same meaning as in the *Veterans' Entitlements Act 1986*.

War worker means a person, who, during the First World War, entered into an agreement with the Commonwealth to proceed to Great Britain for the purpose of engaging in work as a labourer, fettler or navvy for the Imperial Government or otherwise and engaged in such work, and whose agreement with the Commonwealth or the Minister of State for Defence was not determined by reason of his failure to observe and perform any

term or condition contained in the agreement, or by reason of his dismissal from any work in Great Britain during the continuance of the agreement because of any conduct of the worker which, in the opinion of the Minister, was such as to justify the determination of the agreement.

widow of a person who has died means a woman who was legally married to, or a de facto partner of, the person immediately before the person died.

widower of a person who has died means a man who was legally married to, or a de facto partner of, the person immediately before the person died.

widow or widower advance means a subsidised advance to a person referred to in section 20 for a purpose referred to in that section.

winding-up day means the day on which section 15 of the amending Act commences.

- (2) For the purposes of the definition of **Australian Soldier** in subsection (1), a person shall not be taken to be an Australian soldier in relation to the warlike operations in or in connection with Korea after 26 June 1950, or the warlike operations in or in connection with Malaya after 28 June 1950, unless:
- (a) that person was allotted for duty in an operational area within the meaning of subsection 5B(2) of the *Veterans' Entitlements Act 1986* in connection with those operations before 1 September 1957 and, if he was so allotted while in Australia, or in the part of the Queen's dominions other than the Commonwealth, as the case may be, he left the last port of call in Australia or in that other part of the Queen's dominions before that date for the purpose of serving in connection with those operations; or
 - (b) that person, not being a person to whom paragraph (a) applies, served, on or after 1 September 1957 and before 28 May 1963, in an area prescribed to be, or to have been, an operational area for the purposes of this paragraph.

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- (2A) Subject to subsection (2AA), for the purposes of paragraph (a) of the definition of ***Australian Soldier*** in subsection (1), a person who is or was:
- (a) a member of the Citizen Military Forces;
 - (b) a member of the Women's Royal Australian Naval Service, the Australian Women's Army Service or the Women's Auxiliary Australian Air Force;
 - (c) a member of the Australian Army Medical Women's Service but not a member of the Australian Imperial Force; or
 - (d) a member of the Voluntary Aid Detachment;
- shall not, by reason only of being or having been such a member, be taken to have been enlisted or appointed for active service outside Australia or on a ship of war.
- (2AA) Subsection (2A) does not apply in relation to a person who, during the Second World War, was:
- (a) a member of the Women's Royal Australian Naval Service, the Australian Women's Army Service or the Women's Auxiliary Australian Air Force; or
 - (b) a member of the Australian Army Medical Women's Service, other than a member of the Australian Imperial Force; or
 - (c) a full-time paid member of the Voluntary Aid Detachment.
- (2AB) For the purposes of the definitions of ***further advance*** and ***initial advance*** in subsection 4(1), a person of a kind referred to in subsection (2AA) is not taken to have been a purchaser or borrower, merely because the person previously became a purchaser or borrower on the basis that:
- (a) the person's spouse or de facto partner is or was an eligible person, and as a result they were, under subsection 4A(1), treated together as an eligible person for the purposes of this Act; or
 - (b) the person's spouse or de facto partner was an eligible person, and the person became an eligible person because her spouse or de facto partner died; or
 - (c) the person is an eligible person because she is a dependent parent.

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- (2AC) For the purposes of the definitions of *further advance* and *initial advance* in subsection 4(1), a man who:
- (a) was an eligible person in his own right; and
 - (b) is the widower of a person of a kind referred to in subsection (2AA);
- is not taken to have been a purchaser or borrower, merely because he previously became a purchaser or borrower on the basis that:
- (c) he was an eligible person in his own right; or
 - (d) his spouse or de facto partner was an eligible person and they were, under subsection 4A(1), together treated as an eligible person for the purposes of this Act; or
 - (e) his spouse or de facto partner was an eligible person and he became an eligible person because his spouse or de facto partner died; or
 - (f) he was an eligible person because he was a dependent parent.
- (2B) For the purposes of paragraph (c) of the definition of *Australian Soldier* in subsection (1), a person shall not be taken to have served in the Naval, Military or Air Forces of any part of the King's Dominions, other than the Commonwealth, unless he served in such Forces:
- (a) in an operational area outside the country or place of his enlistment or appointment for service; or
 - (b) as a combatant in an active combat unit.
- (2C) Subject to subsection (2D), an Australian soldier who, by reason of his misconduct or misbehaviour:
- (a) was discharged from, or otherwise ceased to be a member of, the Naval, Military or Air Forces of Australia; and
 - (b) is included in a class of members specified in the Schedule to the *War Gratuity Act 1945*;
- shall not be treated as an eligible person for the purposes of this Act, but this subsection shall not prevent a widow, widower or dependent parent of such an Australian soldier being an eligible person.

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- (2D) Where the relevant misconduct or misbehaviour of an Australian soldier referred to in subsection (2C) consisted only of his absence without leave, the Secretary may treat him as an eligible person for the purposes of this Act if the Secretary, having regard to the quality of his service outside Australia, considers it appropriate to do so.
- (3) Where, in the case of a person, being a female, who is:
- (a) a person described in paragraph (g) of the definition of *Australian soldier* in subsection 4(1); or
 - (b) a regular serviceman;
- the whole or any part of the service by reason of which she is such a member or such a regular serviceman, as the case may be, was service as a member of a nursing service, she shall, for the purposes of paragraph 18(1)(f), be deemed to be a person included in paragraph (b) of the definition of *Australian Soldier* in subsection (1) of section 4.
- (4) Where:
- (a) an applicant is the lessee of land under a lease for a term of years from the Commonwealth, the Administration of a Territory or a State, being a lease under which he is entitled, on the fulfilment of the terms, conditions and covenants of the lease, to a grant in fee simple of the land; and
 - (b) the applicant satisfies the Secretary that the applicant has a reasonable prospect of carrying out the terms, conditions and covenants of the lease;
- the land shall be deemed to be a holding for the purposes of this Act in relation to the applicant.
- (5) Where:
- (a) an applicant is purchasing land from a State on terms that entitle him, on compliance with specified conditions, to a grant in fee simple of the land; and

- (b) the applicant satisfies the Secretary that the applicant has a reasonable prospect of complying with those conditions; the land shall be deemed to be a holding for the purposes of this Act in relation to the applicant.
- (6) For the purposes of this Act a person is taken, subject to subsection (7), to have a ***right of residence in a retirement village*** if the person has a right of permanent residence in the retirement village, subject to any contractual conditions governing the person's residence.
- (7) For the purposes of this Act a person is not taken to have a right of residence in a retirement village if the person's right of residence is derived from the person's interest in a holding of the person.
- (8) In this Act, a reference to a person's ***retirement village accommodation*** means that part of a retirement village in which the person has, or the person and the person's spouse or de facto partner have, obtained a right of residence.
- (9) A reference in this Act to an advance that a person may seek from a credit provider, includes a reference to such an advance that a person may seek from a credit provider on behalf of an assignee, or a proposed assignee, of the person.
- (10) A reference in this Act to an assignee of a person is a reference to another person in relation to whom the first-mentioned person is an assignor.
- (11) For the purposes of the definitions of ***further advance*** and ***initial advance*** in subsection 4(1), if the subsidised advance in question is an assigned advance in respect of an assignor:
- (a) a reference in those definitions to the person to whom the advance in question is made is a reference to the assignee; and
 - (b) the assignee is not taken to have previously been a purchaser or borrower merely because the assignee previously became a purchaser or borrower, either as an eligible person in his or

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her own right or as an assignee in relation to another assignor.

- (12) For the purposes of paragraph (b) of the definition of *further advance* in subsection 4(1), a person is not taken to have been a purchaser or borrower immediately before an assigned advance is made, merely because the person is a purchaser or borrower, as an assignee, in relation to an assignor other than the one in question.
- (13) For the purposes of the definitions of *further advance* and *initial advance* in subsection 4(1), a person who has been an assignor is taken to have been a borrower unless the person:
- (a) was an assignor merely because the person is or was the personal representative of a deceased assignor; or
 - (b) was an assignor merely because the person is or was an assignor together with the person's spouse or de facto partner, and became such an assignor on the basis that the person's spouse or de facto partner was an eligible person.

4AAA Regular Serviceman

- (1) Subject to this section, a person is a regular serviceman for the purposes of this Act if:
- (a) he has served on continuous full-time service as a member of the Defence Force, not being service that ended before 7 December 1972, and, during that service, has:
 - (i) in the case of service that commenced before 17 August 1977—completed, whether before or after 7 December 1972, 3 years' effective full-time service as such a member; or
 - (ii) in the case of service that commenced on or after 17 August 1977—completed a period of 6 years' effective full-time service as such a member, being a period at the expiration of which he continued to render full-time service as such a member otherwise than by reason only of a delay in discharging him or otherwise terminating that service, including a delay for the

purpose of the treatment or observation of an illness or injury;

- (b) he was engaged to serve as a member of the Defence Force for a period of continuous full-time service of:
- (i) in the case of a person so engaged before 17 August 1977—not less than 3 years; or
 - (ii) in the case of a person so engaged on or after 17 August 1977—not less than 6 years;

but that service ended, on or after 7 December 1972, by reason of his death or his discharge on the ground of invalidity or physical or mental incapacity to perform duties; or

- (c) he was an officer appointed for continuous full-time service in the Defence Force (other than an officer appointed before 17 August 1977 whose appointment was for a period of continuous full-time service of less than 3 years or an officer appointed on or after 17 August 1977 whose appointment was for a period of continuous full-time service of less than 6 years), but that service ended, on or after 7 December 1972, by reason of his death or the termination of his appointment on the ground of invalidity or physical or mental incapacity to perform duties;

but, subject to subsection (5A), not if the person's first service in the Defence Force began after 14 May 1985.

- (2) For the purposes of paragraph (a) of subsection (1):
- (a) the service of a person as an officer of the Naval Forces undergoing the course of training at the Royal Australian Naval College, and his service after completion of that course, shall be disregarded unless the officer is subsequently promoted to the rank of sub-lieutenant or a higher rank;
 - (b) the service of a person as a member of the Corps of Staff Cadets of the Military Forces shall be disregarded unless the person is subsequently appointed as an officer of those Forces; and

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- (c) the service of a person as an Air Cadet of the Air Force shall be disregarded unless the person is subsequently appointed as an officer of that Force.
- (2A) For the purposes of paragraph (b) of subsection (1), where a person re-engages to serve as a member of the Defence Force, other than as an officer, for a period of continuous full-time service, he shall be taken to have been engaged on his enlistment to serve until the expiration of the period for which he re-engages.
- (2B) For the purposes of paragraph (c) of subsection (1), where an officer commences a period of continuous full-time service immediately after the expiration of a previous period of such service by him, whether as an officer or otherwise, he shall be taken to have been appointed on the commencement of that previous period to serve until the expiration of the later period.
- (3) Paragraphs (b) and (c) of subsection (1) do not apply in relation to a discharge or termination of appointment:
- (a) that occurred before the person concerned had completed twelve months' effective full-time service; and
 - (b) the ground for which was invalidity, or physical or mental incapacity to perform duties, caused, or substantially contributed to, by a physical or mental condition that:
 - (i) existed at the time the person concerned commenced full-time continuous service as a member of the Defence Force; and
 - (ii) was not aggravated, or was not materially aggravated, by that service.
- (4) Paragraph (c) of subsection (1) does not apply in relation to a period of service referred to in paragraph (b) of subsection (6) that was brought to an end by the death, or the termination of the appointment, of the officer concerned.
- (5) A member of the Defence Force not on continuous full-time service who has, whether before or after the commencement of this section, commenced continuous full-time service in pursuance of a

voluntary undertaking given by him and accepted by the appropriate authority of the Defence Force shall:

- (a) if he was an officer on the day on which he so commenced—be deemed, for the purposes of paragraph (c) of subsection (1), to have been appointed as an officer of the Defence Force on that day for service for the period for which he was bound to serve on continuous full-time service; or
- (b) if he was a member other than an officer on the day on which he so commenced—be deemed, for the purposes of paragraph (b) of subsection (1), to have been engaged to serve as a member of the Defence Force on that day for service for the period for which he was bound to serve on continuous full-time service.

First service after 14 May 1985

- (5A) A person is a regular serviceman for the purposes of this Act if:
 - (a) the person is covered by paragraph (1)(b) or (c); and
 - (b) the person's first service in the Defence Force began after 14 May 1985; and
 - (c) the person's death or discharge from the Defence Force occurred before 19 December 1988; and
 - (d) a notice of eligibility or a certificate of entitlement has been issued to the person under this Act or regulations made under this Act.
- (5B) If a person to whom subsection (5A) applies is dead, the person is taken to have been a regular serviceman immediately before the person's death.

Note: this subsection has the effect of making a widow, widower or dependent parent of the person an *eligible person* (see definition of *eligible person* in subsection 4(1)).
- (5C) Subsections (5A) and (5B) do not apply to a person who is or has been a subsidised borrower under the Home Loans Assistance Act.

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- (6) In this section, *effective full-time service*, in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than:
- (a) a period exceeding twenty-one consecutive days during which the member was:
 - (i) on leave of absence without pay;
 - (ii) absent without leave;
 - (iii) awaiting or undergoing trial on a charge in respect of an offence of which he was later convicted; or
 - (iv) undergoing detention or imprisonment; or
 - (b) in the case of an officer of the Defence Force who, on his appointment, was a student enrolled in a degree or diploma course at a university or other tertiary educational institution and was required by the appropriate authority of the Defence Force to continue his studies after his appointment—the period of his service during which, by reason of the requirement to engage in his studies or in activities connected with his studies, he was not regarded by the appropriate authority of the Defence Force as rendering effective full-time service.

4AAB National Serviceman

Subject to this section, a person is a national serviceman for the purposes of this Act if:

- (a) he was, immediately before 7 December, 1972, a national serviceman, or a national service officer, for the purposes of the *National Service Act 1951-1971* serving in the Regular Army Supplement; and
- (b) on or after that date:
 - (i) he completed the period of service in that Force for which he was to be deemed to have been engaged to serve or for which he was appointed, as the case may be; or
 - (ii) that service ended by reason of his death or his discharge, or the termination of his appointment, on the

ground of invalidity or physical or mental incapacity to perform duties.

4AA Extension of Act to Norfolk Island

This Act extends to Norfolk Island.

4AB Joint ownership

- (1) A reference in this Act to any of the following kinds of property:
 - (a) land;
 - (b) a suburban holding under the Crown Lands Consolidation Act, 1913 of New South Wales, or under that Act as amended at any time, or under an Act enacted in substitution for that Act;
 - (c) a unit defined in a units plan registered in accordance with a law of the Australian Capital Territory relating to unit titles;
 - (d) a right of residence in a retirement village;

includes a reference to such property held by a person as a joint tenant or tenant in common.

- (2) A reference in this Act to a dwelling-house includes a reference to a dwelling-house that is built in or on land, such a suburban holding or such a unit, that is held by a person as a joint tenant or tenant in common.
- (3) A reference in this Act to a purchaser or borrower includes a reference to a person who is a purchaser or borrower as a joint tenant or tenant in common.

Note: Section 17A deals with the issue of certificates of entitlement in relation to joint tenancies and tenancies in common.

4A Eligible person and spouse or de facto partner may be treated together as eligible person

- (1) The Secretary may, in his or her discretion, treat an eligible person and the spouse or de facto partner of that eligible person together as an eligible person for the purposes of this Act, and any reference

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in this Act to an eligible person shall be read as including a reference to a spouse or de facto partner of that eligible person who is so treated.

- (3) The Secretary shall not apply this section in relation to any land, or land and dwelling-house, if the land, or land and dwelling-house, is or are owned or proposed to be owned by the eligible person and his or her spouse or de facto partner otherwise than as joint tenants.
- (6) The application of this section in relation to land or land and a dwelling-house does not, except as provided by this section, affect the application of the other provisions of this Act in relation to the land or land and dwelling-house.

4BA Election to surrender eligible status

- (1) An eligible person who:
 - (a) is a member of the Defence Force:
 - (i) whose first service in the Defence Force began on or before 14 May 1985; or
 - (ii) whose first service in the Defence Force began after that day but who is covered by paragraph (ga) of the definition of *Australian Soldier* in subsection 4(1); and
 - (b) is not, and has not at any time been, a borrower; and
 - (c) does not hold a certificate of entitlement that is in force in relation to subsidy on an initial advance;may elect to surrender his or her status as an eligible person under this Act.
- (2) An election must be:
 - (a) in writing, signed by the person making it; and
 - (b) given to the Secretary within the prescribed period.
- (3) Subject to section 4BB, an election is irrevocable and takes effect on the day on which it is given to the Secretary.
- (4) When an election takes effect, the person making it stops being an eligible person for the purposes of this Act.

- (5) The Secretary must cause a copy of each election to be given to the Secretary of the Defence Department.
- (6) In this section:

prescribed period means the period of 6 months starting on the day on which this section commences.

4BB Revocation of election to surrender eligible status

Revocation of election before 1 July 1992

- (1) A person who has elected to surrender his or her status as an eligible person under section 4BA may revoke that election (the *surrender election*) if:
- (a) the person is not and has not been a subsidised borrower under the Home Loans Assistance Act; and
 - (b) the person gives the Secretary a written notice stating that the person wishes to revoke his or her surrender election; and
 - (c) the notice is given to the Secretary before 1 July 1992.

Revocation of election before 1 January 1993

- (2) A person who has elected to surrender his or her status as an eligible person under section 4BA may revoke that election (the *surrender election*) if:
- (a) the person is not and has not been a subsidised borrower under the Home Loans Assistance Act; and
 - (b) the person gives the Secretary a written notice stating that the person wishes to revoke his or her surrender election; and
 - (c) the notice is given to the Secretary on or after 1 July 1992 and before 1 January 1993; and
 - (d) the person satisfies the Secretary that:
 - (i) the person was not aware before 1 July 1992 that the person's surrender election was revocable; and
 - (ii) the person would not have made the surrender election if the person had been aware of the matters announced

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in the statement made by the Minister on 22 August 1991 relating to pooling of entitlements under this Act.

Date of effect of revocation

- (3) If a person's surrender election is revoked by a notice under subsection (1) or (2), the revocation takes effect on the day on which the notice is given to the Secretary.
- (4) If a person revokes his or her surrender election the Secretary must cause a copy of the notice that revoked the election to be given to the Secretary of the Defence Department.

4B Approval of Bank agreement

The Bank agreement, as executed on 9 November 1988, and its execution on behalf of the Commonwealth, are approved.

4C Compensation for acquisition of property

- (1) If, apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Commonwealth such reasonable amount of compensation as is agreed between the person and the Commonwealth or, failing agreement, as is determined by the Federal Court.
- (2) In this section, *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

4D Exclusion of Consumer Credit Codes in relation to subsidised advances

- (1) Except as provided by Part IIIA and section 35A, this Act does not exclude or limit the concurrent operation of the Consumer Credit Codes of the States and Territories.
- (2) Nothing in subsection 23AA(2) or section 23H is intended to make matters referred to in that subsection or section subject to the Consumer Credit Codes of the States and Territories.

4E Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Administration

6 Delegation by Minister

- (1) The Minister may, by writing under his hand, delegate to any person, either generally or otherwise as provided by the instrument of delegation, all or any of his powers or functions under this Act, except this power of delegation.
- (2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

6A Delegation by Secretary

- (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act (except this power of delegation) and any powers that the Secretary exercises on behalf of the Commonwealth under Part VI.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Secretary.
- (3) A delegation under this section does not prevent the exercise of a power by the Secretary.

6B Transfer of portfolio assets to the Bank

- (1) Where a date in relation to the portfolio assets in a State or Territory has been notified in writing by the Bank to the Corporation and the Commonwealth in accordance with the Bank

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agreement, the Minister shall determine the vesting date in relation to the portfolio assets in that State or Territory.

- (2) The Minister may determine a vesting date in relation to the portfolio assets in a State or Territory that is different from the date notified by the Bank but shall not determine a vesting date that is earlier than 3 days before the date notified by the Bank or later than 3 days after that date.
- (3) Where the Minister determines a vesting date, the Minister shall forthwith notify the Bank in writing of the determination.
- (4) A notice to the Bank shall not be taken, for any purpose, to be the making of the determination to which it relates.
- (5) The Minister may refuse to determine a vesting date, or may revoke any such determination, in accordance with the Bank agreement.
- (6) Subject to this section, where the Minister determines a vesting date in relation to the portfolio assets in a State or Territory, then, unless that determination is revoked before that date:
 - (a) all rights, title and interest of the Corporation in the portfolio assets in that State or Territory as in force immediately before that date vest, by force of this section but not otherwise, in the Bank on that date;
 - (b) the Bank is on and after that date, by force of this section, liable to pay and discharge all debts, liabilities and obligations of the Corporation that existed immediately before that date under the portfolio assets in that State or Territory;
 - (c) in spite of any other provision of this Act, any contract in force immediately before that date, being a contract comprising a portfolio asset in that State or Territory, has effect on and after that date as if:
 - (i) the Bank were a party to the contract instead of the Corporation; and

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- (ii) any reference in the contract to the Corporation were (except in relation to matters that happened before that date) a reference to the Bank; and
 - (d) the Commonwealth is, by force of this section, substituted for the Corporation as a party to any proceedings pending in any court immediately before that date (being proceedings to which the Corporation was a party and that relate to a portfolio asset in that State or Territory) and has the same rights in the proceedings as the Corporation had.
- (7) The Bank is not liable to pay or discharge any liability or obligation arising out of proceedings to which the Commonwealth is substituted as a party under paragraph (6)(d).
- (8) Where a portfolio asset vests in the Bank under this section, the bank is bound by the terms and conditions of that asset and shall abide by and duly perform those terms and conditions and any obligations of the Corporation under that asset.
- (9) The provisions of this Act and the Defence Service Homes Regulations specified in Schedule 2, as those provisions were in force immediately before the commencing day, shall be taken to be terms and conditions of portfolio assets which vest in the Bank under this section and, for that purpose, those provisions shall be read as if:
 - (a) references to the Corporation (other than in section 30 and subsections 35(2A) and 36A(1) of this Act as then in force) were references to the Bank;
 - (b) expressions used in those provisions that are defined in this Act as then in force had the same respective meanings as provided in those definitions; and
 - (c) they were further modified as specified in Schedule 2.
- (10) A provision of a portfolio asset requiring or permitting a person to make payments under the asset at any office or to any person, other than the Corporation, shall cease to have effect when the portfolio asset vests in the Bank.

- (11) An undertaking given by a person in relation to a portfolio asset under paragraph 35(2)(b) of this Act, as in force before the commencing day, shall, to the extent to which it has not been discharged before the day on which that asset vests in the Bank under this section, continue to have effect on and after that day as if it had been given by that person under paragraph 22(2)(b) of this Act.

6C Dealings relating to vested portfolio assets

- (1) Where the Corporation, or any of its predecessors, is registered in a State or Territory as the owner of an interest in a portfolio asset which vests in the Bank under section 6B, the Bank may, subject to the Bank agreement, execute any receipt, discharge or other instrument in relation to that interest in its own name, or in the name of the Corporation or the Corporation's predecessor, as the case may be, and the Registrar-General, Registrar of Titles, or other appropriate officer, of that State or Territory may make such entries in his or her registers, and do such other things, as are necessary to give effect to that receipt, discharge or other instrument.
- (2) The Bank may execute a transfer of land and a dwelling-house to the purchaser of that land and dwelling-house under a contract of sale which vests in the Bank under section 6B and any transfer so executed shall be taken to have been made pursuant to and in conformity with the contract of sale.
- (3) A transfer referred to in subsection (2) is not liable to any ad valorem tax under a State or Territory law if that ad valorem tax has been paid on the relevant contract of sale.

6D Transfer of certain other assets to Commonwealth

- (1) On the winding-up day:
- (a) all prescribed rights that, immediately before that day were vested in the Corporation vest on that day, by force of this subsection, in the Commonwealth; and

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- (b) the Commonwealth becomes, by force of this subsection, liable to pay or discharge any prescribed debts of the Corporation that existed immediately before that day.
- (2) Any prescribed contract to which the Corporation was a party immediately before the winding-up day has effect on and after that day as if:
 - (a) the Commonwealth were substituted for the Corporation as a party to the contract; and
 - (b) any reference in the contract to the Corporation were (except in relation to things that happened before that day) a reference to the Commonwealth.
- (3) If, immediately before the winding-up day, prescribed proceedings to which the Corporation was a party were pending in any court, the Commonwealth is, on that day, by force of this subsection, substituted for the Corporation as a party to the proceedings and has the same rights in the proceedings as the Corporation had.
- (4) Where any interest in land situated in a State or Territory vests in the Commonwealth under this section, the Secretary may lodge with the Registrar-General, Registrar of Titles or other appropriate officer of that State or Territory a notice signed by the Secretary, or by a person authorised by the Secretary for the purpose, stating that that interest is vested in the Commonwealth by this section, and the person with whom the notice is so lodged may make such entries in his or her registers, and do such other things, as are necessary to reflect the vesting of that interest in the Commonwealth.
- (5) In this section:

prescribed contract means a contract other than a contract referred to in section 6B or an insurance contract within the meaning of section 38B.

prescribed debt means any debt, liability or obligation other than a debt, liability or obligation referred to in section 6B or an insurance debt within the meaning of section 38B.

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prescribed proceedings means proceedings other than proceedings referred to in section 6B or insurance proceedings within the meaning of section 38B.

prescribed right means any right, property or assets other than a right, title or interest referred to in section 6B or an insurance right within the meaning of section 38B.

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Part III—Notices of eligibility, certificates of entitlement and certificates of assignment

15 Applications for notices and certificates

- (1) A person may apply to the Secretary for any of the following:
 - (a) a notice of eligibility;
 - (b) a certificate of entitlement in relation to subsidy on a subsidised advance that the person may seek from a credit provider;
 - (c) a certificate of entitlement in relation to consent that the person may seek from a credit provider to a transfer;
 - (d) a certificate of entitlement in relation to instalment relief that the person may seek from a credit provider;
 - (e) a certificate of assignment.
- (2) An application shall be in writing in accordance with the appropriate form approved by the Secretary for the purposes of this section and shall be made in accordance with the agreement.

16 Notice of eligibility

- (1) Where, on application by a person for a notice of eligibility, the Secretary is satisfied that the applicant is an eligible person or is an eligible veteran, the Secretary shall issue to the applicant a notice of eligibility.
- (2) A notice of eligibility shall state that the person named in the notice is, on the date of the notice, an eligible person or eligible veteran, as the case may be.

17 Certificate of entitlement: advances

- (1) Subject to this Act, the Secretary shall, on application by a person for a certificate of entitlement in relation to subsidy on a subsidised

advance that the person may seek from a credit provider, issue to the applicant a certificate of entitlement certifying that subsidy is payable by the Commonwealth to the credit provider if, in accordance with the agreement, the credit provider makes that advance to the applicant or the assignee of the applicant.

- (2) A certificate of entitlement issued under this section remains in force until:
- (a) it lapses as provided in the agreement; or
 - (b) subsidy in respect of the relevant advance ceases to be payable under this Act;
- whichever happens first.
- (3) A certificate of entitlement issued under this section shall:
- (a) specify the maximum amount in respect of which subsidy is payable, being an amount determined under section 25;
 - (b) specify the maximum term of the advance;
 - (c) if subsection 34(2) applies—specify the rates of interest and proportions of the further advance to which each of those rates of interest apply, as required by that subsection;
 - (d) in any other case—specify the rate of interest payable on the advance; and
 - (da) contain a statement setting out the effect of section 35AA (which, in some situations, reduces the rate of interest payable on a subsidised advance); and
 - (e) contain particulars of such other matters as are specified in the agreement.
- (4) A certificate of entitlement issued under this section must:
- (a) if the certificate relates to an initial advance, or a further advance, that is not an assigned advance—specify that the advance is for the purposes referred to in subsection 18(2) (other than paragraph 18(2)(1)); or
 - (b) if the certificate relates to an initial advance, or a further advance, that is an assigned advance—specify that the advance is for the purpose of assisting the assignee of the

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- applicant in obtaining a right of residence in the retirement village in question; or
- (c) if the certificate relates to an additional advance that is not an assigned advance—specify that the advance is for the purposes referred to in subsection 18(3) (other than paragraph 18(3)(g)); or
 - (d) if the certificate relates to an additional advance that is an assigned advance—specify that the advance is for the purpose of assisting the assignee of the applicant in continuing to hold a right of residence in the retirement village in question; or
 - (e) in any other case—specify the purpose of the advance.

17A Criteria for issue of certificate of entitlement: joint ownership

- (1) The Secretary must not issue a certificate of entitlement under this Part to an applicant if the applicant's interest or right is in the form of a joint tenancy, unless the Secretary is satisfied that:
 - (a) the application was made by a person and his or her spouse or de facto partner who, under subsection 4A(1), are treated together as an eligible person for the purposes of this Act; or
 - (b) the only other joint tenant is the applicant's spouse or de facto partner, who is also an eligible person.
- (2) The Secretary must not issue a certificate of entitlement under this Part to an applicant if the applicant's interest or right is in the form of a tenancy in common, unless the Secretary is satisfied that the interest or right, at the time when the application was lodged, would have had a value, if it were unencumbered, of not less than the sum of:
 - (a) all advances in relation to the applicant, in respect of which subsidy is payable; and
 - (b) the advance to which the certificate would relate.
- (3) In this section:

interest or right, in relation to an applicant, means the applicant's interest or proposed interest concerned in respect of a holding, or

the applicant's right or proposed right of residence concerned in respect of a retirement village (as the case requires).

18 Criteria for issue of certificate of entitlement: advances other than widow or widower advances, advances for essential repairs and home support advances

- (1) Subject to this section, the Secretary shall not issue a certificate of entitlement in relation to subsidy on an advance that a person may seek from a credit provider unless satisfied that:
- (a) the person is an eligible person, or the spouse or de facto partner of an eligible person who is temporarily or permanently insane; and
 - (b) the person:
 - (i) is not the owner of a dwelling-house; and
 - (ii) does not have a right of residence in a retirement village; and
 - (iii) does not own an interest in shares giving rise to a company title in respect of land on which a dwelling-house is built;

other than the dwelling-house, right of residence or company title in respect of which the advance is payable; and
 - (c) the person is not liable to repay any amount received by way of assistance under an agreement of the kind known as a War Service Land Settlement Agreement; and
 - (d) the person has not received money from the Commonwealth after 9 December 1987 by way of:
 - (i) a payment of a cash grant instead of an advance under this Act as in force on or before that day; or
 - (ii) a payment instead of such a cash grant; and
 - (e) if the person has a spouse or de facto partner (other than a spouse or de facto partner from whom he or she is permanently separated)—the spouse or de facto partner:
 - (i) is not the owner of a dwelling-house; and
 - (ii) does not have a right of residence in a retirement village; and

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- (iii) does not own an interest in shares giving rise to a company title in respect of land on which a dwelling-house is built;
other than the dwelling-house, right of residence or company title in respect of which the advance is payable; and
 - (f) except in the case of an advance to a person included in paragraph (b) or (d) of the definition of *Australian Soldier* in section 4 in relation to a house or building used or to be used as a hospital, sanatorium or nursing-home—the dwelling-house or retirement village accommodation in respect of which the advance is payable is intended to be used by the person as a home for the person and any dependants of the person; and
 - (g) such advance will be secured by:
 - (i) in the case of an assigned advance—except as provided by the agreement, a first or subsequent mortgage over the assignee’s interest in the retirement village and over any other person’s interest in the retirement village; or
 - (ii) in any other case—except as provided by the agreement, a first mortgage over the person’s interest in the holding and over any other person’s interest in the holding.
- (2) The Secretary shall not issue a certificate of entitlement in relation to subsidy on an advance, other than an additional advance, that a person may seek from a credit provider unless satisfied that the advance is for the purpose of enabling the person:
 - (a) to build a dwelling-house on a holding of the person; or
 - (b) to purchase a holding and build a dwelling-house on the holding; or
 - (c) to purchase a dwelling-house together with the holding on which it is built; or
 - (d) to complete a partially built dwelling-house on a holding of the person; or
 - (e) to enlarge, modify or repair a dwelling-house on a holding of the person; or
 - (f) to discharge any mortgage, charge or encumbrance already existing on the person’s interest in a holding; or

- (g) to obtain a right of residence in a retirement village; or
 - (h) to complete the person's partially-built retirement village accommodation; or
 - (j) to enlarge, modify or repair the person's retirement village accommodation; or
 - (k) to discharge any debt owed by the person in relation to the person's retirement village accommodation; or
 - (l) in the case of an assigned advance—to be assisted in obtaining a right of residence in the retirement village.
- (3) The Secretary shall not issue a certificate of entitlement in relation to subsidy on an additional advance that a person may seek from a credit provider unless satisfied that the advance is for the purpose of enabling the person:
- (a) to enlarge, modify or repair:
 - (i) a dwelling-house on a holding of the person; or
 - (ii) a person's retirement village accommodation; or
 - (b) to meet the cost of roadmaking if the person is liable to meet that cost but is otherwise unable to do so; or
 - (e) to discharge any mortgage, charge or encumbrance already existing on the person's interest in a holding; or
 - (f) to discharge any debt owed by the person in relation to the person's retirement village accommodation; or
 - (g) in the case of an assigned advance—to be assisted in continuing to hold a right of residence in the retirement village.
- (6) In this section:

advance means a subsidised advance other than a widow or widower advance, an advance for essential repairs or a home support advance.

19 Criteria for issue of certificate of entitlement: further advance

The Secretary must not issue a certificate of entitlement in relation to subsidy on a further advance to a person unless the person is or

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was a purchaser or borrower in relation to a Corporation advance, a subsidised advance (other than a home support advance) or a contract of sale on or after 9 December 1987.

20 Criteria for issue of certificate of entitlement: widow or widower advances

- (1) The Secretary shall not issue a certificate of entitlement in relation to subsidy on a widow or widower advance that a person may seek from a credit provider unless satisfied that:
 - (a) the person is:
 - (i) the widow, widower or a widowed parent of an eligible person; or
 - (ii) a spouse or de facto partner of an eligible person who is temporarily or permanently insane; and
 - (b) the person is a purchaser or a borrower in relation to:
 - (i) land; or
 - (ii) land and a dwelling-house; or
 - (iii) a right of residence in a retirement village; and
 - (c) the widow or widower advance relates to that land, land and dwelling-house or right of residence.

Note: Paragraph (a)—see the definitions of *widow* and *widower* in subsection 4(1). *Widowed parent* has a corresponding meaning: see section 18A (parts of speech and grammatical forms) of the *Acts Interpretation Act 1901*.

- (1A) For the purposes of paragraph (1)(b), the person is taken to be a borrower in relation to a right of residence in a retirement village if the person is, or will be, an assignor in relation to the advance.
- (2) The Secretary shall not issue a certificate of entitlement in relation to a subsidy on a widow or widower advance that a person may seek from a credit provider unless satisfied that:
 - (a) the advance is for the purpose of keeping the buildings, fences, fixtures and other improvements on the relevant land or of the person's retirement village accommodation in good order and repair and it would cause financial hardship to the

person if he or she were to bear the cost of keeping them in good order and repair; or

- (b) the advance is for the purpose of paying rates, taxes, charges or other outgoings in relation to the relevant land, land and dwelling-house or right of residence in a retirement village and it would cause financial hardship to the person if he or she were to pay those rates, taxes, charges or other outgoings.
- (3) In deciding whether a person is suffering financial hardship for the purposes of paragraph (2)(a) or (b), the Secretary is to have regard to any guidelines approved by the Minister under subsection (4).
- (4) The Minister may, by legislative instrument, approve guidelines setting out matters to be taken into account in deciding whether a person is suffering financial hardship for the purposes of this Act.

21 Criteria for issue of certificate of entitlement: advances made for essential repairs

- (1) The Secretary shall not issue a certificate of entitlement in relation to subsidy on an advance for essential repairs that a person may seek from a credit provider unless satisfied that:
 - (a) the person is an eligible person who is a purchaser or a borrower in relation to:
 - (i) land; or
 - (ii) land and a dwelling-house; or
 - (iii) a right of residence in a retirement village;
 - (b) the advance relates to that land, land and dwelling-house or right of residence;
 - (c) the advance is for the purpose of enabling the person to effect repairs essential to keep the buildings, fences, fixtures and other improvements on that land or of that person's retirement village accommodation in good order and repair; and
 - (d) it would cause serious financial hardship to the person if he or she were to bear the cost of keeping them in good order and repair.

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- (1A) For the purposes of paragraph (1)(a), the person is taken to be a borrower in relation to a right of residence in a retirement village if the person is, or will be, an assignor in relation to the advance.
- (2) In deciding whether a person is suffering serious financial hardship for the purposes of paragraph (1)(d), the Secretary is to have regard to any guidelines approved by the Minister under subsection (3).
- (3) The Minister may, by legislative instrument, approve guidelines setting out matters to be taken into account in deciding whether a person is suffering serious financial hardship for the purposes of this Act.

21A Criteria for issue of certificate of entitlement: home support advances

The Secretary must not issue a certificate of entitlement in relation to subsidy on a home support advance that a person may seek from a credit provider unless the Secretary is satisfied that:

- (a) the person is an eligible person (disregarding subsection 4(2C)) or is an eligible veteran; and
- (b) either:
 - (i) the person is the owner of a dwelling-house; or
 - (ii) the person has a right of residence in a retirement village; and
- (c) the advance is for a purpose related to the dwelling-house or the right of residence in the retirement village (other than for a purpose mentioned in paragraph 18(2)(a), (b), (c), (d), (f), (h) or (k)) that will assist the person to remain independently housed; and
- (d) if a certificate of entitlement has been issued to the person in relation to an initial advance, an additional advance or a further advance—an advance has been made by the credit provider in accordance with the certificate or an advance that would be in accordance with the certificate has been refused by the credit provider; and
- (e) if the person is liable to pay the outstanding amount of any one or more of the following:

- (i) an initial advance;
 - (ii) an additional advance;
 - (iii) a further advance;
- the sum of those outstanding amounts is less than \$10,000;
and
- (f) a certificate of entitlement that relates to an initial advance, an additional advance or a further advance could not be issued to the person in respect of the application concerned.

22 Certificate of entitlement: transfer of property subject to specified portfolio asset or advance

- (1) Subject to subsection (1AA), if any land, land and dwelling-house or right of residence in a retirement village is subject to:
 - (a) a specified portfolio asset which vests in the Bank under section 6B; or
 - (b) a mortgage or other security securing a subsidised advance; a transfer of the estate, interest or right of the purchaser or borrower in that land or land and dwelling-house, or in relation to that right of residence, being a transfer subject to that specified portfolio asset, mortgage or other security, has no effect unless the Secretary has issued a certificate of entitlement to the proposed transferee in relation to the transfer.
- (1AA) Subsection (1) does not apply if the subsidised advance referred to in paragraph (1)(b) is an assigned advance.
- (1A) If:
 - (a) a person has obtained a right of residence in a retirement village; and
 - (b) the person is a borrower in relation to that right of residence and is liable to pay the outstanding amount of a subsidised advance in respect of which subsidy is payable; and
 - (c) the relevant credit provider has no security for the subsidised advance;a transfer of the person's right of residence, while the person's liability under paragraph (b) remains, has no effect unless the

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Secretary has issued a certificate of entitlement to the proposed transferee in relation to the transfer.

- (2) The Secretary:
- (a) shall not issue a certificate of entitlement in relation to consent that the person may seek from a credit provider to a transfer unless satisfied that, in all the circumstances, it is reasonable to do so; and
 - (b) may, before issuing the certificate, require a person to take such action (including the giving of an undertaking by the proposed transferee) as the Secretary considers reasonable in the circumstances.
- (3) A certificate of entitlement under this section (other than one that relates to a home support advance) may be issued only to a proposed transferee who is an eligible person.
- (3A) A certificate of entitlement under this section that relates to a home support advance may be issued only to a proposed transferee who is an eligible person or an eligible veteran.
- (4) A certificate of entitlement under this section remains in force until the subsidy to which it relates ceases to be payable under this Act.
- (5) A certificate of entitlement under this section shall:
- (a) contain a statement to the effect that the Secretary consents to the transfer to the proposed transferee and that the Commonwealth will continue to pay subsidy in relation to the specified portfolio asset or subsidised advance if the transfer to the proposed transferee is carried out;
 - (b) specify the maximum amount in respect of which subsidy is payable;
 - (c) specify the maximum term during which subsidy will be paid;
 - (d) specify the relevant rate of interest payable on the specified portfolio asset or subsidised advance; and
 - (e) contain particulars of such other matters (if any) as are specified in the agreement.

- (6) Subject to this section but in spite of any other provision of this Act, where land, or land and a dwelling-house, has been transferred to a transferee who is not an eligible person or an eligible veteran, section 45A does not apply to the transferee's interest in the land, or land and dwelling-house.
- (7) This section does not apply to:
 - (a) a transfer of land, land and a dwelling-house or right of residence in a retirement village, to a credit provider as a result of the exercise by the credit provider of its powers under the relevant mortgage or other security; or
 - (b) where the purchaser or owner of land, land and a dwelling-house or right of residence in a retirement village, dies—a transmission of the land, land and a dwelling-house or right of residence in a retirement village, to the executor or administrator of the estate of the purchaser or owner; or
 - (c) a transfer of a person's right of residence in a retirement village to the owner or owners of the retirement village.
- (8) A reference in this section to a transfer, in relation to land or land and a dwelling-house, includes a reference to a transfer of shares giving rise to a company title in respect of the land or land and dwelling-house.

23 Certificate of entitlement: instalment relief

- (1) Where, on application by a person for a certificate of entitlement in relation to instalment relief that the person may seek from a credit provider, the Secretary is satisfied that:
 - (a) the applicant is a purchaser or borrower who is:
 - (i) the widow or widower of an eligible person; or
 - (ii) a widowed parent of an eligible person; or
 - (iii) a spouse or de facto partner of an eligible person who is temporarily or permanently insane; or
 - (b) the applicant is not a person referred to in paragraph (a) but is a purchaser or a borrower who is an eligible person or is an eligible veteran and the amounts of the instalments payable

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under the relevant contract of sale, mortgage or other security include an amount of interest calculated at a rate of more than 3.75% per year;

and that it would cause financial hardship to the applicant if the applicant were to pay in full the amounts of the instalments, the Secretary shall determine the amount by which the amounts of the instalments should be reduced and the period during which that reduction should apply.

Note: Paragraph (a)—see the definitions of *widow* and *widower* in subsection 4(1). *Widowed parent* has a corresponding meaning: see section 18A (parts of speech and grammatical forms) of the *Acts Interpretation Act 1901*.

- (2) Where the Secretary makes a determination, the Secretary shall issue to the applicant a certificate of entitlement specifying:
 - (a) the amount by which the amounts of the instalments should be reduced and the period during which that reduction should apply; and
 - (b) particulars of such other matters (if any) as are required by the agreement.
- (3) The Secretary shall cause a copy of each certificate of entitlement under this section to be given to the credit provider.
- (4) On the issue of a certificate of entitlement under this section, the amounts of instalments payable under the contract of sale, mortgage or other security to which the certificate relates are, if the credit provider grants instalment relief to the applicant, reduced by the amount specified in the certificate during the period specified in the certificate.
- (5) In deciding whether a person is suffering financial hardship for the purposes of subsection (1), the Secretary is to have regard to any guidelines approved by the Minister under subsection (6).
- (6) The Minister may, by legislative instrument, approve guidelines setting out matters to be taken into account in deciding whether a person is suffering financial hardship for the purposes of this Act.

23A Certificates of assignment

- (1) Subject to this Act, the Secretary may, on application by an eligible person (the *assignor*) for a certificate of assignment, issue the assignor with such a certificate certifying that subsidy is payable by the Commonwealth to a credit provider if, in accordance with the certificate, the credit provider makes an advance to another person (the *assignee*).
- (2) The Secretary must not issue the assignor with a certificate of assignment unless:
 - (a) the Secretary is satisfied that the assignee owns or will own a retirement village that:
 - (i) is primarily for the accommodation of eligible persons or eligible veterans; or
 - (ii) is a granny flat; and
 - (b) the Secretary is satisfied that the assignee will assist the assignor to obtain and continue to hold a right of residence in the retirement village, if the credit provider makes such an advance to the assignee; and
 - (c) the applicant has already been issued with a certificate of entitlement that is in force that:
 - (i) specifies, under subsection 17(4), a purpose of a kind referred to in paragraph 18(2)(l) or (3)(g) or 21A(c); and
 - (ii) was not issued under section 22; and
 - (d) a subsidised advance has not been made to the assignor in relation to that certificate of entitlement; and
 - (e) the assignor and the assignee have agreed to conditions of a kind specified in a determination made by the Secretary under subsection (3).
- (3) The Secretary may, by legislative instrument, make determinations specifying the kinds of conditions to which an assignor and assignee must agree before a certificate of assignment can be issued to the assignor.

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- (4) A certificate of assignment issued under this section remains in force until subsidy in respect of the assigned advance concerned ceases to be payable under this Act.
- (5) A certificate of assignment issued under this section must:
 - (a) specify the maximum amount in respect of which subsidy is payable, being the amount specified under paragraph 17(3)(a) in the certificate of entitlement mentioned in paragraph (2)(c) of this section.
 - (b) specify the maximum term of the advance; and
 - (c) specify the purpose of the advance; and
 - (d) specify the rate of interest payable on the advance; and
 - (e) contain particulars of such other matters as are specified in a determination made by the Secretary under subsection (6).
- (6) The Secretary may, by legislative instrument, make determinations as to the kind of matters to be included in a certificate of assignment pursuant to paragraph (5)(e).

Part IIIA—Unjust transactions

23AA Power to reopen unjust transactions

- (1) Subject to this Part, if a court is satisfied, on the application of a borrower, mortgagor or guarantor, that, in the circumstances relating to the relevant contract, mortgage or guarantee, at the time it was entered into or changed (whether or not by agreement), the contract, mortgage or guarantee or the change was unjust, the court may re-open the transaction that gave rise to the contract, mortgage, guarantee or change.
- (2) This section does not apply to, or to a change in:
 - (a) the annual percentage rate or rates of interest under a contract or mortgage or the method of calculating any such rate or rates of interest or of calculating any amount of interest under the contract or mortgage; or
 - (b) an establishment fee or charge, or other fee or charge, in respect of which an application may be made under section 23F.

23B Matters to be considered by court

- (1) In determining whether a term of a particular contract, mortgage or guarantee in relation to a subsidised advance is unjust in the circumstances relating to it at the time it was entered into or changed, a court is, subject to subsection (2), to have regard to the public interest (including the public interest in the continued provision of assistance to eligible persons by means of subsidised advances by a credit provider) and to all the circumstances of the case and may have regard to the following:
 - (a) the consequences of compliance, or non-compliance, with all or any of the provisions of the contract, mortgage or guarantee;
 - (b) the relative bargaining power of the parties;

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- (c) whether or not, at the time the contract, mortgage or guarantee was entered into or changed, its provisions were the subject of negotiation;
- (d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the contract, mortgage or guarantee or the change;
- (e) whether or not any of the provisions of the contract, mortgage or guarantee impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the contract, mortgage or guarantee;
- (f) whether or not any mortgagor (other than the borrower) or guarantor, or a person who represented that mortgagor or guarantor, was reasonably able to protect the interests of that mortgagor or guarantor because of his or her age or physical or mental condition;
- (g) whether or not the mortgagor who was the borrower, or a person who represented that mortgagor, was reasonably able to protect the interests of that mortgagor because of his or her physical or mental condition;
- (h) the form of the contract, mortgage or guarantee and the intelligibility of the language in which it is expressed;
- (i) whether or not, and if so when, independent legal or other expert advice was obtained by the borrower, mortgagor or guarantor;
- (j) the extent to which the provisions of the contract, mortgage or guarantee or change and their legal and practical effect were accurately explained to the borrower, mortgagor or guarantor and whether or not the borrower, mortgagor or guarantor understood those provisions and their effect;
- (k) whether the credit provider or any other person exerted or used unfair pressure, undue influence or unfair tactics on the borrower, mortgagor or guarantor and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics;

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- (l) whether the credit provider took measures to ensure that the borrower, mortgagor or guarantor understood the nature and implications of the transaction and, if so, the adequacy of those measures;
 - (m) whether the terms of the transaction or the conduct of the credit provider is justified in the light of the risks undertaken by the credit provider;
 - (n) the terms of other comparable transactions involving persons other than the credit provider who provide credit;
 - (o) any other relevant matter.
- (2) In determining whether a term of a particular contract, mortgage or guarantee is unjust in the circumstances relating to it at the time it was entered into or changed, a court:
- (a) is to have regard to:
 - (i) the fact that the relevant credit provider and the Commonwealth have entered into an agreement or arrangement for the provision by the credit provider of subsidised advances or other benefits under this Act; and
 - (ii) the fact that the credit provider is required to provide a subsidised advance if the requirements of this Act and the agreement are satisfied; and
 - (iii) the fact that the interest rates applicable to subsidised advances and loans secured by specified portfolio assets are determined under this Act; and
 - (iv) the fact that, in some circumstances, the credit provider would not provide advances to an eligible person if the making of the advance were assessed on ordinary commercial lending criteria instead of the criteria set out in this Act or the agreement; but
 - (b) is not to have regard to:
 - (i) any inequality in bargaining power between the Corporation or the credit provider, and the borrower, that arose because the borrower was able to obtain a subsidised advance from the Corporation or credit provider and not from another financial institution; or

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(ii) the borrower's age.

- (3) For the purposes of paragraph (1)(f) or (g), a person is taken to have represented a mortgagor or guarantor if the person represented the mortgagor or guarantor, or assisted the mortgagor or guarantor to a significant degree, in the negotiations process before, or at, the time the mortgage or guarantee was entered into or changed.

23C Unforeseen circumstances

In determining whether a contract, mortgage or guarantee in relation to a subsidised advance is unjust, a court is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the contract, mortgage or guarantee was entered into or changed.

23D Conduct

In determining whether to grant relief in respect of a contract, mortgage or guarantee that it finds to be unjust, a court may have regard to the conduct of the parties to the proceedings in relation to the contract, mortgage or guarantee since it was entered into or changed.

23E Orders on reopening of transactions

If a court reopens a transaction under section 23AA, it may do any one or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation:

- (a) reopen an account already taken between the parties;
- (b) relieve the borrower and any guarantor from payment of any amount in excess of the amount that the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable;

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- (c) set aside either wholly or in part, or revise or alter, an agreement made or mortgage or guarantee given in connection with the transaction;
- (d) order that the credit provider take any steps that are necessary to discharge the mortgage;
- (e) give judgment for, or make an order in favour of, a party of any amount that, having regard to the relief (if any) that the court thinks fit to grant, is justly due to that party under the contract, mortgage or guarantee;
- (f) give judgment or make an order against a person for delivery of goods to which the contract, mortgage or guarantee relates and which are in the person's possession;
- (g) make ancillary or consequential orders.

23F A court may review unconscionable fees and charges

- (1) Subject to this Part, if a court is satisfied on the application of a borrower, mortgagor or guarantor that:
 - (a) an establishment fee or charge in respect of the relevant contract, mortgage or guarantee; or
 - (b) a fee or charge payable on early termination of the relevant contract, mortgage or guarantee; or
 - (c) a fee or charge for a prepayment of an amount under the relevant contract, mortgage or guarantee;is unconscionable, the court may annul or reduce the fee or charge and may make ancillary or consequential orders.
- (2) In determining whether an establishment fee or charge is unconscionable, the court is to have regard to whether the amount of the fee or charge is equal to the credit provider's reasonable costs of determining an application for credit and the initial administrative costs of providing the credit or is equal to the credit provider's average reasonable costs of those things in respect of that class of contract.
- (3) For the purposes of this section, a fee or charge payable on early termination of, or a prepayment of an amount under, the relevant

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contract, mortgage or guarantee is unconscionable if, and only if, it appears to the court that it exceeds a reasonable estimate of the credit provider's loss arising from the early termination or prepayment, including the credit provider's average reasonable administrative costs in respect of such a termination or prepayment.

23G Time limit

- (1) An application under section 23AA may not be brought more than 2 years after the relevant contract, mortgage or guarantee is rescinded or discharged or the credit provider writes off the relevant debt, whichever occurs first.
- (2) An application under section 23F may not be brought more than 2 years after the relevant fee or charge is charged under the contract, mortgage or guarantee or the credit provider writes off the relevant debt, whichever occurs first.

23H Exceptions

- (1) This Part does not apply to:
 - (a) a change to a contract, mortgage or guarantee if the change was made by, or as a result of, the enactment of this Part, section 35A, any other Act or an amendment of the agreement; or
 - (b) a contract, mortgage or guarantee under which the borrower, mortgagor or guarantor is not an individual; or
 - (c) a contract under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose; or
 - (d) a mortgage or guarantee that secures or guarantees obligations under a contract:
 - (i) under which the borrower is not an individual; or
 - (ii) under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose; or

- (e) a contract, mortgage or guarantee that was entered into before the commencement of this paragraph.
- (2) For the purposes of this section:
 - (a) investment by a borrower is not a personal, domestic or household purpose; and
 - (b) the predominant purpose for which an individual is borrowing is:
 - (i) the purpose for which more than one-half of the amount borrowed is intended to be used; or
 - (ii) if the amount borrowed is intended to be used to obtain goods, services or rights in relation to, or interests in, real property for use for different purposes—the purpose for which the goods, services, rights or interests are intended to be most used.

23J Legal and financial assistance

- (1) A person who has made, or proposes to make, an application under section 23AA or 23F may apply to the Attorney-General for a grant of assistance under this section in respect of the application.
- (2) If such an application for assistance is made, the Attorney-General, or a person appointed or engaged under the *Public Service Act 1999* (the **public servant**) authorised in writing by the Attorney-General, may, if he or she is satisfied that it would involve hardship to the applicant to refuse the application for assistance and that, in all the circumstances, it is reasonable that the application for assistance should be granted, authorise the grant by the Commonwealth to the person, either unconditionally or subject to any conditions that the Attorney-General or public servant determines, of such legal or financial assistance in relation to the application under section 23AA or 23F, as the case may be, as the Attorney-General or public servant determines.

Section 23K

23K Jurisdiction of courts

The courts of summary jurisdiction of the States are invested with federal jurisdiction, and (subject to the Constitution) jurisdiction is conferred on the courts of summary jurisdiction of the Territories, with respect to matters arising under this Part.

23L Definition

In this Part:

unjust includes unconscionable, harsh or oppressive.

Part IV—Subsidy on advances etc.**24 Subsidy payable by Commonwealth**

- (1) Subject to this Part, subsidy is payable by the Commonwealth to a credit provider on a subsidised advance to a person or the assignee of a person.
- (2) Subject to this Part, subsidy is payable by the Commonwealth to the Bank in relation to a specified portfolio asset which vests in the Bank under section 6B, or to any credit provider in relation to a subsidised advance, where the land, land and dwelling-house or right of residence in a retirement village, to which the specified portfolio asset or advance relates has been transferred to a person to whom a certificate under section 22 has been issued in relation to that transfer.
- (3) Subject to this Part, subsidy is payable by the Commonwealth to the Bank on:
 - (a) all specified portfolio assets which vest in the Bank under section 6B; and
 - (b) all advances that the Bank is taken to have made under section 37.

24A Condition of payment of subsidy—subsidy under one scheme only

- (1) This section applies if subsidy (*2008 Act subsidy*) is, or has ever been, payable to a person under the *Defence Home Ownership Assistance Scheme Act 2008*.
- (2) Subsidy is not payable by the Commonwealth to a credit provider on a subsidised advance to the person or the assignee of the person on or after the earliest day the 2008 Act subsidy became payable.

Section 25

25 Maximum amounts for which subsidy is payable

- (1) Subject to this section, the amount that shall be specified under paragraph 17(3)(a) in a certificate of entitlement issued to a person in relation to a subsidised advance that the person may seek from a credit provider is:
- (a) in the case of an initial advance—such amount as the Secretary determines is necessary to give effect to the purpose for which the advance is made, being an amount that is not more than \$25,000; and
 - (b) in the case of an additional advance—such amount as the Secretary determines is necessary to give effect to the purpose for which the advance is made, being an amount that is not more than the amount by which \$25,000 exceeds:
 - (i) the case of an assigned advance—the sum of the amounts of the assigned advances made to the assignee in relation to the person; or
 - (ii) in any other case—the sum of the amounts of the contract of sale, Corporation advance, initial advance or further advance and any previous additional advance made to the person; and
 - (c) in the case of a widow or widower advance or an advance for essential repairs—such amount as the Secretary determines is necessary to give effect to the purpose for which the advance is made; and
 - (d) in the case of a further advance—an amount equal to:
 - (i) the limit of the last Corporation advance, subsidised advance or contract of sale in relation to which the person was a borrower or purchaser, or the assignee of the person was a borrower in respect of the person (as the case requires); or
 - (ii) \$25,000;whichever is less; or
 - (e) in the case of a home support advance—such amount as the Secretary determines is necessary to give effect to the purpose for which the advance is made, being an amount that is not more than:

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- (i) if no previous home support advances have been made to the person—\$10,000; or
 - (ii) if any previous home support advances have been made to the person—\$10,000 reduced by the sum of those previous advances.
- (1A) In working out the limit of a person's last Corporation advance, subsidised advance or contract of sale under paragraph (1)(d), the amount of the person's last Corporation advance, subsidised advance or contract of sale is taken to include the amount of any additional advance that has subsequently been made to the person or the assignee of the person (as the case requires).
- (2) Where an initial advance is made to 2 or more persons jointly (being persons included in paragraph (b) or (d) of the definition of *Australian Soldier* in section 4) in relation to a house or building used or to be used as a hospital, sanatorium or nursing-home, the Secretary may determine a maximum amount under paragraph (1)(a) that is more than \$25,000 but shall not determine a maximum amount that is more than the sum of the maximum amounts that could have been determined if the advance had been made to each of those persons separately.
- (3) Where subsidy is payable for a specified portfolio asset which vests in the Bank under section 6B, the maximum amount in respect of which subsidy is payable is an amount equal to the amount of the outstanding balance under the specified portfolio asset as at the relevant vesting date.
- (4) Where the outstanding balance of a specified portfolio asset which vests in the Bank under section 6B, or of a subsidised advance, increases as a result of a grant of instalment relief to the purchaser or borrower, the maximum amount in respect of which subsidy is payable for that specified portfolio asset or subsidised advance shall be taken to have been increased by an amount equal to the amount of the increase of that outstanding balance.

Section 26

26 Cancellation of subsidy

- (1) Where the Commonwealth is paying subsidy on a subsidised advance to a person, or the assignee of a person, and the Secretary is satisfied that:
- (a) a certificate of entitlement in relation to that advance was issued to the person as a result of a false statement made by the person or the assignee of the person; or
 - (aa) a certificate of assignment in relation to that advance was issued to the person as a result of a false statement made by the person or the assignee of the person; or
 - (b) the person was not, when a certificate of entitlement in relation to the advance was issued to the person, entitled to the certificate; or
 - (ba) the person was not, when a certificate of assignment in relation to the advance was issued to the person, entitled to the certificate; or
 - (c) the person, or the assignee of the person, used the advance for a purpose other than that for which it was made; or
 - (d) where the person is a transferee—the person has, without reasonable excuse, failed to comply with an undertaking given by the person to the Secretary under subsection 22(2);
- the Secretary may, by notice of cancellation given to the person, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.
- (2) Where:
- (a) the Commonwealth is paying subsidy on a specified portfolio asset which vests in the Bank under section 6B or a subsidised advance; and
 - (b) the Secretary is satisfied that the person in respect of whom the subsidy is being paid has agreed or arranged to transfer the relevant land, land and dwelling-house or right of residence in a retirement village, by a transfer that is subject to:
 - (i) that specified portfolio asset; or
 - (ii) the mortgage securing that advance; or

- (iii) in the case of a right of residence in a retirement village—any other security that the credit provider has in relation to that advance;

as the case may be, to a person who is not a transferee; the Secretary may, by notice of cancellation given to the first-mentioned person, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.

(2A) If:

- (a) a person has obtained a right of residence in a retirement village; and
- (b) the person is a borrower in relation to that right of residence and is liable to pay the outstanding amount of a subsidised advance in respect of which subsidy is payable; and
- (c) the credit provider has no security for the subsidised advance; and
- (d) the Secretary is satisfied that the person has agreed or arranged to transfer the right of residence, while the person's liability under paragraph (b) remains, to a person who is not a transferee;

the Secretary may, by notice of cancellation given to the first-mentioned person, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.

(2B) If:

- (a) the Commonwealth is paying subsidy on an assigned advance; and
- (b) the Secretary is satisfied that:
 - (i) the assignor has agreed to transfer the right of residence in the retirement village, or has given up the right of residence in the retirement village; or

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- (ii) the assignee has agreed to transfer all or part of his or her interest in the retirement village, or has terminated the assignor's right of residence in the retirement village;

the Secretary may, by notice of cancellation given to the assignor, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.

- (2C) If the Secretary cancels a subsidy under subsection (2B), the credit provider may, from the date when the cancellation of subsidy takes effect, charge an interest rate in relation to the advance that is an interest rate applicable to similar loans provided by the credit provider to mortgagors generally.

- (3) Where the Commonwealth is paying subsidy on a specified portfolio asset or a subsidised advance and the credit provider takes action to enforce:

- (i) the asset; or
- (ii) the mortgage securing the advance; or
- (iii) in the case of a right of residence in a retirement village—any other security that the credit provider has in relation to that advance;

but does not, within 3 months after starting that action, recover the outstanding balance secured under the asset, or the outstanding balance of the advance, as the case may be, the Secretary may, by notice of cancellation given to the relevant borrower, purchaser or transferee, cancel the subsidy on the date specified in the notice, being a date not earlier than the date of the notice.

- (4) Where the Commonwealth is paying subsidy in respect of 2 persons and one of those persons becomes a spouse or de facto partner of the other person, the Secretary may, by notice of cancellation given to one of those persons, cancel the subsidy in respect of that person on the date specified in the notice, being a date not earlier than the date of the notice.

- (5) The Secretary shall cause a copy of a notice of cancellation to be given:

- (a) to the credit provider; and
 - (b) in the case of an assigned advance—to the assignee.
- (6) Where the Secretary cancels subsidy under this section, that subsidy ceases to be payable on the date specified in the notice of cancellation.
- (7) Where:
- (a) the Commonwealth is paying subsidy on a subsidised advance to a person, or to the assignee of a person, in relation to the person's retirement village accommodation; and
 - (b) the person's right of residence in the retirement village is terminated for any reason and the person ceases to reside in the retirement village accommodation;
- the Secretary may cancel the subsidy by written notice given to the person.
- (8) The cancellation takes effect on the date specified in the notice, being a date not earlier than the date of the notice.
- (9) If:
- (a) the person's right of residence is terminated; and
 - (b) the person has a right of review of, or appeal against, the decision to terminate;
- the termination is taken, for the purposes of subsection (7), not to occur until:
- (c) the review or appeal has been finally determined and the person has ceased to reside in the retirement village accommodation; or
 - (d) the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted and the person has ceased to reside in the retirement village accommodation.

Section 27

27 Cancellation of subsidy where subclause 11.16 of the Bank agreement applies

- (1) Where the Commonwealth is paying subsidy in relation to a specified portfolio asset entered into by a person and the Secretary is satisfied that:
 - (a) the person obtained the benefit of any advance or assistance secured by that asset as a result of a false statement made by the person;
 - (b) the person was not, when he or she received that benefit, entitled to do so;
 - (c) the person used the amount secured by the asset for a purpose other than that for which it was made; or
 - (d) the person has, without reasonable excuse, failed to comply with an undertaking given, or taken to have been given, by the person to the Secretary under subsection 22(2);and the Secretary decides that the subsidy should be cancelled, the Secretary shall, under subclause 11.16 of the Bank agreement, give the Bank one month's notice of the intended cancellation of the subsidy.
- (2) Where the Secretary gives the Bank a notice under subsection (1), the subsidy to which the notice relates shall be taken to have been cancelled, and ceases to be payable, at the end of any period during which the Commonwealth is required to continue paying subsidy under subclause 11.16 of the Bank agreement.
- (3) The Secretary shall cause a copy of a notice under subsection (1) to be given to the relevant purchaser, borrower or transferee.
- (4) Where subsidy ceases to become payable under this section the Secretary shall notify the relevant purchaser, borrower or transferee accordingly.

27A Cancellation of subsidy if the eligible person dies

- (1) Subject to subsection (3), the Secretary may cancel subsidy on a subsidised advance in respect of a person, or the assignee of a person, if:
 - (a) the person has died; and
 - (b) 3 months has elapsed from the date on which the person died; and
 - (c) the Secretary is satisfied that there is no surviving spouse or de facto partner of the person, to whom a certificate of entitlement could be issued under section 22, in relation to the land or land and dwelling-house concerned, or in relation to the right of residence in the retirement village concerned (as the case requires); and
 - (d) the Secretary considers it appropriate to cancel the subsidy.
- (2) Subject to subsection (3), the Secretary may cancel subsidy in relation to a portfolio asset entered into by a person if:
 - (a) the person has died; and
 - (b) 3 months has elapsed from the date on which the person died; and
 - (c) the Secretary is satisfied that there is no surviving spouse or de facto partner of the person, to whom a certificate of entitlement could be issued under section 22, in relation to the land or land and dwelling-house concerned, or in relation to the right of residence in the retirement village concerned (as the case requires); and
 - (d) the Secretary considers it appropriate to cancel the subsidy.
- (3) If subsidy is being paid in respect of 2 persons who are spouses or de facto partners of each other who, under subsection 4A(1), are treated together as an eligible person for the purposes of this Act, the Secretary may only cancel subsidy under subsection (1) or (2) if:
 - (a) both spouses or de facto partners have died; and
 - (b) 3 months has elapsed from the death of the spouse or de facto partner who died last.

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- (4) If the Secretary cancels subsidy under subsection (1) or (2), the Secretary must:
 - (a) give a notice of cancellation to the executor or personal representative of the person who has died; and
 - (b) give a copy of the notice of cancellation to the credit provider; and
 - (c) in the case of an assigned advance—give a copy of the notice of cancellation to the assignee.
- (5) The cancellation takes effect, and the subsidy concerned ceases to be payable, on the date specified in the notice, being a date not earlier than the date of the notice.
- (6) If the Secretary cancels subsidy under subsection (1) or (2), the credit provider may, from the date when the cancellation of subsidy takes effect, charge an interest rate in relation to the advance that is an interest rate applicable to similar loans provided by the credit provider to mortgagors generally.

28 Deferral of subsidy by Minister

If an agreement permits the Commonwealth to defer payments of subsidy to the credit provider, the Minister may, by written notice given to the credit provider, defer payments of the subsidy in accordance with the agreement.

29 Recovery of subsidy

- (1) Where subsidy in relation to an advance to a person ceases to be payable under section 26, 27 or 27A, for a reason referred to in:
 - (a) paragraph 26(1)(a), (b) or (c); or
 - (b) subsection 26(2), (2B) or (7); or
 - (c) paragraph 27(1)(a), (b) or (c); or
 - (d) subsection 27A(1) or (2);the Secretary may, by notice in writing given to the person, require the person to pay to the Commonwealth the amount specified in the notice in the manner, and within the period, specified in the notice.

- (2) The Secretary may specify in a notice an amount equal to:
- (a) where paragraph 26(1)(a) or (b) or paragraph 27(1)(a) or (b) applied—the whole of the amount of subsidy paid in respect of the person; or
 - (b) where paragraph 26(1)(c) or 27(1)(c) applied—the whole of the amount of subsidy paid in respect of the person since the day when the use referred to in that paragraph happened; or
 - (c) where subsection 26(2) applied—the whole of the amount of subsidy paid in respect of the person since the day when the person agreed or arranged to transfer the relevant land, or land and dwelling-house; or
 - (ca) where subparagraph 26(2B)(b)(i) applied—the whole of the amount of subsidy paid in respect of the person since the day when the assignor agreed to transfer the right of residence in the retirement village, or gave up the right of residence in the retirement village; or
 - (cb) where subparagraph 26(2B)(b)(ii) applied—the whole of the amount of subsidy paid in respect of the person since the day on which the assignee agreed to transfer the interest in the retirement village, or terminated the assignor's right of residence in the retirement village; or
 - (d) where subsection 26(7) applied—the whole of the amount of subsidy paid in respect of the person since the day on which the person's right of residence was terminated and the person has ceased to reside in the retirement village accommodation; or
 - (e) where subsection 27A(1) or (2) applied—the whole of the amount of subsidy paid in respect of the person since the day on which the cancellation of subsidy took effect;
- or such part of that amount of subsidy as the Secretary determines to be reasonable.
- (3) The Secretary shall cause a copy of a notice under this section to be given:
- (a) to the credit provider; and
 - (b) if subsection 26(2B) applied—to the assignor.

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- (4) Subject to this section, where a person fails to comply with a notice, the amount specified in the notice may be recovered from the person in a court of competent jurisdiction as a debt due to the Commonwealth.
- (5) Where:
- (a) a credit provider sells any property of a person by way of enforcing:
 - (i) a specified portfolio asset; or
 - (ii) a mortgage securing a subsidised advance; or
 - (iii) in the case of a right of residence in a retirement village—any other security that the credit provider has in relation to that advance; and
 - (b) the Secretary has given the person a notice under this section; the credit provider shall pay to the Commonwealth an amount equal to:
 - (c) the part of the proceeds of the sale that, but for this subsection, would have been payable by the credit provider to the person; or
 - (d) such part of the amount specified in the notice as remains unpaid;whichever is less.
- (6) A payment by a credit provider to the Commonwealth under subsection (5) is, to the extent of the payment, a discharge of the liability of the person referred to in that subsection to the Commonwealth and of any liability of the credit provider to the person under the specified portfolio asset, mortgage or other security.

30 Waiver etc.

- (1) The Secretary may, on behalf of the Commonwealth, by instrument in writing:
- (a) write off an amount that a person has been required to pay to the Commonwealth under section 29;

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- (b) waive the right of the Commonwealth to recover from a person the whole or part of an amount that the person has been required to pay to the Commonwealth under that section; or
 - (c) allow a person who has been required to pay an amount to the Commonwealth under section 29 to pay that amount by such instalments as are specified in the instrument.
- (2) A decision under subsection (1) takes effect:
- (a) on the day specified in the notice, being the day on which the decision is made or any day before or after that day; or
 - (b) if no day is so specified—on the day on which the decision is made.

Part V—Rates of interest, maximum terms, and conversions

31 Rate of interest on initial advances

The rate of interest that shall be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to an initial advance that a person may seek from a credit provider is 6.85% per year.

32 Rate of interest on widow or widower advances

The rate of interest that shall be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to a widow or widower advance that a person may seek from a credit provider is 3.75% per year.

33 Rate of interest on additional advances

The rate of interest that must be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to an additional advance that a person may seek from a credit provider is 6.85% per year.

34 Rate of interest on further advances

- (1) Subject to subsection (2), the rate of interest that is to be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to a further advance that a person may seek from a credit provider is the rate of interest per year (disregarding section 35AA) of the last preceding previous advance.
- (2) If, at the time when subsidy is or was most recently payable in relation to the last preceding previous advance, subsidy is or was payable in respect of the person in relation to one or more other previous advances:
 - (a) the rates of interest that are to be specified under paragraph 17(3)(c) in a certificate of entitlement in relation to

a further advance that a person may seek from the credit provider are the rates of interest per year that applied (disregarding section 35AA) to those previous advances; and

- (b) in relation to each such interest rate—the proportion of the further advance to be so specified in relation to that interest rate is the proportion of the sum of amounts outstanding in respect of all the previous advances that are amounts to which that interest rate applies.
- (2A) For the purposes of this section, in determining the rate of interest that was payable in relation to a previous advance at any time before 5 January 1998, apply sections 35AB and 35AC as if the application of those sections were not limited to the calculation of interest for 5 January 1998 and later days.
- (3) In this section:

previous advance, in relation to a further advance in respect of a person, means an advance (whether a Corporation advance, initial advance, additional advance or further advance) in respect of which the person is or was a borrower, or a contract of sale, in respect of which the person is or was a purchaser, preceding the further advance in question.

35 Rate of interest on advances for essential repairs

The rate of interest that shall be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to an advance for essential repairs that a person may seek from a credit provider is 6.85% per year.

35AAA Rate of interest on home support advance

The rate of interest that must be specified under paragraph 17(3)(d) in a certificate of entitlement in relation to a home support advance that a person may seek from a credit provider is 6.85% per year.

Section 35AA

35AA Interest rates reduced according to reduced Benchmark rate

- (1) If the rate of interest payable for a particular month on a subsidised advance, or on an amount owed to the Bank in relation to a specified portfolio asset, exceeds the reduced Benchmark rate, the rate payable for that month is reduced to the level of the reduced Benchmark rate.
- (2) The *reduced Benchmark rate* for the month is the Benchmark rate worked out for the month in accordance with subclause 11.10 of the Bank agreement or the corresponding provision of another agreement (whichever is applicable), rounded up or down to 2 decimal places (rounding 0.005% up), less 1.5 percentage points.
- (3) This section applies despite anything in any certificate of entitlement or in any subsidised advance contract or portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement.

35AB Reduction of certain single-tiered rates of interest

- (1) If:
 - (a) a person is the borrower in respect of a subsidised advance or an amount owed to the Bank in relation to a specified portfolio asset; and
 - (b) apart from this section, a single rate of interest would be payable on the whole of the balance of the advance or amount; and
 - (c) that rate exceeds 6.85% per year;the rate of interest payable on the balance is reduced to 6.85% per year.
- (2) This section applies despite anything in any certificate of entitlement or in any subsidised advance contract or portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement.
- (3) This section is subject to section 35AA (which will sometimes reduce the rate of interest payable to less than 6.85% per year).

35AC Replacement of multi-tiered rates of interest with single rate

- (1) If:
- (a) a person is the borrower in respect of a subsidised advance or an amount owed to the Bank in relation to a specified portfolio asset; and
 - (b) apart from this section, 2 or more different rates of interest would be payable on different parts of the balance of the advance or amount;
- the following single rate of interest is instead taken to be payable on the balance:
- (c) if the blended interest rate (see subsection (2)) for the advance or amount is less than 4.5% per year—3.75% per year;
 - (d) if the blended interest rate is less than 6.85% per year but not less than 4.5% per year—4.5% per year;
 - (e) in any other case—6.85% per year.
- (2) This is how to work out the **blended interest rate** for the advance or amount:

Method statement

- Step 1. For each different rate of interest payable, multiply the rate by that part of the limit of the advance, or of the limit of the amount, on which the rate is payable, and total the results.
- Note: However, if that limit is nil, see subsection (4).
- Step 2. Divide the total by the limit of the advance or amount.
- Step 3. Express the result as a percentage rate per year and round the rate up or down to 2 decimal places (rounding 0.005% up). This is the **blended interest rate** for the advance or amount (subject to Steps 4 and 5).
- Step 4. If:

Section 35AC

- (a) the result from Step 3 is less than 6.85% per year but not less than 6.67% per year; and
- (b) apart from this section, the different rates of interest payable on the different parts of the limit are 3.75% per year, 7.25% per year and 10% per year;

the *blended interest rate* is instead 6.85% per year.

Step 5. If:

- (a) the result from Step 3 is less than 4.5% per year but not less than 4.45% per year; and
- (b) apart from this section, the different rates of interest payable on the different parts of the limit are 3.75% per year and 7.25% per year;

the *blended interest rate* is instead 4.5% per year.

Note: Steps 4 and 5 are needed because the amortisation of the limit of the advance or amount over the term of the loan or contract can cause small temporary deviations from the average of the various rates of interest over the term. Steps 4 and 5 prevent these deviations from affecting the calculation of the blended interest rate.

- (3) This is an example of how to work out the *blended interest rate* for an advance or amount:

Example: Assume that the limit of an advance is \$4,000. Interest is payable at the rates of 3.75% per year on the first \$1,000, 7.25% per year on the next \$1,000 and 10% per year on the last \$2,000 of that limit.

The Step 1 calculations are:

$$\left(\$1,000 \times 3.75\% \right) + \left(\$1,000 \times 7.25\% \right) + \left(\$2,000 \times 10\% \right) = \$37.50 + \$72.50 + \$200 = \$310$$

Under Step 2, the \$310 is divided by the total limit of \$4,000, giving a result of 0.0775.

Under Step 3, that result is expressed as a percentage: 7.75% per year.

Section 35AD

Step 4 does not apply, because the blended interest rate is too high.
Step 5 does not apply, because the blended interest rate is too high and in any event because the rates of interest in question are not the ones specified in Step 5. Therefore, the *blended interest rate* for the advance is 7.75% per year.

- (4) For Steps 1 and 2 of the method statement in subsection (2), if the limit of the advance or amount at the time concerned is nil, then, instead of nil, use the amount of the limit from when the advance was first made, or when the amount first became owing to the Bank.
- (5) This section applies despite anything in any certificate of entitlement or in any subsidised advance contract or portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement.
- (6) This section is subject to section 35AA (which will sometimes further reduce the rate of interest payable).
- (7) If this section would increase the total amount of interest payable on the balance of an advance or amount over the term of the advance or amount, then this section does not apply to that balance.

35AD Rates not altered for certain portfolio contracts of sale

Sections 35AA, 35AB and 35AC do not apply in relation to a portfolio contract of sale made as a result of the exercise of a power under section 36 of this Act as in force before the commencing day if, when the contract was made, the purchaser was not an eligible person within the meaning of this Act as then in force.

35A Modifications of Bank agreement and other instruments

- (1) Despite clause 8.1 of the Bank agreement and anything contained in any subsidised advance contract or in any portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement:

Section 35A

- (a) a subsidised advance or an amount owed to the Bank under a loan secured by a specified portfolio asset is repayable in equal monthly instalments comprising principal and interest; and
 - (b) interest on each subsidised advance and each amount owed under a loan secured by a specified portfolio asset is to be:
 - (i) charged in arrears; and
 - (ii) calculated by applying the applicable annual percentage rate divided by 365 to the outstanding daily balance of the subsidised advance loan account; and
 - (c) if the Commonwealth terminates the interest subsidy in respect of a subsidised advance contract:
 - (i) the Bank may terminate the contract and any associated portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement; and
 - (ii) if the Bank does so, it is entitled to demand repayment of, and recover by action in any court or under the mortgage, the principal and interest and any other money owing under the contract, mortgage or agreement.
- (2) Clause 1.1 of the Bank agreement has effect as if the definition of “Rest Day” were omitted and the following definition were substituted:
- Rest Day: means, in respect of a Specified Portfolio Asset or a Subsidised Advance, the fifth day of each month on which principal and accrued interest will be due and payable in respect of the relevant Subsidised Advance Loan Account.
- (3) Any reference to a rest day in any mortgage relating to a subsidised advance, or in any portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement, is taken to be a reference to a rest day as defined by subsection (2).
- (4) The Bank agreement has effect as if Part B of Schedule D were omitted.

36 Maximum terms of advances

- (1) Subject to section 37, the maximum term to be specified under paragraph 17(3)(b) in a certificate of entitlement in relation to a subsidised advance that a person may seek from a credit provider is:
 - (a) in the case of an initial advance or of a home support advance—25 years;
 - (b) in the case of an additional advance, a widow or widower advance or an advance for essential repairs:
 - (i) a term equal to the unexpired part of the term of the borrower's initial advance, further advance or Corporation advance, or of the purchaser's contract of sale, as the case may be; or
 - (ii) if the Secretary determines that a longer maximum term would be appropriate, having regard to the circumstances of the case—such longer term as the Secretary determines;
 - (d) in the case of a further advance:
 - (i) if the person has ceased to be a purchaser or borrower in relation to the last preceding previous advance—a term equal to the unexpired part of the last preceding previous advance at the time immediately before the person ceased to be such a purchaser or borrower; or
 - (ii) in any other case—a term equal to the unexpired part of the last preceding previous advance; and
 - (e) in the case of an advance or a specified portfolio asset transferred to a transferee—a term equal to the unexpired part of the advance or asset so transferred.
- (2) Subject to section 37, the maximum term of a specified portfolio asset which vests in the Bank under section 6B is a term equal to the remainder of the term of that specified portfolio asset as at the relevant vesting date.
- (3) Where the term of a specified portfolio asset which vests in the Bank under section 6B, or of a subsidised advance increases as a result of a grant of instalment relief to the purchaser or borrower,

Section 37

the maximum term of that specified portfolio asset or advance shall be taken to have been increased by a period equal to the period by which the term of that asset or advance was so increased.

(4) In this section:

previous advance, in relation to a further advance in respect of a person, means an advance (whether a Corporation advance, initial advance, additional advance or further advance) in respect of which the person is or was a borrower, or a contract of sale, in respect of which the person is or was a purchaser, preceding the further advance in question.

37 Conversion of contract of sale into mortgage

Where a purchaser executes a mortgage in favour of the Bank for the balance of the purchase money and interest, and all other money, payable under a contract of sale, the Bank shall be taken to have made, on the date of the mortgage, an initial advance to the purchaser under the agreement of an amount equal to the sum of the balance of the purchase money and all other money (including interest) payable under the contract as at that date, being an advance that is subject to the prescribed conditions and on which subsidy is payable by the Commonwealth.

Part VI—Defence Service Homes Insurance Scheme

38 Defence Service Homes Insurance Scheme

For the purposes of this Act, there shall be a Commonwealth insurance scheme, to be known as the ***Defence Service Homes Insurance Scheme***, for the insurance of dwelling-houses, rights of residence in retirement villages, land, building materials and improvements of the kind referred to in section 38C.

38A Powers of Commonwealth to be exercised by the Secretary

- (1) The powers and functions of the Commonwealth under this Part shall be exercised by the Secretary on behalf of the Commonwealth.

Statement of Conditions

- (2) The Secretary must, in exercising the powers of the Commonwealth under this Part, comply with the Statement of Conditions determined in an instrument under this section, as the Statement of Conditions is in force from time to time.
- (3) The Minister may, by legislative instrument, determine the Statement of Conditions for the purposes of subsection (2).

Note: See subsection (6) for the content of the Statement of Conditions.

Revocation and replacement of Statement of Conditions

- (4) The Minister may, by legislative instrument, revoke the Statement of Conditions in force under this section. If the Minister does so, the Minister must, in that instrument, determine another Statement of Conditions for the purposes of subsection (2).

Note: See subsection (6) for the content of the Statement of Conditions.

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Variation of Statement of Conditions

- (5) The Minister may, by legislative instrument, vary the Statement of Conditions in force under this section.

Content of Statement of Conditions

- (6) The Statement of Conditions under this section must deal with:
- (a) the risks against which the Commonwealth will undertake insurance under this Part; and
 - (b) other terms and conditions relating to insurance undertaken by the Commonwealth under this Part.

This subsection does not limit the matters that may be dealt with by the Statement of Conditions.

No removal of right of person to receive payment

- (7) The Minister must not revoke or vary the Statement of Conditions so as to remove the right of a person to receive a payment to which the person had become entitled before the revocation or variation took effect.

38B Transfer of assets and liabilities

- (1) On the commencing day:
- (a) all insurance rights that immediately before that day were vested in the Corporation, vest in the Commonwealth by force of this subsection; and
 - (b) the Commonwealth becomes, by force of this subsection, liable to pay or discharge any insurance debts of the Corporation that existed immediately before that day.
- (2) Any insurance contract to which the Corporation was a party immediately before the commencing day has effect on and after that day as if:
- (a) the Commonwealth were substituted for the Corporation as a party to the contract; and

- (b) any reference in the contract to the Corporation were (except in relation to things that happened before that day) a reference to the Commonwealth.
- (3) If, immediately before the commencing day, insurance proceedings to which the Corporation was a party were pending in any court, the Commonwealth is, on that day, by force of this subsection, substituted for the Corporation as a party to the proceedings and has the same rights in the proceedings as the Corporation had.
- (4) In this section:

Corporation insurance means an insurance undertaken by the Corporation, or that the Corporation is to be taken to have undertaken, under this Act as in force at any time before the commencing day.

Insurance contract means:

- (a) a contract relating to any Corporation insurance;
- (b) a concessions agreement of the kind referred to in subsection 38(4C) or 38(4D) of this Act as in force at any time before the commencing day; or
- (c) a contract or arrangement of the kind referred to in section 38A of this Act as then in force.

Insurance debts means any debts, liabilities or obligations arising out of, or relating to, any Corporation insurance.

Insurance proceedings means any proceedings relating to any Corporation insurance.

Insurance rights means any rights, property or assets arising out of, or relating to, any Corporation insurance or insurance contract.

38C Insurance of dwelling-houses and rights of residence in retirement villages

Dwelling-houses

- (1) The Commonwealth may undertake insurance of, or in relation to:
-

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- (a) a dwelling-house that is wholly or partially owned by an eligible recipient; or
- (b) building materials on a site where there is, or is to be, a dwelling-house referred to in paragraph (a), being materials that are for use in the building of, or use otherwise in relation to, the dwelling-house; or
- (c) any permanent domestic improvement of a structural kind that has been made:
 - (i) to a dwelling-house referred to in paragraph (a); or
 - (ii) on the land on which such a dwelling-house is built, is being built or is to be built; or
- (d) building materials on a site where there is, or is to be, an improvement referred to in paragraph (c), being materials that are for use in the building of, or use otherwise in relation to, the improvement.

Note: For *eligible recipient*, see subsection 4(1).

- (2) The Commonwealth may undertake insurance against risks related to the land on which a dwelling-house referred to in paragraph (1)(a) is built, is being built or is to be built.

Rights of residence in retirement villages

- (3) The Commonwealth may undertake insurance of, or in relation to:
 - (a) a right of residence in a retirement village that is a right held by an eligible recipient; or
 - (b) building materials on a site where there is, or is to be, a retirement village covered by paragraph (a), being materials that are for use in the building of, or use otherwise in relation to, the retirement village; or
 - (c) any permanent domestic improvement of a structural kind that has been made to a retirement village covered by paragraph (a); or
 - (d) building materials on a site where there is, or is to be, an improvement referred to in paragraph (c), being materials that are for use in the building of, or use otherwise in relation to, the improvement.

Note: For *eligible recipient*, see subsection 4(1).

- (4) The Commonwealth may undertake insurance against risks related to the land on which a retirement village covered by paragraph (3)(a) is built, is being built or is to be built.

38CB Powers of Commonwealth under this Part

The Commonwealth may do all things necessary or convenient to be done for the purpose of undertaking insurance under this Part and, without limiting the generality of its powers under this section, may enter into an agreement of a kind known as a concessions agreement with a person who is, or is likely to be, the mortgagee of property insured with the Commonwealth.

38E Termination of insurance

- (1) This section applies if:
- (a) the Commonwealth has undertaken insurance under section 38C in relation to a dwelling-house that is wholly or partially owned by, or a right of residence in a retirement village that is a right held by, a person who is:
 - (i) a member of the Defence Force or a former member of the Defence Force; or
 - (ii) a member of a Peacekeeping Force or a former member of a Peacekeeping Force; and
 - (b) the person dies.

Notice that insurance will cease to have effect

- (2) If this section applies:
- (a) the insurance undertaken in relation to the dwelling-house, or the right of residence in the retirement village, does not cease to have effect because of the death of the person; and
 - (b) unless the insurance has already ceased to have effect for some other reason, the Secretary must give reasonable notice in writing to each person having an interest in the dwelling-house, or the right of residence in the retirement

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village, that the insurance will cease to have effect on a day specified in the notice.

Day insurance ceases to have effect

- (3) If the Secretary gives a notice under paragraph (2)(b), the insurance ceases to have effect on the day specified in the notice, unless it has already ceased to have effect.

Exception

- (4) If this section applies and the person referred to in paragraph (1)(a) is survived by a widow or widower, the Secretary must not give a notice under paragraph (2)(b) in relation to the dwelling-house or the right of residence in the retirement village.
- (5) Subsection (4) does not prevent the insurance ceasing to have effect for a reason other than the giving of a notice under paragraph (2)(b).

Notice not a legislative instrument

- (6) A notice under paragraph (2)(b) is not a legislative instrument.

38F Reinsurance

The Commonwealth may enter into a contract or arrangement with an insurer to ensure that money will be available to assist in meeting its liabilities under insurances undertaken by it under this Part.

38G Payments for fire brigade services

- (1) Where under a law of a State, a person carrying on in that State the business of insuring against the risk of fire is liable to make payments to the State, or to an authority of the State, to assist in meeting the cost of the fire brigade services in the State, the Commonwealth may make payments to the State, or authority, for that purpose.

- (2) The amount of a payment under this section shall not be more than the amount that the Commonwealth would be liable to pay under the law of the State if the law applied to the Commonwealth.

38GA Payments for State Emergency Services

- (1) Where under a law of a State a person carrying on in that State the business of insuring against the risk of loss of, or damage to, property is liable to make payments to the State, or to an authority of the State, to assist in meeting the cost of the State Emergency Service of the State, the Commonwealth may make payments to the State, or authority, for that purpose.
- (2) The amount of a payment under this section must not be more than the amount that the Commonwealth would be liable to pay under the law of the State if the law applied to the Commonwealth.

38H Limitation of liability of Commonwealth

- (1) The amount of the total liability of the Commonwealth to pay money to persons under this Part in relation to contracts of insurance to which it is a party, or that have effect as if the Commonwealth were a party, shall not at any time be more than the total amount of the insurance assets of the Commonwealth at that time.

- (2) In this section:

insurance assets means rights, property and assets vested in the Commonwealth under section 38B or acquired by the Commonwealth as a result of the exercise of its powers under this Part.

Part VII—Finance

40 Defence Service Homes Insurance Account

- (1) There is continued in existence the Defence Service Homes Insurance Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (3) There must be credited to the Account amounts equal to all payments to the Commonwealth in connection with its activities:
- (a) as an insurer under this Act, including a payment to it under a contract or arrangement referred to in section 38F; and
 - (b) with respect to insurance, as an agent for an insurer.
- (4) The purpose of the Account is to make all payments by the Commonwealth in connection with its activities:
- (a) as an insurer under this Act, including:
 - (i) a payment by it under a contract or arrangement referred to in section 38F; and
 - (ii) a payment by it under section 38G or 38GA; and
 - (iii) a payment by it that it is not legally required to make but that is of a kind that would be made by a person carrying on the business of insurance in accordance with sound commercial principles; and
 - (b) with respect to insurance, as an agent for an insurer.

40A Interest on amounts invested

- (1) Subject to this section, there must be credited to the Defence Service Homes Insurance Account, in respect of each financial year ending after the commencement of this section, an amount, calculated in such manner as the Finance Minister determines, by

way of interest on the amount standing to the credit of the Account during that year, whether that amount has been invested by the Finance Minister or not.

- (2) If interest is received by the Commonwealth from the investment of an amount standing to the credit of the Defence Service Homes Insurance Account, an amount equal to the interest must be credited to the Account.

41 Appropriation

The following payments by the Commonwealth to a credit provider shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) payments of subsidy;
- (b) payments under subclause 4.7 of the Bank agreement or under the corresponding provision of any other agreement.

Part VIII—Miscellaneous

43 Internal review of reviewable decisions

- (1) The Secretary shall, as soon as practicable after making a reviewable decision, cause a notice in writing to be given to the person whose interests are affected by the decision containing:
 - (a) the terms of the decision;
 - (b) the reasons for the decision; and
 - (c) a statement setting out particulars of the person's right to have the decision reviewed under this section.
- (2) A person whose interests are affected by a reviewable decision may apply in writing to the Secretary for a review of the decision.
- (3) An application for a review shall be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such further period (if any) as the Secretary, either before or after the end of that period, allows.
- (4) Subject to subsection (5), the Secretary shall, on receiving an application, review the decision, or cause it to be reviewed by a person to whom the Secretary's power under this section is delegated, being a person other than the person who made, or was involved in the making of, the decision and occupying a position senior to that occupied by the last-mentioned person.
- (5) Where a reviewable decision is made by the Secretary personally, the Secretary shall refer an application for review of the decision to the Minister and the Minister shall review the decision.
- (6) A person who reviews a reviewable decision may make a decision affirming, varying or revoking the reviewable decision and, where the person revokes the decision, may make such other decision as the person thinks appropriate.

- (7) A reference in this section to a person whose interests are affected by a reviewable decision is a reference to such a person other than a credit provider.

44 Review of decisions by Administrative Review Tribunal

- (1) Where a person makes a decision under subsection 43(6) affirming or varying a reviewable decision, the person shall cause a notice in writing to be given to the person whose interests are affected by the decision (other than a credit provider) containing:
- (c) the terms of the decision;
 - (d) the reasons for the decision; and
 - (e) a statement to the effect that, subject to the *Administrative Review Tribunal Act 2024*, application may be made to the Administrative Review Tribunal for review of the decision to which the notice relates.
- (2) Failure to include in a notice under subsection (1) a statement of the kind referred to in paragraph (1)(e) does not affect the validity of the decision to which the notice relates.
- (3) Subject to the *Administrative Review Tribunal Act 2024*, application may be made to the Administrative Review Tribunal by a person other than a credit provider for a review of a decision made under subsection 43(6) affirming or varying a reviewable decision.
- (4) In this section:

decision has the same meaning as in the *Administrative Review Tribunal Act 2024*.

45 Certain provisions of Bank agreement not to be revoked or amended

- (1) An agreement between the Commonwealth and the Bank that revokes, amends or otherwise affects the operation of subclause 8.1, 11.2, 11.3, 11.5, 11.7.6, 11.9, 11.10, 11.11, 11.12 or 11.13 of the Bank agreement has no effect.

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- (2) Subsection (1) does not apply to any agreement made between the Commonwealth and the Bank within 3 months after the day on which the *Veterans' Affairs Legislation Amendment Act (No. 1) 1996* receives the Royal Assent that amends, or otherwise affects, the operation of clause 8.1 or 11 of the Bank agreement.
- (3) Subsection (1) does not apply to any agreement made between the Commonwealth and the Bank within 3 months after the day on which the *Defence Service Homes Amendment Act 1997* receives the Royal Assent that amends or otherwise affects the operation of clause 11 of the Bank agreement.
- (4) An agreement made between the Commonwealth and the Bank within 3 months after the day on which that Act receives the Royal Assent that amends or otherwise affects the operation of the Bank agreement may be expressed to apply, or to have applied, from 5 January 1998.

45A Bankruptcy of purchaser or borrower

- (1) Except with the approval of the Secretary, the estate or interest of a purchaser or borrower in any land, land and dwelling-house or right of residence in a retirement village, that is the subject of a contract of sale, or of a mortgage or other security securing a Corporation advance or a subsidised advance:
 - (a) shall not be taken from the purchaser or borrower under the *Bankruptcy Act 1966*; and
 - (b) shall not be sold in satisfaction of a judgment debt, otherwise than by a credit provider or another mortgagee in the exercise of powers under a contract of sale, or a mortgage or other security.
- (2) Where 2 persons who are spouses or de facto partners of each other are joint purchasers or borrowers in relation to land, land and a dwelling-house or a right of residence in a retirement village, the Secretary may give an approval under subsection (1) in relation to the estate or interest of both of them if either of them becomes bankrupt or incurs a judgment debt.

45B Exchange of information

- (1) The Commonwealth shall give the Bank, as provided by the Bank agreement, any information in the possession of the Commonwealth that is required to be disclosed or provided to the Bank under the Bank agreement.
- (1A) If an agreement between the Commonwealth and a credit provider other than the Bank requires any information in the possession of the Commonwealth to be disclosed or provided to the credit provider, the Commonwealth must give the information to the credit provider.
- (2) The Bank shall give the Commonwealth, as provided by the Bank agreement, any information in the possession of the Bank that is required to be disclosed or provided to the Commonwealth under the Bank agreement.
- (3) If an agreement between the Commonwealth and a credit provider other than the Bank requires any information in the possession of the credit provider to be disclosed or provided to the Commonwealth, the credit provider must give the information to the Commonwealth.

45C Use and disclosure of personal information

- (1) This section applies to personal information about any of the following people:
 - (a) an applicant for a certificate of entitlement;
 - (b) a person who has been issued with a certificate of entitlement (whether or not the certificate is in force);
 - (c) a person, or the assignee of a person, to whom a subsidised advance has been made;
 - (d) a widow or widower of a person (other than an assignee) covered by paragraph (a), (b) or (c).
- (2) A person covered by subsection (1) may, for a purpose prescribed by the regulations:
 - (a) use the personal information; or

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- (b) disclose the personal information to another person covered by that subsection.
 - (3) This subsection covers the following people:
 - (a) the Secretary;
 - (b) a delegate of the Secretary under section 6A;
 - (c) a delegate of the Secretary under the *Defence Home Ownership Assistance Scheme Act 2008* (the **2008 Act**) or the *Defence Force (Home Loans Assistance) Act 1990* (the **1990 Act**);
 - (d) a credit provider, if the credit provider has:
 - (i) received an application for a subsidised advance from the person mentioned in paragraph (1)(b) of this section; or
 - (ii) made a subsidised advance to the person mentioned in paragraph (1)(c) of this section;
 - (e) a loan provider as defined under section 3 of the 2008 Act, if the loan provider has:
 - (i) received an application for a subsidised loan (as defined under section 3 of the 2008 Act) from the person mentioned in paragraph (1)(b) of this section; or
 - (ii) made a subsidised loan (as defined under section 3 of the 2008 Act) to the person mentioned in paragraph (1)(c) of this section;
 - (f) the Bank as defined under section 3 of the 1990 Act, if the Bank has:
 - (i) received an application for a subsidised loan (as defined under section 3 of the 1990 Act) from the person mentioned in paragraph (1)(b) of this section; or
 - (ii) made a subsidised loan (as defined under section 3 of the 1990 Act) to the person mentioned in paragraph (1)(c) of this section.
 - (4) The use and disclosure of personal information under subsection (2) is taken to be authorised by this Act for the purposes of:
 - (a) the *Privacy Act 1988*; and
-

- (b) any provision of a law of a State or Territory that provides that personal information may be used or disclosed if the use or disclosure is authorised by law.

Note: The authorisation under this subsection is only for the use and disclosure of personal information for a prescribed purpose mentioned in subsection (2).

- (5) The regulations may prescribe circumstances in which a person may, or must not, use or disclose personal information for the purposes of this section.
- (6) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

46 Reports from inspectors and valuers

The Secretary may, from time to time, obtain a report from an inspector or valuer as to the manner in which any advance has been expended and used by the borrower, and generally as to the state and condition of any land or land and dwelling-house in respect of which a contract of sale has been entered into or an advance has been made.

47 Dwelling-houses for incapacitated soldiers

The Secretary may provide a dwelling-house for the use of a person who is receiving, or is eligible to receive, a pension under Part II of the *Veterans' Entitlements Act 1986* and to whom section 24 of that Act applies.

50A Improper use of certain words

- (1) No person shall, without the authority of the Secretary, proof whereof shall lie upon the person accused, assume or use in connexion with his trade, business, calling or profession any words which would reasonably lead to the belief that his trade, business, calling or profession is being carried on under or for the purposes

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of this Act, or by or under the authority or control of the Corporation.

Penalty: 1 penalty unit.

- (2) Without limiting the preceding subsection, any person who:
- (a) places, or suffers or permits to be placed, on the building in which he carries on his trade, business, calling or profession; or
 - (b) uses in any advertisement or sign published or displayed in connexion with his trade, business, calling or profession; or
 - (c) uses on any document, as a description of his trade, business, calling or profession; or
 - (d) uses as a business name (within the meaning of the *Business Names Registration Act 2011*) or part of a business name; the words “War Service Homes” or “Defence Service Homes” or any words so nearly resembling them as to be likely to deceive, whether alone or in conjunction with any words, is taken to have committed an offence against that subsection.
- (3) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

50B Annual Report

- (1) The Secretary shall as soon as practicable after the last day of June first occurring after the commencing day, prepare and give to the Minister a report on the administration and operation of this Act (including the operations of the Corporation) during the period beginning on 1 July 1988 and ending on that last day of June.
- (2) The report referred to in subsection (1) shall be accompanied by:
- (a) financial statements, in such form as the Finance Minister approves, in respect of the operations of the Corporation (other than under section 38 of this Act as in force before the commencing day) during the period beginning on 1 July 1988 and ending on the winding-up day; and

- (b) financial statements, in such form as the Finance Minister approves, in respect of the operations of the Corporation under section 38 of this Act, as in force before the commencing day, and the administration of Part VI of this Act, as in force on and after that day, during the period to which the report relates.
- (3) The Secretary shall, as soon as practicable after each subsequent 30 June prepare and give to the Minister a report on the administration and operation of this Act during the year that ended on that day.
- (4) A report referred to in subsection (3) shall be accompanied by financial statements, in such form as the Finance Minister approves, relating to the administration of Part VI of this Act during the year to which the report relates.
- (5) Before giving financial statements to the Minister, the Secretary shall submit them to the Auditor-General, who shall report to the Minister:
 - (a) whether the statements are based on proper accounts and records;
 - (b) whether the statements are in agreement with those accounts and records; and
 - (c) as to such other matters arising out of the statements as the Auditor-General thinks should be reported to the Minister.
- (6) The Minister shall cause a copy of each report and its accompanying financial statements, together with the Auditor-General's report on those statements, to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

51 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters, which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act and, in particular,

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making provision for, and in relation to, the undertaking of insurance by the Commonwealth under Part VI.

Schedule 1—Agreement between the Commonwealth of Australia and Westpac Banking Corporation

Subsection 4(1)

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30. PERFORMANCE OF OBLIGATIONS BY CORPORATION SCHEDULES
 1. Schedule A—Documentation to be provided by Commonwealth in respect of Sub-clause 5.1 applications
 2. Schedule B—Documentation to be provided by Commonwealth in respect of Sub-clause 5.2 applications
 3. Schedule C—Lending Criteria
 4. Schedule D—Information to be provided by Bank on a monthly basis
 5. Schedule E—Withdrawal of Amounts under Excess Credit Arrangements.

An AGREEMENT made the 9 day of November 1988

BETWEEN

the COMMONWEALTH OF AUSTRALIA
(hereinafter referred to as “the Commonwealth”) of the one part

and

WESTPAC BANKING CORPORATION
of 60 Martin Place, Sydney in the State of New South Wales
(hereinafter referred to as “the Bank”) of the other part

WHEREAS:

- A. The Commonwealth by the Defence Service Homes Act 1918 (the Act) has established a body corporate known as the Defence Service Homes Corporation (the Corporation).
- B. Pursuant to the Act the Corporation currently provides assistance to members of the Australian Defence Force and certain other persons, to acquire homes.
- Such assistance is provided in the form of, but not limited to, advances secured by mortgages in favour of the Corporation, contracts for the sale of land on terms, as well as assistance in the form of benefits such as those now set out in Sections 18A, 29, 29AA, 29AB, 31, 33 and 35 of the Act.
- C. In the course of providing such assistance the Corporation has acquired interests as mortgagee in respect of mortgages over land and interests as vendor of land under contracts of sale on terms. The Corporation also is a party to other agreements which are supplementary to its lending activities under the Act.
- D. The Bank wishes to acquire such of the Corporation's interests as are described herein and for the consideration set out herein the Commonwealth is willing to pass legislation vesting such interests in the Bank.
- E. The Commonwealth is willing to provide the Bank with the exclusive right to provide advances and benefits to all persons who satisfy the tests of eligibility and entitlement under the Act current as at the date of this Agreement, other than those members of the Defence Force who enlisted after 14 May 1985.
- F. The Commonwealth is willing to pay to the Bank a Subsidy in respect of Specified Portfolio Assets, Subsidised Advances and certain other agreements.
- G. The Commonwealth and the Bank acknowledge that this Agreement is dependent upon the passage of legislation governing same, by the Parliament of the Commonwealth of Australia.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement except where the context otherwise requires:

1.1 *Definitions*

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| Act: | means the Defence Service Homes Act 1918 as amended as at the date of signing of this Agreement. |
| Agreement: | means this Agreement between the Commonwealth and the Bank signed on the above date. |
| Amended Act: | means the Defence Service Homes Act 1918 as amended by the Amending Act or any subsequent amendment. |
| Amending Act: | means the Defence Service Homes Amendment Act 1988. |
| Arrears: | means any amount of principal and/or interest due and unpaid by a Borrower under a Specified Portfolio Asset or Subsidised Advance. |
| Balance: | means the original amount lent to a Borrower, less all actual repayments of principal and all prepayments of principal (including any moneys held pursuant to a loan interest offset arrangement) plus unpaid interest and unpaid fees. |
| Borrower: | means a person who is liable to pay the outstanding amount: (a) of a Subsidised Advance in respect of which a subsidy is payable; or (b) secured by a Specified Portfolio Asset which vests in the Bank under section 6B of the Amended Act in respect of which Subsidy is payable. |
| Business Day: | means a day upon which banks are open for business in Sydney. |
| Calendar Year: | means a period of twelve (12) months commencing on 1 January. |
| Certificate of Entitlement: | means a Certificate of Entitlement issued by the Commonwealth to an Entitled Applicant. |
| Consideration: | means the moneys payable by the Bank in accordance with Clause 3. |
| Corporation: | means the Defence Service Homes Corporation. |
| Corporation advance: | means an advance made under Section 20 of the Act as in force before the Date of Proclamation, being an advance made |

Schedule 1 Agreement between the Commonwealth of Australia and Westpac Banking Corporation

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| | by the Corporation, whether before or after that day. |
| Date of Proclamation: | means the day on which section 10 of the Amending Act commences. |
| Entitled Applicant: | means a person who is determined by the Commonwealth to be entitled to a Corporation Advance, a Subsidised Advance, Instalment Relief or to a Transfer of Land and Subsidy pursuant to the Act and/or the Amended Act. |
| Establishment Fees: | means any fee charged by the Bank to a Housing Loan Customer relating to or dealing with the Bank's services for the processing and determining of applications for owner occupied housing loans secured by first mortgage or applications for increased loan facilities in relation to housing loans, including the preparation and execution of all associated documentation and payment of such loans, including the management, repayment and discharge of the loan security, excluding all State and Commonwealth Government charges relating to stamping and registration of documents and legal costs and the Bank's standard production and/or settlement fees. |
| Excess Credits: | means any amount paid by a Borrower in excess of the required monthly instalment on a Portfolio Asset and/or Subsidised Advance other than amounts which the Borrower elects to be applied as prepayment of principal pursuant to Sub-clause 9.7. |
| Financial Year: | means a period of twelve (12) months commencing on 1 July. |
| Housing Loan Customer: | means a person who has obtained or requested a loan from the Bank to finance the purchase, construction, extension, repair, or refinance of a dwelling in which it is intended that the person reside and who qualifies in terms of the Bank's lending criteria for owner occupied housing. |
| Instalment Relief: | means that relief provided to a Borrower by the Bank which is described in Sub-clause 8.4. |
| Limit: | means the original amount lent to a Borrower, as that amount is: (a) reduced by any scheduled repayments of principal (whether made or not) and any prepayments of principal (excluding any moneys held pursuant to a loan interest offset arrangement), and (b) increased by the amount of Instalment Relief granted by |

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| | the Bank pursuant to a Certificate of Entitlement. |
| Month: | means a period commencing at the beginning of a day of one of the twelve (12) months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month. |
| Other Portfolio Agreements: | means all guarantees for the payment of moneys due to the Corporation as mortgagee under Portfolio Mortgages including all mortgage insurance contracts, deeds of postponement between the Corporation as first mortgagee and subsequent registered interest holders, other agreements and acknowledgements collateral to the Portfolio Assets. |
| Portfolio Arrears: | means the total amount of principal and interest due and unpaid under all Specified Portfolio Assets and all Subsidised Advances. |
| Portfolio Assets: | means all Portfolio Mortgages, Portfolio Contracts of Sale, Portfolio Supplementary Agreements, Portfolio Land and Other Portfolio Agreements. |
| Portfolio Contracts of Sale: | means all existing contracts of sale as at the relevant Vesting Date entered into by the Corporation as vendor of the Portfolio Land. |
| Portfolio Land: | means land which is subject to a contract of sale pursuant to Part IV, or Sections 36, 48 or 48C of the Act and which is held by the Corporation as registered proprietor, or legal owner, or as a lessee under a Crown lease as at the relevant Vesting Date. |
| Portfolio Mortgages: | means all mortgages in which the Corporation has an interest as mortgagee as at the relevant Vesting Date, and includes all agreements and acknowledgements for further advances in accordance with the Act, all charges pursuant to Section 31 of the Act, and all mortgages to the Corporation as mortgagee pursuant to Section 36 or Section 48D of the Act. |
| Portfolio Supplementary Agreements: | means all rights and obligations of the Corporation pursuant to charges against Borrowers and acknowledgements by Borrowers pursuant to Section 18A (generally, land development costs) of the Act and agreements pursuant to Section 29AA and Section 29AB (generally, assistance to widows and others) of the Act and deeds of covenant between the Corporation as mortgagee and Borrowers or other persons. |

Schedule 1 Agreement between the Commonwealth of Australia and Westpac Banking Corporation

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| Potential Portfolio Assets: | means those assets which have not vested but which would have been Specified Portfolio Assets had the relevant Vesting Dates fallen on 30 April 1989. |
| Rest Day: | means in respect of a Specified Portfolio Asset, the 1st day of each month on which day principal and interest will be due and payable in respect of the relevant Subsidised Advance Loan Account or, in respect of a Subsidised Advance, the 5th day of each month on which day principal and interest will be due and payable in respect of the relevant Subsidised Advance Loan Account. |
| Specified Portfolio Assets: | means all Portfolio Mortgages, Portfolio Contracts of Sale, and Portfolio Supplementary Agreements. |
| Subsidised Advance: | means any advance made by the Bank in accordance with the Certificate of Entitlement, or an initial advance which the Bank is taken to have made pursuant to Section 37 of the Amended Act. |
| Subsidised Advance Loan Account: | means an account established by the Bank for the purpose of administering a Specified Portfolio Asset or a Subsidised Advance. |
| Subsidy: | means the interest subsidy referred to in Clause 11. |
| Subsidy Scheme: | means the scheme for provision of Subsidy. |
| Transfer of Land and Subsidy: | means a transfer of land or land and dwelling house subject to a Specified Portfolio Asset or a mortgage securing a Subsidised Advance. |
| Vesting Dates: | means the dates as determined by the Minister in accordance with the Amended Act. |

1.2 *Interpretation*

- 1.2.1 Words importing one gender shall include the other gender.
- 1.2.2 Words importing the singular shall include the plural and vice-versa.
- 1.2.3 A reference to a Clause shall be a reference to all of its Sub-clauses, and a reference to a Sub-clause shall be a reference to all its Sub-Sub-clauses unless the context otherwise admits.
- 1.2.4 The Clause headings in this Agreement are for reference only and have no effect on the construction, interpretation or meaning of the Clauses.

- 1.2.5 The Schedules referred to herein form part of and are subject to the terms of this Agreement.
- 1.2.6 Where in this Agreement any period of time dating from a given day, act, or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned inclusive of such day or of the day of such act or event.
- 1.2.7 Where the last day of any period prescribed or allowed by this Agreement for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.
- 1.2.8 Where in this Agreement any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.
- 1.2.9 A reference to a Clause shall be a reference to a Clause in this Agreement.
- 1.2.10 A reference to the parties shall be a reference to the parties to this Agreement.
- 1.2.11 All sums of money and all payments made under this Agreement shall be in Australian dollars.

2. AGREEMENT

2.1 *Commonwealth to vest Portfolio Assets*

Subject to Clause 4, all of the Corporation's interests, rights, title and obligations in the Portfolio Assets will vest in the Bank pursuant to the Amending Act for the Consideration referred to in Clause 3.

2.2 *Assumption of obligations by Bank*

Subject to Clause 4, the Bank agrees as and from the relevant Vesting Date to assume the burden of the obligations of the Corporation under the Portfolio Assets.

2.3 *Payment of Subsidy*

Pursuant to Clause 11, the Commonwealth further agrees to pay to the Bank a Subsidy with respect to Specified Portfolio Assets and Subsidised Advances.

- 2.4 *Bank to act in accordance with Subsidy Scheme*
The Bank further agrees to be bound by and act at all times in accordance with the Subsidy Scheme.
- 2.5 *Provision of Subsidised Advances*
The Bank further agrees to provide Subsidised Advances in accordance with Clause 7.
- 2.6 *Provision of Instalment Relief and effecting Transfer of Land and Subsidy*
The Bank further agrees to provide Instalment Relief in accordance with Clause 8 and to give effect to the Commonwealth's consent to Transfer of Land and Subsidy in accordance with Clause 8.
- 2.7 *Payment of deposits*
Pursuant to Sub-clause 4.7, the Commonwealth agrees to pay to the Bank certain sums deposited with the Corporation by Borrowers.
- 2.8 *Exclusive right of Bank to receipt of Subsidy*
Pursuant to Clause 13, the Commonwealth agrees to grant to the Bank the exclusive right to receipt of Subsidy in respect of the advances and other benefits as described herein.
3. CONSIDERATION AND PAYMENT
- 3.1 *Calculation of Consideration*
The Bank hereby agrees to pay to the Commonwealth the Consideration at the times and in the manner referred to in this Clause.
- 3.1.1 The Consideration referred to in Sub-clause 3.1 is the sum of:
- (a) one hundred million dollars (\$100,000,000); and
 - (b) the Total Face Value; and
 - (c) interest calculated on a weekly basis at the Interest Rate as defined below on that part of the Total Face Value which has not been paid by the Bank to the Commonwealth as from the Interest Commencement Date to the date that payment of that part of the Consideration is received by the Commonwealth.
- 3.1.2 For the purposes of this Clause, the words:
- (a) "Face Value" shall mean
 - (i) if all the relevant Vesting Dates occur prior to the Interest Commencement Date the Principal Sum of

- the Specified Portfolio Assets as at their relevant Vesting Dates; or
- (ii) if one or more of the relevant vesting Dates falls after the Interest Commencement Date the Principal Sum of the Specified Portfolio Assets which vested prior to the Interest Commencement Date as at their relevant Vesting Dates and the Principal Sum of all Potential Portfolio Assets as at the Interest Commencement Date.
 - (b) “Final Face Value” shall mean the Principal Sum of the Specified Portfolio Assets as at the relevant Vesting Dates whenever they occur.
 - (c) “Interest Commencement Date” means 30 April 1989 or, if the Date of Proclamation is a date between 1 January 1989 and 30 June 1989, the date which is one hundred and twenty (120) days after the Date of Proclamation.
 - (d) “Interest Rate” shall be the weighted average yield set at the most recent weekly tender for the thirteen (13) week Treasury Note.
 - (e) “Principal Sum” shall mean the outstanding principal, including all arrears of principal, and the outstanding interest, including all interest billed and unpaid as well as accrued since the last billing date.
 - (f) “Total Face Value” shall mean the sum of the Face Values.
 - (g) “Total Final Face Value” shall mean the sum of the Final Face Values.

3.2 *Payment Schedule*

The Consideration, subject always to Sub-clause 3.4, shall be payable by instalments as follows:

- 3.2.1 The sum of one hundred million dollars (\$100,000,000) referred to in Sub-clause 3.1.1(a) shall be due and payable by the Bank to the Commonwealth as follows:
- (a) the sum of ten million dollars (\$10,000,000) on the Date of Proclamation; and
 - (b) the sum of ninety million dollars (\$90,000,000) on 1 January 1989.

- 3.2.2 The Face Value referred to in Sub-clause 3.1.1(b) shall be a debt due by the Bank to the Commonwealth as at the relevant Vesting Date(s) or as at the Interest Commencement Date, whichever is the earlier, and the Total Face Value shall be paid in instalments by the Bank as set out in Sub-clauses 3.2.3, 3.2.4 and 3.2.5.
- 3.2.3 The first instalment of the Total Face Value in the sum of four hundred million dollars (\$400,000,000) shall be paid by the Bank on 15 March 1989.
- 3.2.4 Subject to Sub-clause 3.2.6, the second instalment of the Total Face Value in the sum of five hundred million dollars (\$500,000,000) and interest thereon shall be paid by the Bank at its election on a date between 1 July 1989 and 7 July 1989, of which date approximately seven (7) days prior notice shall be given to the Commonwealth in writing.
- 3.2.5 Subject to Sub-clause 3.2.6, the balance of the Total Face Value and interest thereon shall be paid by the Bank at its election on a date between 8 July 1989 and 14 July 1989, of which date approximately seven (7) days prior notice shall be given to the Commonwealth in writing.
- 3.2.6 The Commonwealth may elect to receive the whole or any part of the instalment of five hundred million dollars (\$500,000,000) referred to in Sub-clause 3.2.4 and interest thereon prior to 1 July 1989, provided that the Commonwealth notifies the Bank in writing on or prior to 24 May 1989 or such later date as may be agreed between the parties of the Commonwealth's election to receive the whole or any part of the instalment of five hundred million dollars (\$500,000,000) and interest thereon prior to 1 July 1989.
- (a) In the event that the Bank receives notice under this Sub-clause the Bank shall pay the amount specified in the notice on a date of its election prior to 1 July 1989, which date shall be notified by the Bank to the Commonwealth in writing approximately seven (7) days prior to the date on which the Bank elects to pay the amount and interest thereon.
- (b) In the event that the Bank pays the whole or any part of the instalment of five hundred million dollars (\$500,000,000)
-

and interest thereon on or prior to 30 June 1989, the balance of the Total Face Value and interest thereon shall be paid by the Bank to the Commonwealth in two equal instalments as follows:

- (i) the first instalment shall be paid in the manner set out in Sub-clause 3.2.4; and
- (ii) the second instalment shall be paid in the manner set out in Sub-clause 3.2.5.

3.3 *Manner of Payment*

The instalments of the Consideration referred to in Sub-clause 3.2 shall be paid by 11.00 a.m. on the due dates by depositing the relevant amounts to the credit of the Commonwealth Public Account No. 002 21030-0 with the Reserve Bank of Australia, Sydney, or as may be otherwise decided by the Commonwealth and notified to the Bank.

3.4 *Delay in Proclamation of Amending Act*

The Commonwealth and the Bank agree that, in the event that the Date of Proclamation is a date between 1 January 1989 and 30 June 1989, then:

- (a) the Bank shall pay the one hundred million dollars (\$100,000,000) referred to in Sub-clause 3.1.1(a) on the Date of Proclamation; and
- (b) the Bank shall pay the Total Face Value as follows:
 - (i) by the payment in the sum of four hundred million (\$400,000,000) seventy-five (75) days after the Date of Proclamation; and
 - (ii) by the payment of the balance of the Total Face Value one hundred and twenty (120) days after the Date of Proclamation or such other date as may be agreed between the parties, together with interest thereon calculated at the Interest Rate as from the Interest Commencement Date.

3.5 *Notice of Face Value*

The Corporation shall calculate the Face Value and shall notify the Bank of the Face Value within seven (7) days of the relevant Vesting Date or the Interest Commencement Date, whichever is the earlier.

3.6 *Bank audit of Face Value*

The Bank and the Commonwealth agree that the Bank may audit the Face Value. Such audits are to be carried out at the Bank's own expense, in the following way;

- (a) by random physical examination of the Corporation's security packets;
- (b) by random examination of loan approval documentation and the individual accounts;
- (c) by examination of the systems used by the Corporation for the calculation of the Face Value; and
- (d) by random examination of accounts in Arrears.

3.6.1 The Corporation shall provide the Bank access to the documentation and information necessary to enable the Bank to conduct such audits.

3.7 *Resolution of dispute as to amount of Face Value*

3.7.1 In the event that the Bank disagrees with or disputes that the Face Value notified by the Corporation is the correct Face Value, it shall notify the Commonwealth in writing no later than thirty (30) days after:

- (a) receipt of the Corporation's calculation of the Face Value made pursuant to Sub-clause 3.5; and
- (b) obtaining access to the documentation and information specified in Sub-clause 3.6.1.

3.7.2 Within fourteen (14) days of notice being given pursuant to Sub-clause 3.7.1 the parties shall meet with a view to agreeing on the correct sum for the Face Value.

3.7.3 In the event that the parties are unable to agree within twenty-eight (28) days of first meeting, the parties will appoint an independent registered company auditor to conduct an audit of and determine the correct Face Value. In the event that the parties are unable to agree on the appointment of an independent auditor an auditor will be selected by the President of the Institute of Chartered Accountants in Australia. The determination of Face Value by an independent auditor pursuant to this Clause shall be conclusive and binding on both parties. The fees and expenses of the auditor shall be borne equally by the parties.

3.7.4 If an auditor appointed pursuant to Sub-clause 3.7.3 makes a determination prior to the date for payment fixed pursuant to Sub-clause 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii) then the balance payable pursuant to the applicable Sub-clause shall be

adjusted, if necessary, by reference to the determination. In the event that the procedures set out in Sub-clauses 3.6, 3.7.1, 3.7.2 and 3.7.3 are not completed prior to such date then the Bank shall pay to the Commonwealth the Total Face Value notified by the Corporation pursuant to Sub-clause 3.5, together with interest, in the manner set out in Sub-clause 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii). In the event that the auditor's determination requires an adjustment to the sum paid pursuant to Sub-clause 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii) the amount payable by either party as a result of the audit shall be paid, together with interest calculated at the Interest Rate, to the other party forthwith.

3.8 *Vesting Date falling after Interest Commencement Date*

In the event that one or more of the Vesting Dates falls after the Interest Commencement Date the Corporation shall calculate the Final Face Value and shall notify the Bank of such Final Face Value within seven (7) days of the relevant Vesting Date.

3.8.1 If amounts are notified pursuant to Sub-clause 3.8 prior to payment of the balance of the Total Face Value pursuant to Sub-clause 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii) then the sum payable by the Bank pursuant to the applicable Sub-clause shall be reduced by the sum of any amount by which the Total Face Value exceeds the Total Final Face Value and interest on such difference calculated at the Interest Rate from the date of notification until payment of the balance.

3.8.2 If an amount is notified pursuant to Sub-clause 3.8 after the payment of the balance of the Total Face Value pursuant to Sub-clause 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii) then the Commonwealth shall pay to the Bank without interest any amount by which the Total Face Value exceeds the Total Final Face Value.

3.9 *Bank audit of Final Face Value*

The Bank and the Commonwealth agree that the Bank may audit the Final Face Value. Such audits are to be carried out at the Bank's own expense, in the following way:

- (a) by random physical examination of the Corporation's security packets;

- (b) by random examination of loan approval documentation and the individual accounts;
- (c) by examination of the systems used by the Corporation for the calculation of the Final Face Value; and
- (d) by random examination of accounts in Arrears.

3.9.1 The Corporation shall provide the Bank access to the documentation and information necessary to enable the Bank to conduct such audits.

3.10 *Resolution of Dispute as to Final Face Value*

3.10.1 In the event that the Bank disagrees with or disputes that the Final Face Value notified by the Corporation is the correct Final Face Value, it shall notify the Commonwealth in writing no later than thirty (30) days after:

- (a) receipt of the Corporation's calculation of the Final Face Value made pursuant to Sub-clause 3.8; and
- (b) obtaining access to the documentation and information specified in Sub-clause 3.9.1.

3.10.2 Within fourteen (14) days of notice being given pursuant to Sub-clause 3.10.1 the parties shall meet with a view to agreeing on the correct sum for the Final Face Value.

3.10.3 In the event that the parties are unable to agree within twenty-eight (28) days of first meeting, the parties will appoint an independent registered company auditor to conduct an audit of and determine the correct Final Face Value. In the event that the parties are unable to agree on the appointment of an independent auditor an auditor will be selected by the President of the Institute of Chartered Accountants in Australia. The determination of Final Face Value by an independent auditor pursuant to this Clause shall be conclusive and binding on both parties. The fees and expenses of the auditor shall be borne equally by the parties.

3.10.4 If an auditor appointed pursuant to Sub-clause 3.10.3 makes a determination prior to the date for payment fixed pursuant to Sub-clauses 3.2.5 or, if applicable, Sub-clause 3.4(b)(ii) then the balance payable pursuant to the applicable Sub-clause shall be adjusted, if necessary, by reference to the determination. In the event that the procedures set out in Sub-clauses 3.9, 3.10.1,

3.10.2 and 3.10.3 are not completed prior to such date then any adjustment required by Sub-clause 3.8.1 or payment required by Sub-clause 3.8.2 shall be based on the amount notified pursuant to Sub-clause 3.8. In the event that the auditor's determination requires a further adjustment, the amount payable by either party as a result of the audit shall be paid, together with interest calculated at the Interest Rate, to the other party forthwith.

4. VESTING OF PORTFOLIO ASSETS AND PAYMENT OF SUMS DEPOSITED BY BORROWERS

4.1 *Vesting*

On the Vesting Dates the Corporation's interests, title, rights and obligations in the Portfolio Assets shall progressively vest in the Bank by operation of the amending Act in the manner provided for under the Agreement and it is a condition of this Agreement that the Amending Act shall be effective to so transfer those interests, title, rights and obligations from the Corporation to the Bank.

4.2 *Bank bound by Portfolio Assets*

The Bank hereby acknowledges and agrees that the Amending Act should bind it, as and from the Vesting Dates, to comply with the terms and conditions of the Portfolio Assets.

4.3 *Bank to perform the terms and conditions of Portfolio Assets*

The Bank hereby acknowledges and agrees that the Amending Act should bind it, as and from the relevant Vesting Dates, to abide by and duly perform the terms and conditions and obligations of the Corporation under the Portfolio Assets.

4.4 *Nomination of Vesting Dates*

The Bank shall be entitled to give written notices to the Commonwealth and the Corporation nominating a date for the vesting of the Portfolio Assets in one or more of the States and Territories provided that;

- (a) such date may not be earlier than ten (10) days from the date of giving notice;
- (b) such date in relation to a particular State or Territory may not be earlier than;
 - (i) the date identified in Sub-clause 4.6 in respect of that State or Territory; or
 - (ii) if the Date of Proclamation is a date between 1 January 1989 and 30 June 1989, then such date referred to in

Sub-paragraph (i) shall be extended by the number of days between 1 January 1989 and the Date of Proclamation (both dates being inclusive).

4.5 *Ministerial Determination of Vesting Dates*

Subject to Sub-clause 4.5.1 the Minister shall determine the Vesting Date in relation to the Portfolio Assets in each State or Territory. The Vesting Date so determined shall not differ by more than three (3) days from the date for vesting in relation to a State or Territory previously notified by the Bank pursuant to Sub-clause 4.4.

4.5.1 In the event that the Bank is in default under this Agreement in payment of part or all of the Consideration referred to in Sub-clause 3.1;

- (a) on the date of its giving a notice to the Minister under Sub-clause 4.4;
 - (b) on the date upon which the Minister, pursuant to Sub-clause 4.5, determines a date for vesting; or
 - (c) subsequent to a date being fixed by the Minister for vesting under Sub-clause 4.5 but prior to vesting being effected;
- the Minister may refuse to determine a Vesting Date or may revoke any determination which has been made, up to the Vesting Date so determined.

4.5.2 Where the Bank has remedied its default in payment of part or all of the Consideration, it may give a further written notice to the Commonwealth and the Corporation pursuant to Sub-clause 4.4 and the Minister shall thereupon determine the Vesting Date in accordance with Sub-clause 4.5.

4.6 *Earliest Dates to be specified*

The date to be specified in the Bank's notice under Sub-clause 4.4 shall not be earlier than the date identified below in respect of each State and Territory.

| STATE | DATES |
|--|------------------|
| South Australia and the Northern Territory | 15 January 1989 |
| Western Australia | 1 February 1989 |
| Queensland | 28 February 1989 |
| Victoria and Tasmania | 15 March 1989 |
| New South Wales and the Australian | |

Capital Territory and Norfolk Island

15 April 1989

4.7 *Existing Sums Deposited by Borrowers*

The Commonwealth further agrees to pay to the Bank and the Bank further agrees to treat as Excess Credits under Clause 9 the sums deposited with the Corporation by Borrowers to the credit of Borrowers' accounts pursuant to Section 29 of the Act, by paying all such sums on a State by State basis in the manner provided in this Clause for the vesting of Portfolio Assets so that all such sums deposited by Borrowers in each State shall be paid to the Bank on the relevant Vesting Date.

5. TRANSITION PROVISIONS

5.1. *Incomplete Applications for an Advance under the Act*

On 1 December 1988 or on the Date of Proclamation whichever is the later, those applications for a Corporation Advance by a person who has not previously received assistance under the Act or by a person who has previously received assistance under the Act and has obtained or sought the Minister's approval for assistance pursuant to Section 20A of the Act, which are in the possession of the Corporation as at such date but for which a mortgage has not been executed by both the Corporation and the Entitled Applicant (or has not been executed by the Entitled Applicant in such cases where the mortgage is required to be executed only by the Entitled Applicant) and are identified below, shall be dealt with by the parties as follows.

5.1.1 The Corporation shall treat any such application as an application for a Certificate of Entitlement in accordance with Clause 7.

No later than when the Corporation delivers a Certificate of Entitlement to the Bank, the Corporation shall also deliver to the Bank a copy of any such application and the Bank shall treat that copy of such application in the same way as an application for a Subsidised Advance is to be treated under Clauses 7 and 8.

5.1.2 Where the Corporation has approved a Corporation Advance in respect of any such application, on receipt of the Certificate of Entitlement and a copy of the loan approval letter, the Bank shall be bound to make a Subsidised Advance on the same terms and conditions as those approved by the Corporation and shown in Part A of the Certificate of Entitlement.

- 5.1.3 The Bank shall accept any documentation and results of investigations carried out by the Corporation in respect of any such application and treat them as though the Bank had prepared the documentation or carried out the investigations. These investigations shall include but not be limited to Certificate of Title searches, property surveys, valuations and decisions as to creditworthiness.
- 5.1.4 The Bank agrees that where any such application would have been due for settlement by the Corporation in the ordinary course of events in the period of four (4) weeks from 1 December 1988 or the Date of Proclamation whichever is the later, and the Bank notifies the Corporation that the Bank is unable to effect settlement and make the Subsidised Advance then the Corporation may proceed to make the Corporation Advance and the mortgage taken by the Corporation to secure the Corporation Advance will be included in the Portfolio Assets to be vested in the Bank in accordance with Clause 4.

5.2 *Incomplete Applications for Benefits under the Act*

On the relevant Vesting Date for any Portfolio Asset any application or request by a Borrower or other person relating to a Portfolio Asset for an additional advance pursuant to Section 20 of the Act or for relief pursuant to Sections 29AA or 29AB of the Act or for an exercise of the Corporation's powers under Sections 31, 33 or 35 of the Act which are in the possession of the Corporation at such relevant Vesting Date shall be dealt with by the parties as follows.

- 5.2.1 The Commonwealth shall treat any such application or request as an application for Certificate of Entitlement in accordance with Clause 7. No later than when the Commonwealth delivers a Certificate of Entitlement to the Bank the Commonwealth shall also deliver to the Bank a copy of any such application or request and the Bank shall treat that application or request in the same way as an application for a Subsidised Advance, Instalment Relief or Transfer of Land and Subsidy, whichever is appropriate, is to be treated under Clauses 7 or 8.
- 5.2.2 Where the Corporation has approved a Corporation Advance in respect of any such application or request, or approved any such application or request, on receipt of the Certificate of Entitlement and a copy of the loan approval letter, the Bank

shall be bound to make a Subsidised Advance or provide Instalment Relief or give effect to the Transfer of Land and Subsidy on the terms and conditions as set out in Part A of the Certificate of Entitlement.

- 5.2.3 The Bank shall accept any documentation and results of investigations carried out by the Corporation in respect of any such application and treat them as though the Bank had prepared the documentation or carried out the investigations. These investigations shall include but not be limited to Certificate of Title searches, property surveys, valuations and decisions as to creditworthiness.

5.3 *Court Orders*

In respect of any Court order affecting or relating to any Portfolio Asset as at the Vesting Date for such Portfolio Asset and in respect of any Court order affecting or relating to any application for a Corporation Advance pursuant to the Act as detailed in Sub-clause 5.1, the Bank agrees that upon being notified by the Commonwealth of the contents of such Court order it shall observe the requirements of the Court order. The Corporation shall advise the Bank of any such Court order on or prior to the relevant Vesting Date.

5.4 *Instalments*

Upon receipt by the Commonwealth of any instalment payment in respect of any Portfolio Asset subsequent to the vesting of the Portfolio Asset in the Bank in accordance with Clause 4, the Commonwealth shall within seven (7) days of such receipt forward the said instalment payment to the Bank.

5.5 *Fees and Charges*

The Bank hereby agrees that it will not impose on an applicant, an Entitled Applicant or a Borrower any fees or charges whatsoever relating to the Bank's administration, preparation, lodging, registration or otherwise dealing with any application referred to in Sub-clauses 5.1 and 5.2 or the security or charge in respect of such an application where such a fee or charge has already been paid by the applicant, Entitled Applicant or Borrower to the Corporation. Where such a fee or charge paid to the Corporation has not been fully expended by the Corporation the unexpended amount shall be transferred to the Bank by the Corporation at the time that applications are transferred in accordance with Sub-clauses 5.1.1 and 5.2.1.

5.6 *Documentation provided by the Commonwealth*

For the purposes of this Clause the Commonwealth shall provide to the Bank such documents as are necessary for the Bank to continue with an application for a Corporation Advance, Instalment Relief and/or Transfer of Land and Subsidy in accordance with Clauses 7 and 8 and in particular:

- 5.6.1 after the Date of Proclamation or 1 December 1988, whichever is the later, the Commonwealth shall promptly provide to the Bank documentation in accordance with Schedule “A” in respect of the applications for Corporation Advances referred to in Sub-clause 5.1; and
- 5.6.2 after the relevant Vesting Date, the Commonwealth shall provide to the Bank within the period specified in Schedule “B” such documentation in respect of the Portfolio Assets transferred on the relevant Vesting Date or the applications referred to in Clause 5.2 which have been agreed to between the parties and identified in Schedule “B”.

5.7 *Discount of Fees*

The Bank agrees that the Establishment Fee charged with respect to all applications lodged in the twelve (12) month period following the Date of Proclamation shall be subject to a fifteen (15) per cent discount as against the Establishment Fees charged to its Housing Loan Customers.

6. *AMENDING ACT*

6.1 *Amending Act being passed by Parliament*

This Agreement is binding on the parties but, except for this Clause, is subject to and conditional upon the Amending Act being passed by Parliament in the form of the draft Bill initialled on behalf of the parties at the time of execution of this Agreement with such amendments only as:

- (i) are agreed in writing by the parties; or
- (ii) are taken to have been agreed to by the Bank pursuant to Sub-clause 6.4.

6.2 *Amendments to draft Bill*

In the event that the Amending Act passed by Parliament should contain any amendments from the draft Bill referred to in Sub-clause 6.1, the Commonwealth shall within two (2) days of the passage of the

Amending Act give notice to the Bank of the amendments together with such information relating to those amendments as it wishes to provide.

6.3 *Effect of Amendments*

If in the opinion of the Bank, such amendments:

- (a) alter the obligations of the Bank set out in the Agreement or the draft Bill;
- (b) alter the arrangements for the payment of Subsidy set out in the Agreement or the draft Bill;
- (c) reduce or restrict the entitlements of persons set out in the Agreement, the Act or the draft Bill in a way which is likely to reduce, from levels applying in recent years, the number of Entitled Applicants applying for advances;
- (d) alter any of the obligations of the Commonwealth or the Corporation set out in the Agreement, the Act or the draft Bill; or
- (e) result in any financial consequences adverse to the Bank, and are unacceptable to the Bank, the Bank shall notify the Commonwealth of such opinion within seven (7) days of receipt of the notice under Sub-clause 6.2, or such further period as may be agreed upon by the parties, and upon receipt of such notice the Agreement shall terminate.

6.4 *No Notice by Bank*

In the event that the Bank does not give notice under Sub-Clause 6.3, it shall be taken to have agreed to such amendments for the purposes of Sub-clause 6.1.

6.5 *Form of draft Bill*

The Commonwealth agrees that the draft Bill to be submitted to Parliament shall be the draft Bill referred to in Sub-clause 6.1 with only such amendments thereto as may be agreed in writing between the parties.

6.6 *Effect of Termination*

In the event that the Amending Act is not passed in the form of the draft Bill referred to in Sub-clause 6.1 and, as a result, the condition contained in Sub-clause 6.1 is not met and the Agreement is terminated or has no force or effect, neither the Bank nor the Commonwealth will have any right to claim compensation, losses, expenses, costs or damages arising or resulting from this Agreement against the other.

6.7 *Agreement approved by Amending Act*

The parties hereby agree that a copy of this Agreement shall be annexed to and approved by the Amending Act.

6.8 *Amending Act provisions*

The Amending Act shall provide that the Corporation's interests, rights, title and obligations in the Portfolio Assets shall vest in the Bank progressively on the Vesting Dates determined in accordance with Clause 4.

6.9 *Date of Proclamation after 30 June 1989*

In the event that the Date of Proclamation is a date after 30 June 1989 then this Agreement shall be of no force or effect and neither the Bank nor the Commonwealth will have any right to claim for compensation, losses, expenses, costs or damages arising or resulting from this Agreement against the other.

7. APPLICATION/REVIEW—GENERAL

7.1 *Applications*

7.1.1 In the event of an applicant approaching the Bank for

- (a) a Subsidised Advance;
- (b) Instalment Relief; and/or
- (c) Transfer of Land and Subsidy

the Bank shall provide the applicant with an application for a Certificate of Entitlement which application shall be completed by the applicant.

7.1.2 The Bank agrees that nothing in this Agreement prohibits an applicant for a Certificate of Entitlement from applying initially directly to the Commonwealth for the purpose of obtaining such Certificate except that in the case of an application for a Certificate of Entitlement for Instalment Relief, such application can only be made through the Bank.

7.1.3 The Bank or the applicant shall forthwith on completion of an application for a Certificate of Entitlement forward that application to the Commonwealth.

7.1.4 On receipt by the Commonwealth of a completed application for a Certificate of Entitlement either from the Bank or an applicant, the Commonwealth shall proceed to determine whether the applicant is an Entitled applicant and, if so, shall issue to the applicant a Certificate of Entitlement.

7.1.5 On receipt by the Commonwealth of a completed application for a Certificate of Entitlement for Instalment Relief from the Bank, the Commonwealth shall proceed to determine whether the applicant is an Entitled applicant and, if so, shall issue a Certificate of Entitlement within seven (7) days of receipt of the said application by the Commonwealth.

7.2. *Certificate of Entitlements*

7.2.1 A Certificate of Entitlement shall comprise two (2) parts, part A of which shall be limited to the following information:

- (a) the maximum amount of a Subsidised Advance;
- (b) the maximum term of a Subsidised Advance;
- (c) the purpose for which the Subsidised Advance is to be used by the entitled applicant;
- (d) the interest rate chargeable by the Bank to an Entitled Applicant in respect of a Subsidised Advance;
- (e) where payment to a nominated payee is required, the name of that payee;
- (f) in the case of Instalment Relief, the amount of reduction in instalments, the period over which such reduction is to be granted by the Bank to the Borrower and the amount, if any, of the outstanding arrears on the Borrower's Subsidised Advance Loan Account at the date of effect of the Instalment Relief that may be incorporated in the Limit of that account; and
- (g) in the case of a consent to a Transfer of Land and Subsidy, whether the Commonwealth consents to pay Subsidy to the Bank for and on behalf of the proposed transferee in respect of the holding to be transferred.

7.2.2 Part B of a Certificate of Entitlement may include any terms a breach of which would permit the Commonwealth to terminate or suspend Subsidy under Sub-clause 11.15.

7.2.3 The Certificate of Entitlement issued by the Commonwealth pursuant to Sub-clause 7.1.4 shall lapse after the expiration of three (3) months from its date of issuance unless in that period the Bank has approved in accordance with the terms of the Certificate a Subsidised Advance, Instalment Relief or has agreed to give effect to the Commonwealth consent to a

Transfer of Land and Subsidy to the person to whom that Certificate was issued.

7.3 *Obligations of Bank upon receipt of Certificate of Entitlement*

As and from 1 December 1988 or the Date of Proclamation whichever is the later, the Bank agrees that it shall, as soon as it receives a Certificate of Entitlement, consider and assess an Entitled Applicant's application to the Bank, in accordance with the lending criteria set out in Schedule "C", and advise the Entitled Applicant of the outcome of the same within fifteen (15) Business Days of receipt of such application or Certificate of Entitlement, whichever is the later. Where the application is successful the Bank agrees that it will make the Subsidised Advance, grant the Instalment Relief and/or give effect to the Commonwealth's consent to the Transfer of Land and Subsidy for or on behalf of the Entitled Applicant, in accordance with Part A of the Certificate of Entitlement issued by the Commonwealth, on the date requested by the Entitled Applicant, subject to the completion by the Entitled Applicant and the Bank of first mortgage requirements and documentation where necessary.

7.4 *Nominated Payee*

The Bank agrees that where it is specified in the Certificate of Entitlement that payment is to be made to a nominated payee, the Bank shall draw a bank cheque in favour of that nominated payee and make available same to the Borrower.

7.5 *Application of Lending Criteria*

The Bank is not obliged to make a Subsidised Advance or grant Instalment Relief or give effect to the Commonwealth's consent to the Transfer of Land and Subsidy unless the lending criteria specified in Schedule "C" are satisfied.

7.6 *Alteration of Lending Criteria*

The Bank and the Commonwealth agree that the lending criteria set out in Schedule "C" will be subject to alteration from time to time to reflect changes in prevailing market conditions and lending norms as evidenced by the lending criteria then applied by the five (5) largest bank providers of housing finance determined in accordance with Sub-clause 11.10. Where the Bank considers that circumstances in the market justify such an alteration, it shall advise the Commonwealth at least thirty (30) days prior to the intended date of effect of the proposed alteration in the lending criteria. The Bank will continue to treat Entitled

Applicants and Borrowers no less favourably in comparison with its other Housing Loan Customers in future than is the case as at the date of signing this Agreement, including in particular the special factors referred to in Sub-clause 7.8 which the Bank is expressly required by this Agreement not to take into account in applying its lending criteria to Entitled Applicants in future.

7.7 *Failure to meeting Lending Criteria*

The Bank further agrees that the failure by an Entitled Applicant to meet the lending criteria set out in Schedule “C” will be the sole basis for a refusal in whole or in part by the Bank to make the Subsidised Advance or grant the Instalment Relief or give effect to the Commonwealth’s consent to the Transfer of Land and Subsidy sought by the Entitled Applicant.

7.8 *Factors to be excluded by Bank*

The Bank further agrees that the following factors will not be taken into account when considering whether an Entitled Applicant has met the lending criteria set out in Schedule “C”:

- (a) the age of the person;
- (b) the amount of money the Entitled Applicant has on deposit with the Bank and/or the period of time the Entitled Applicant has had money on deposit with the Bank;
- (c) the fact that the Entitled Applicant has never had money on deposit with the Bank or with any other bank, building society, or other financial institution;
- (d) the sex or marital status of the Entitled Applicant; and
- (e) the race, colour or religious beliefs of the Entitled Applicant.

7.9 *Reasons for Bank’s decision*

The Bank further agrees that, if requested, the Bank’s advice to the Entitled Applicant will, in the case of rejection in whole or in part of the application, include reasons in writing for the Bank’s decision that the Entitled Applicant failed to meet the lending criteria.

7.10 *Commonwealth determination*

Should the Commonwealth determine that an applicant is not an Entitled Applicant then any advance or instalment relief or benefit made or given by the Bank to the applicant shall not be a Subsidised Advance or Instalment Relief pursuant to this Agreement.

7.11 *Non-discrimination*

The Bank agrees that it will not discriminate against or differentiate other than as provided in this Agreement between an Entitled Applicant and its other Housing Loan Customers where the Entitled Applicant seeks only a Subsidised Advance, or Instalment Relief and/or a consent to Transfer of Land and Subsidy and does not seek or apply for a further loan from the Bank.

7.12 *Treatment of Arrears*

The Bank agrees that in the treatment of Arrears, it will treat Borrowers no less favourably than its owner-occupied Housing Loan Customers. In particular, the Bank agrees that it will not impose any penalty interest, fine or other charge on the Borrower.

7.13 *Review of Commonwealth determination*

7.13.1 An applicant may seek to have the Commonwealth's determination reviewed in accordance with the review mechanism provided under the Amended Act, and should such review result in the Commonwealth's determination being amended, the Commonwealth shall advise the Bank and the applicant of the result of the review by issuing a further Certificate of Entitlement and the Bank shall, subject to Sub-clause 7.5, provide a Subsidised Advance and/or Instalment Relief and/or give effect to the Commonwealth's consent to a transfer of Land and Subsidy in accordance with that Certificate.

8. SUBSIDISED ADVANCES/INSTALMENT RELIEF/TRANSFER OF LAND AND SUBSIDY

8.1 *Repayment of Subsidised Advance*

The Bank agrees that a Subsidised Advance shall be repayable in equal monthly instalments comprising principal and interest with the interest being calculated each month on the outstanding principal at the end of each preceding month.

8.2 *Initial Advances—Description*

The Bank agrees that the initial advance made by the Bank to an Entitled Applicant who has not previously been a Borrower shall be a Subsidised Advance up to a maximum amount of twenty five thousand dollars (\$25,000) repayable over a term not exceeding twenty five (25) years or such other amount or term as may be agreed upon between the parties.

8.3 *Security*

The Bank agrees that all Subsidised Advances shall be secured by way of a first mortgage over the Entitled Applicant's holding as defined in the Act, except that:

- (a) where a Borrower has not previously obtained a Subsidised Advance in an amount up to that to which he is entitled, but subsequently does receive such an additional advance, that additional advance must be secured either by way of a first mortgage or if this is not possible by way of a second mortgage over that Borrower's holding as defined in the Act; or
- (b) where the Borrower is a purchaser under a Portfolio Contract of Sale, any additional Subsidised Advance may be unsecured.

8.4 *Instalment Relief*

The parties agree that where the Bank provides Instalment Relief, such relief will be granted by:

- (a) a reduction in the monthly instalments of the Borrower under the Specified Portfolio Asset or Subsidised Advance and an extension in the repayment term of that Specified Portfolio Asset or Subsidised Advance to cover the cost of such reduction, thereby extending the period over which the Commonwealth pays Subsidy to the Bank; and
- (b) the incorporation in the Limit of the Subsidised Advance Loan Account applicable to the Specified Portfolio Asset or Subsidised Advance of:
 - (i) part or all of the amount of Arrears outstanding in that Subsidised Advance Loan Account at the date of effect of the Instalment Relief; and
 - (ii) unpaid interest where agreed instalments are reduced as a result of the grant of Instalment Relief.

8.5 *Transfer of Land and Subsidy*

In the event that the Certificate of Entitlement states that the Commonwealth consents to a Transfer of Land and Subsidy and the Bank consents to such transfer after application of the lending criteria set out in Schedule "C" then the Commonwealth shall continue to pay Subsidy in accordance with the terms of this Agreement.

8.6 *Fees*

The Bank agrees that an Entitled Applicant and/or Borrower will pay no other fees and no more in fees with respect to all applications for

Subsidised Advances, Instalment Relief and consents to Transfer of Land and Subsidy to the Bank than its other Housing Loan Customers. Nothing herein prevents the Bank from charging an Entitled Applicant less than the fees paid by its other Housing Loan Customers.

8.7 *Failure to meet lending criteria*

In the event that a Certificate of Entitlement indicates that:

- (i) a Subsidised Advance is to be a widow's advance;
- (ii) a Subsidised Advance is to be made for essential repairs; or
- (iii) Instalment Relief is to be granted,

and the Entitled Applicant fails to meet the lending criteria set out in Schedule "C", the Bank agrees:

- (a) that the Bank shall provide to the Commonwealth its reasons in writing as to why the Entitled Applicant has failed to meet the lending criteria set out in Schedule "C"; and
- (b) at the election of the Commonwealth, the Bank and the Commonwealth shall meet to discuss what arrangements, if any, suitable to the Bank and the Commonwealth can be made whereby the Bank will provide the advance or instalment relief to the Entitled Applicant.

8.8 *Further Loans/Instalment Relief*

Nothing hereunder shall operate in any way to restrict the ability of a Borrower to approach the Bank for such further loans and/or instalment relief as the Borrower may in his discretion require, in which event the Bank hereby undertakes to treat such loan and/or instalment relief applications in their ordinary and usual course of banking business and treat the Borrower as it would treat a Housing Loan Customer seeking a single loan. In particular, the Bank agrees that where a Borrower applies for another loan at the same time as applying for a Subsidised Advance it will charge the Borrower one set of Establishment Fees covering both the Subsidised Advance and the further loan and secure both advances under the same first mortgage.

9. EXCESS CREDITS

9.1 *Provision of Excess Credit Arrangement*

Where a Borrower pays to the Bank an amount of Excess Credits then the Bank agrees to provide to the Borrower an Excess Credit arrangement.

9.2 *Form of Excess Credit Arrangement*

The Excess Credit arrangement to be made available by the Bank to Borrowers pursuant to Sub-clause 9.1 shall take the form of either:

- (a) a loan interest offset arrangement; or
- (b) a banking account.

9.3 *Election by Borrower*

The Bank agrees to provide to a Borrower a choice between the two types of Excess Credit arrangement referred to in Sub-clause 9.2. In the event that the Borrower fails to exercise such a choice before the Borrower's first repayment is due to the Bank under the Portfolio Asset and/or Subsidised Advance, then the Bank shall provide a loan interest offset arrangement. The Bank further agrees that a Borrower may elect at any time to change between the two types of Excess Credit arrangements during the currency of the Portfolio Asset and/or Subsidised Advance.

9.4 *Loan Interest Offset Arrangement*

If the Bank provides a loan interest offset arrangement then:

- 9.4.1 the Bank will apply the Excess Credits to reduce the principal outstanding in the Borrower's Subsidised Advance Loan Account without penalty to the Borrower;
- 9.4.2 where the principal outstanding attracts various interest rates the reduction shall be made on a proportionate basis in accordance with the relationship between the amount of principal which attracts a single interest rate and the total principal outstanding;
- 9.4.3 providing it remains secured by the first mortgage the Borrower may increase the principal outstanding by drawing from his Subsidised Advance Loan Account any amount by which the Limit exceeds the Balance;
- 9.4.4 the Bank will permit the Borrower to withdraw funds at any time by way of cheque; and
- 9.4.5 the Bank will permit four (4) free withdrawals or debits for each quarter of each Calendar Year.

9.5 *Banking Account*

If the Bank provides a banking account then:

- (a) the Bank will deposit Excess Credits in an interest bearing deposit account with funds at call;
- (b) the account will have bill paying facilities, and
- (c) the account will have a direct credit facility.

9.6 *Obligations of Bank*

The Bank agrees to advise Borrowers of the purposes for which either a loan interest offset arrangement as described in Sub-clause 9.4 or a banking account as described in Sub-clause 9.5 can be used, (such purposes being described in Schedule E to this Agreement) and further agrees not to charge any fees (excluding statutory charges) to Borrowers in respect of withdrawals or debits made from these accounts which are directly attributable to the Portfolio Asset and/or Subsidised Advance instalment repayments.

9.7 *Prepayments*

In the event that the Borrower pays to the Bank an amount in excess of that required to meet the monthly instalment on the Specified Portfolio Asset and/or Subsidised Advance, and the Borrower specifically elects for that amount to be treated as a prepayment then the Bank shall treat that amount as a prepayment. Such prepayments are to be applied by the Bank at the direction of the Borrower to reducing the principal and interest outstanding under the Borrower's Specified Portfolio Asset and/or Subsidised Advance without penalty to the Borrower.

9.8 *Effect of prepayment*

The Bank agrees that where a Borrower has made the election referred to in Sub-clause 9.7 the prepayment will not affect the monthly instalments payable by the Borrower, but shall reduce the term applicable to the Specified Portfolio Asset and/or Subsidised Advance.

9.9 *Prepayment on a loan*

In the event that the Borrower makes a prepayment on a loan account applicable to his Specified Portfolio Asset and/or Subsidised Advance which has more than one interest rate then the Bank shall credit that prepayment on a proportionate basis in accordance with the relationship between the amount of principal which attracts a single interest rate and the total principal outstanding.

10. PROVISION OF INFORMATION

10.1 *Obligations of Bank to notify the Commonwealth*

The Bank shall notify the Commonwealth when the Bank Manager responsible for a Borrower's account becomes aware of or receives in the ordinary course of banking business any of the following concerning or regarding an Entitled Applicant or Borrower, such

notification to be forwarded to the Commonwealth not more than seven (7) days after the Bank Manager becomes aware of or receives same:

- (a) written notice of marriage;
- (b) a purported transfer of land or land and dwelling house subject to Subsidy without Commonwealth consent;
- (c) written notice of death;
- (d) written notice of bankruptcy or insolvency;
- (e) seizure in execution of a Court order of the land or land and dwelling house;
- (f) ownership of any other dwelling house as at the date of issue of the Certificate of Entitlement;
- (g) cessation of the occupation of dwelling house without Commonwealth consent; and
- (h) a failure to use the Subsidised Advance for the purpose set out in Part A of the Certificate of Entitlement.

10.2 *Variation of Bank's Obligations under Sub-clause 10.1*

The parties agree that the circumstances referred to in Sub-clause 10.1 may be added to or varied from time to time by agreement.

10.3 *Action taken by Bank to enforce security*

Except where the Bank's security is in jeopardy the Bank shall not take any action to:

- (a) foreclose;
- (b) take possession;
- (c) exercise a power of sale;
- (d) cancel a contract of sale;
- (e) appoint a Receiver; or
- (f) institute legal proceedings,

under any Portfolio Mortgage, Portfolio Contract of Sale or other security securing the Portfolio Asset or Subsidised Advance without giving the Commonwealth fourteen (14) days notice prior to the Bank taking any such action. In those cases where the Bank's security is in jeopardy and the Bank has taken any such action then the Bank agrees to give notice to the Commonwealth of the taking of such action within five (5) days.

10.4 *Form of Notification*

All notifications referred to in this Clause shall be made to the Commonwealth in writing.

10.5 *Schedule "D" Information*

The Bank agrees to provide the information referred to in Schedule "D" on a monthly basis, or at such other time as may be agreed upon by the parties. Information supplied monthly is to be submitted to the Commonwealth with the Bank's Subsidy invoice referred to in Sub-clause 11.4 and to be accompanied by a certification by an appropriate officer of the Bank that the information provided is in accordance with the Bank's records and is true and correct.

10.6 *Provision of report by Bank's External Auditor*

The Bank agrees to provide to the Commonwealth within two (2) months of the end of each Financial Year in which Subsidy is paid under this Agreement a report by the Bank's external auditors advising as to the extent to which, in their opinion, the Bank's systems for maintaining data concerning Subsidised Advances can be relied upon to provide accurate information for the purpose of the calculation of Subsidy payable to the Bank under the Agreement.

10.7 *Discussion of audit procedures between External Auditors*

If at any time the Commonwealth considers this to be desirable, the Bank will arrange with its external auditors for the Commonwealth to discuss with the external auditors the audit procedures applied.

10.8 *Bank to provide External Auditor's Report with Subsidy Invoice*

The Bank further agrees to provide a report by its external auditors in the terms of Sub-clause 10.6 prior to or concurrently with its first Subsidy invoice.

10.9 *Bank to supply information to enable verification*

In the event that the Commonwealth is unable to verify the details contained in the Subsidy invoice provided pursuant to Sub-clause 11.4 from information supplied pursuant to this Clause, the Bank shall supply such further information as is necessary to enable the Commonwealth to verify the details.

10.10 *Documentation to be provided by the Bank*

In respect of any claim, dispute or legal proceeding now existing or at any time hereafter existing or being made against the Commonwealth/Corporation by any applicant, Entitled Applicant, Borrower or by some other person in respect of a Portfolio Asset or Subsidised Advance or any other associated matter the Bank agrees that it will, except to the extent that the Bank is prohibited by law, at the request of the Commonwealth make available and provide to the

Commonwealth all documents, information, material and computer data in the possession or under the control of the Bank, in relation to a Portfolio Asset or Subsidised Advance or any other associated matter which may be required by the Commonwealth in respect of and in order to defend or prosecute such a claim, dispute or legal proceeding and the Bank agrees that it will give to the Commonwealth, its employees, servants, officers or agents all such reasonable assistance as shall be necessary for such purpose. The Bank may only charge the Commonwealth its minimum standard production fee in respect of any such documents or assistance provided to the Commonwealth pursuant to this Sub-clause.

10.11 *Charge to Commonwealth by Bank*

Subject to Sub-clause 10.10, the Bank shall not be entitled to charge the Commonwealth a fee in relation to the provision by it to the Commonwealth of any information pursuant to this Clause.

11. SUBSIDY SCHEME

11.1 *Agreement to pay Subsidy*

In accordance with the terms of this Agreement, the Commonwealth hereby agrees to pay to the Bank subsidy in respect of:

- (a) Specified Portfolio Assets, and
- (b) Subsidised Advances made by the Bank.

11.2 *Commencement of obligation to pay Subsidy*

The obligation of the Commonwealth to pay Subsidy to the Bank as prescribed in Sub-clause 11.1 is to commence:

- (a) in so far as that Subsidy relates to a Specified Portfolio Asset, from the actual day upon which the Borrower first becomes liable for payment of interest thereon or from the relevant Vesting Date, whichever is the later; and
- (b) in so far as that Subsidy relates to a Subsidised Advance by the Bank to a Borrower, from the actual day upon which the Borrower first becomes liable to pay to the Bank interest on such Subsidised Advance.

11.3 *Subsidy payable monthly*

Subsidy is payable monthly and is calculated by reference to the Balance in the Subsidised Advance Loan Account of each Borrower on the relevant Rest Day or such later day as the amount of interest payable on that Rest Day is debited to the Subsidised Advance Loan Account.

11.4 *Subsidy Invoice*

The Bank hereby agrees to provide the Commonwealth with a written invoice detailing its claim for Subsidy together with the information referred to in Sub-clause 10.5 not more than three (3) Business Days after the Rest Day for Subsidised Advances.

11.5 *Verification and Payment of Subsidy*

The Commonwealth shall pay the Bank the amount of Subsidy which the Commonwealth has verified by 11 a.m. on the day which is fifteen (15) days after the relevant Rest Day or the day which is seven (7) Business Days after the receipt of the invoice and the information referred to in Sub-clause 10.5, whichever is the later.

11.6 *Manner of Payment of Subsidy*

Subsidy shall be paid by depositing the relevant amounts to BSB Account Number 032-936-05-0151 with the Retail Banking Division branch of the Bank, or to such other account as the Bank may from time to time advise.

11.7 *Dispute as to Subsidy Claim*

In the event of a dispute or disagreement arising between the Commonwealth and the Bank as to the amount of Subsidy payable to the Bank by the Commonwealth in accordance with this Agreement then the following provisions shall apply.

11.7.1 The Commonwealth shall pay to the Bank the amount of subsidy the Commonwealth has verified as being due.

11.7.2 Such dispute or disagreement is, so far as is possible, to be resolved as soon as practicable directly between the Commonwealth and the Bank.

11.7.3 In the event that any such dispute or disagreement cannot be resolved between the Commonwealth and the Bank within a period of seven (7) days after first occurring, the dispute or disagreement is to be referred to arbitration in accordance with the procedure outlined in Clause 26, except that the Commonwealth and the Bank agree that for the purpose of such dispute/disagreement the arbitrator shall be appointed by the President for the time being of the Australian Institute of Chartered Accountants.

11.7.4 Until the actual resolution of such dispute or disagreement, the Commonwealth shall not be under any obligation to pay to the

Bank that part of the Subsidy invoice which is disputed or over which disagreement exists.

11.7.5 Upon resolution of such dispute or disagreement, the amount of Subsidy next payable to the Bank by the Commonwealth after such resolution takes place, or if insufficient time is available, the payment after the next payment, shall be adjusted to take into account the result of that resolution.

11.7.6 The Commonwealth and the Bank agree that the amount of such adjustment shall bear interest at the Benchmark rate fixed in accordance with Sub-clause 11.10.

11.8 *Adjustment of Subsidy Invoice*

The Commonwealth and the Bank further hereby agree that in the event that an invoice claiming Subsidy from the Commonwealth pursuant to Sub-clause 11.4 is found to be in error, the subject of an omission, or require variation, either by the Bank or the Commonwealth, then, subject to the dispute or disagreement resolution mechanism set out in Sub-clause 11.7, the Subsidy invoice next submitted by the Bank to the Commonwealth after the discovery of such error, omission and/or variation will be adjusted in favour of the Commonwealth or the Bank as is found to be necessary.

11.9 *Calculation of Subsidy*

The amount of Subsidy payable by the Commonwealth shall be calculated as set out in paragraph (a) and adjusted as set out in paragraph (b) hereunder:

- (a) the amount of Subsidy shall be equal to the difference between the actual amount of interest payable in that month by a Borrower on the Balance outstanding on any Subsidised Advance Loan Account and the notional amount of interest calculated by applying to the same Balance the Benchmark rate of interest determined at the end of the previous month pursuant to Sub-clause 11.10;
- (b) in the event that the total amount of Portfolio Arrears exceeds 0.035 per cent of the aggregate of the Limits on all Subsidised Advance Loan Accounts, the total Subsidy payable pursuant to this Clause shall be reduced by an amount calculated by application of the following formula:

$$X = Y \times a/b$$

where

X = the amount by which the Subsidy is to be reduced;

Y = the total Subsidy calculated in accordance with Sub-clause 11.9(a);

a = the amount by which Portfolio Arrears exceed 0.035 per cent of the aggregate of the Limits on all Subsidised Advance Loan Accounts; and

b = the aggregate of the Balances of all Subsidised Advance Loan Accounts.

11.10 *Calculation of Benchmark Rate*

The Benchmark rate, being the maximum notional rate of interest to which the Bank is entitled in respect of the outstanding principal under all Specified Portfolio Assets and/or Subsidised Advances for the purpose of calculating payments of Subsidy to the Bank by the Commonwealth, shall be calculated in the manner provided in Sub-clause 11.10.7 or, if applicable, Sub-clause 11.10.8, by reference to the unregulated standard annual rates of interest applied in each State and the Australian Capital Territory and the Northern Territory to the first \$25,000 (or such other amount as may be agreed by the Commonwealth and the Bank) of owner-occupied housing loans provided by the five (5) largest banking group providers of housing finance in Australia.

11.10.1 For the purposes of Sub-clause 11.10, the unregulated standard annual rates of interest applied to owner-occupied housing loans shall be the rate which is applied to the largest number of owner-occupied housing loans outstanding in each State and the Australian Capital Territory and the Northern Territory to each of the banking groups concerned, as determined by reference to data compiled by the Reserve Bank of Australia or as the parties may otherwise agree.

11.10.2 The five (5) largest banking group providers of housing finance in Australia for the purposes of this Sub-clause shall be determined as at 1 July in each Financial Year that Subsidy is payable on the basis of data published by the Australian Bureau of Statistics or, if such information is not available, as may otherwise be agreed between the parties.

11.10.3 In the event that the parties are unable to agree on:
(a) the unregulated standard annual rates of interest applied to owner-occupied housing loans in each State and the

- Australian Capital Territory and the Northern Territory under Sub-clause 11.10.1; or
- (b) the five (5) largest banking group providers of housing finance in Australia under Sub-clause 11.10.2;
- within fourteen (14) days of first notification by either party to the other of that disagreement, the matter in dispute shall be determined by an independent nominee of the President of the Institute of Chartered Accountants of Australia. Such determination shall be conclusive and binding on both parties. The fees and expenses of the nominee shall be borne equally by the parties.
- 11.10.4 Pending the resolution of any dispute or disagreement referred to in Sub-clause 11.10.3 in the manner provided for in that Sub-clause, the Benchmark rate used to calculate the Subsidy payable to the Bank by the Commonwealth in the immediately preceding month shall continue to apply.
- 11.10.5 Upon resolution of such dispute or disagreement, the amount of Subsidy next payable to the Bank by the Commonwealth after such resolution takes place, or if insufficient time is available, the payment after the next payment, shall be adjusted to take into account the result of that resolution.
- 11.10.6 The Commonwealth and the Bank agree that the amount of such adjustment shall bear interest at the Benchmark rate fixed in accordance with Sub-clause 11.10.
- 11.10.7 Subject to Sub-clause 11.10.8, the Benchmark rate to be used for Subsidy payment purposes in any month shall be calculated monthly in two stages as follows:
- (a) for each banking group concerned, a simple arithmetic average of the unregulated standard annual rates of interest for owner-occupied housing loans as defined in Sub-clause 11.10.1 which that banking group applied on the last day of the immediately preceding month in each State and the Australian Capital Territory and the Northern Territory in which the banking group concerned conducted housing loan business shall be calculated; and
- (b) the figures calculated for each banking group under Sub-clause 11.10.7(a) shall then be subject to a simple

arithmetic average to determine the Benchmark rate for that month.

11.10.8 In the event that the Bank should, in future, for any reason, offer publicly to make loans for the purchase or construction of owner-occupied houses in any State or Territory on terms including that the first interest rate to be applied is lower than the Benchmark rate determined in accordance with Sub-clause 11.10.7, then the Subsidy payable to the Bank by the Commonwealth in respect of each Subsidised Advance provided by the Bank to an Entitled Applicant in the relevant State or Territory during the period in which such publicly announced loans are available, shall be determined by reference to that lower rate for a period equal to the period during which that lower rate applies to such publicly announced loans. Thereafter the normal Benchmark rate shall apply.

11.11 *Bank Providers of Housing Finance*

The Bank and the Commonwealth hereby agree that for the purposes of this Agreement until 1 July 1989 the five (5) largest banking group providers of housing finance in Australia shall be:

- (a) The Commonwealth Bank of Australia;
- (b) Westpac Banking Corporation;
- (c) The State Bank of Victoria;
- (d) The National Australia Bank; and
- (e) the Australia and New Zealand Bank Group Limited.

11.12 *Fall in Benchmark Rate*

In the event that the Benchmark rate of interest prescribed in Sub-clause 11.10 falls below the actual rate of interest payable by a Borrower in respect of a Specified Portfolio Asset and/or Subsidised Advance, the Bank agrees to pay to the Commonwealth, on a monthly basis, an amount to be calculated as follows:

Such amount shall be equal to the difference between the notional amount of interest payable in that month by a Borrower on the Balance outstanding on any Subsidised Advance Loan Account at the end of the preceding month, calculated by applying the Benchmark rate of interest to that Balance and the amount of interest payable in that same month by the Borrower calculated by applying to the same Balance the actual

rate(s) of interest prescribed under the terms and conditions governing that Subsidised Advance Loan Account.

11.13 *Deduction from Subsidy Payments*

Any amount payable by the Bank pursuant to Sub-clause 11.12 shall be deducted from the Bank's claim for Subsidy provided pursuant to Sub-clause 11.4. In the event that such deductions exceed the total sum of Subsidy calculated in accordance with Sub-clause 11.9 then any net sum payable by the Bank to the Commonwealth shall be paid fifteen (15) days after the relevant Rest Day.

11.14 *Where Benchmark Rate falls below 6.85 per cent*

In the event that the Benchmark rate of interest prescribed in Sub-clause 11.10 falls below 6.85 per cent or such other rate as may be specified in the Amended Act for inclusion in Certificates of Entitlement for initial advances and is likely in the opinion of either the Bank or the Commonwealth to continue below such rate in the future then the parties shall meet forthwith for the purpose of reviewing the situation.

11.15 *Termination/Suspension of Subsidy Payments and Recovery of Subsidy from Borrower*

Notwithstanding the provisions of any other Clause in this Agreement, the Commonwealth may elect to recover from the Borrower in the manner provided for under the Amended Act or may terminate and/or suspend future Subsidy payments in respect of the following:

- (a) a Borrower who, having obtained a Subsidised Advance pursuant to the Amended Act, a Portfolio Contract of Sale or a Corporation Advance under a Specified Portfolio Asset,
 - (i) is discovered to have made a false statement in order to obtain a Certificate of Entitlement, a Portfolio Contract of Sale or a Corporation Advance;
 - (ii) is discovered not to have been entitled to a Certificate of Entitlement, a Portfolio Contract of Sale or a Specified Portfolio Asset at the time when the Certificate of Entitlement was issued to the Borrower or the Corporation Advance secured by the Specified Portfolio Asset was received by the Borrower or the Portfolio Contract of Sale was executed by the Borrower;
 - (iii) purports to transfer a holding without a Certificate of Entitlement having been issued which provides for

- Commonwealth consent to the Transfer of Land and Subsidy to the proposed transferee;
- (iv) is discovered to have used the Subsidised Advance or Corporation Advance for a purpose other than that for which it was made;
 - (v) is a transferee of a holding in respect of which the Commonwealth has issued a Certificate of Entitlement consenting to a Transfer of Land and Subsidy and has without reasonable excuse failed to comply with an undertaking given by that transferee under Sub-section 22(2) of the Amended Act; or
 - (vi) becomes the husband or wife of another Borrower,
- (b) where the Bank takes action to enforce a Portfolio Contract of Sale or a security for which the Subsidised Advance or a Corporation Advance was provided and the Bank has not within three (3) months sold the property and discharged the loan outstanding to it thereon; or
 - (c) where, without the prior written consent of the Commonwealth, a Borrower having a Subsidised Advance seeks to use that Subsidised Advance for the purpose of discharging any existing mortgage or other security over that Borrower's land or land and dwelling house.

11.16 *Notice of termination of Subsidy payments to Bank*

Where the Commonwealth elects to terminate future Subsidy payments to the Bank in respect of a Specified Portfolio Asset pursuant to Sub-clause 11.15(a) then it shall give the Bank one month's notice of its intention to do so. If prior to the completion of that one month period the Bank gives the Commonwealth notice that it intends to take action to enforce its security with respect to that Specified Portfolio Asset then the Commonwealth shall continue to pay Subsidy until the Bank has discharged its loan, or for three (3) months, whichever is the earlier. Any Subsidy paid to the Bank which is recoverable from the Borrower pursuant to the Amending Act shall be paid to the Commonwealth by the Bank as required by the Amending Act from any moneys due to the Borrower from the proceeds of any sale by the Bank of his land or land and dwelling house.

11.17 *Entitlement of Bank to charge applicable interest rate*

The Commonwealth acknowledges that it shall be a term of any Subsidised Advance made by the Bank to a Borrower that in the event that Subsidy is, for any reason whatsoever, terminated by the Commonwealth in respect of that advance, the Bank shall be entitled to charge the interest rate applicable to similar loans provided by the Bank to borrowers generally from the date of termination of Subsidy.

12. DEFAULT PROVISIONS

12.1 *Persistent Failure by Bank to provide Subsidised Advances*

Where it appears to the Commonwealth that there has been a persistent failure by the Bank to provide Subsidised Advances in accordance with this Agreement or to treat applicants for further loans in the manner required by Sub-clause 8.8, the Commonwealth may, by notice in writing served on the Bank, require the Bank within twenty-eight (28) days after service of that notice to rectify that failure.

12.1.1 Where following such notice the Bank fails to rectify such persistent failure then without prejudice to any other rights the Commonwealth may have:

- (a) the Commonwealth shall be entitled to defer part of or all future payments of Subsidy to the Bank until such time as the persistent failure has been so rectified, or for such lesser time which the Commonwealth in its discretion determines provided however that such deferral shall not exceed a period of six (6) months; and
- (b) in the event that the persistent failure continues for a period of three (3) months or more following the Bank's receipt of notice thereof from the Commonwealth, the Bank is required to show cause to the Commonwealth why the Commonwealth should not terminate the Bank's exclusive right to make future Subsidised Advances to Entitled Applicants under the Amended Act and grant that right, together with the associated right to receipt of Subsidy in respect of such future Subsidised Advances, to another person of the Commonwealth's sole choosing and, in the event that the Bank fails to do so, the Commonwealth and the Bank agree that the Commonwealth may terminate the Bank's exclusive right to make future Subsidised Advances to Entitled Applicants under the Amended Act and grant that right together with the associated right to

receipt of Subsidy thereon to another person of the Commonwealth's sole choosing.

12.2 *Failure by Bank to comply with any other term of the Agreement*

Where it appears to the Commonwealth that there has been a failure by the Bank to comply with any other term of this Agreement the Commonwealth may, by notice in writing served on the Bank, require the Bank within twenty-eight (28) days after service of that notice to rectify that failure.

12.2.1 Where following such notice the Bank fails to rectify such failure then without prejudice to any other rights the Commonwealth may have, the Commonwealth shall be entitled to defer part of or all future payments of Subsidy to the Bank with respect to any Portfolio Asset or Subsidised Advance which is affected by such a failure until such time as the failure has been so rectified, or for such lesser time which the Commonwealth in its discretion determines provided however that such deferral shall not exceed a period of six (6) months.

12.3 *Commonwealth Remedies*

Should the Commonwealth exercise its right pursuant to Sub-clauses 12.1.1 or 12.2.1 then the deferred Subsidy will be paid to the Bank at the completion of the period of the deferral but the Bank shall have no right to compensation or interest on the Subsidy deferred against the Commonwealth in respect thereto, and further the Bank agrees that it shall continue without reservation or modification to charge interest to Borrowers at the applicable rates of interest prescribed pursuant to those Borrowers' respective Portfolio Assets and/or Subsidised Advances, and/or at the rates specified in the Amended Act for inclusion in Certificates of Entitlement in respect of such Advances, as at the date upon which the Commonwealth exercises such right.

12.4 *Employee actions resulting in Subsidy over-payment*

Where employees of the Bank knowingly:

- (a) participate in or assist in the preparation of an incorrect application for a Certificate of Entitlement, and/or
- (b) conceal or participate in the concealing of information,

and such action results in an over-payment of Subsidy then the Commonwealth shall be entitled to recover from the Bank immediately as a debt all Subsidy payments over-paid. The Bank shall notify the Commonwealth immediately it becomes aware of any such action.

12.5 *Recovery of Subsidy*

Where the Bank fails to notify the Commonwealth of the circumstances referred to in Sub-clauses 10.1 or 12.4 and such failure to notify results in payments of Subsidy which would not otherwise have occurred then the Commonwealth shall be entitled to recover from the Bank, the Borrower or the Entitled Applicant as it deems appropriate immediately as a debt all Subsidy payments that the Commonwealth has incurred and/or paid as a result of the Bank's failure to so notify.

12.5.1 The Commonwealth shall be entitled to recover as from the last date that notification should have been given by the Bank.

12.6 *Default in payment of Consideration*

If the bank defaults in payment of the Consideration or any part thereof and the default continues for more than fourteen (14) days after notice in writing specifying the default has been served on the Bank then, notwithstanding anything contained herein and without prejudice to any other rights of the Commonwealth, the whole of the balance of the Consideration and other moneys due hereunder shall at the option of the Commonwealth become immediately due and payable.

12.7 *Breach of this Agreement-Interest Payable*

If the Commonwealth or the Bank commits a breach of this Agreement, including default in payment of Consideration, the party in default shall without prejudice to any other rights of the other party pay on demand interest on any moneys overdue during the period of default. Such interest shall be the weighted average yield set at the most recent weekly tender for the thirteen (13) week Treasury Note plus four (4) per cent.

12.8 *Exercise of Remedies*

Time shall be of the essence of this Agreement. However, without prejudice to the other provisions of this Clause, if either party defaults under this Agreement the other party shall not be entitled to exercise any of its rights arising out of the default, including its right to sue for moneys then owing until it has served the party in default with a written notice specifying the default and its intention to exercise its rights unless the default is remedied and the reasonable legal costs occasioned by the default and any moneys payable under Sub-clause 12.7 are all paid within fourteen (14) days of service of the notice and the party in default fails to comply with the notice.

12.9 *Termination*

Where:

- (a) the Bank becomes bankrupt or insolvent;
- (b) the Bank effects an assignment of all or substantially all of its property for the benefit of creditors;
- (c) the bank merges, amalgamates or reconstructs if that results in the merged, reconstructed or amalgamated entity having no authority, power or facilities to effectively perform the Bank's obligations hereunder;
- (d) the Commonwealth vests its obligations to pay Subsidy under this Agreement in another person without the Bank's consent; or
- (f) either party assigns the Agreement in whole or in part without the consent of the other party,

then the other party shall be entitled by notice in writing to terminate this Agreement forthwith but without prejudice to any right of action or remedy which shall have accrued or which shall accrue thereafter in favour of either party.

12.10 *Appointment of Receiver/Receiver and Manager/Liquidation/Official Management of the Bank*

Where the Bank has a Receiver or Receiver and Manager appointed to all or substantially all of the Bank's assets or enters into liquidation voluntarily or otherwise is placed under official management, the Commonwealth may terminate the Bank's exclusive right to make future Subsidised Advances to Entitled Applicants under the Amended Act and grant that right together with the associated right to receipt of Subsidy in respect of such future Subsidised Advances to another person of the Commonwealth's sole choosing.

13. GRANT OF FRANCHISE

13.1 *Exclusive Right*

The Commonwealth hereby grants to the Bank on the terms set out in this Agreement the exclusive right to provide the first twenty five thousand dollars (\$25,000), or such other amount as may be agreed upon by the parties, of any Subsidised Advance and other benefits upon which Subsidy is payable to all persons who satisfy the test of eligibility and entitlement under the Act, other than those members of the Defence Force who enlisted after 14 May 1985.

13.2 *Notification of Bank's Exclusive Right*

The Commonwealth agrees that all persons who seek Subsidised Advances or other benefits under the Amended Act shall be notified that the Bank has the exclusive right to make such Subsidised Advances and to provide such benefits.

14. PROVISION FOR REFUND OF PART OF \$100 MILLION REFERRED TO IN SUB-CLAUSE 3.1.1(a)

14.1 The Commonwealth agrees that the Bank may be entitled to a refund of part of the Consideration pursuant to this Clause if, during the period of five (5) years commencing from the date of this Agreement, the Commonwealth should:

- (a) pass legislation to reduce or restrict the benefits of or the terms of entitlement to Subsidised Advances and Instalment Relief which the Bank has agreed to provide under this Agreement; or
- (b) introduce a different scheme of benefits for eligible persons who otherwise would be entitled to Subsidised Advances and Instalment Relief which the Bank has agreed to provide under this Agreement,

and such action causes the number of Entitled Applicants applying to the Bank for Subsidised Advances and Instalment Relief in any of the five (5) years following the date of this Agreement to fall below four thousand (4,000). If the Bank is of the opinion that the above facts have occurred or will occur it may give notice of that situation to the Commonwealth. On receipt of such notice, the Commonwealth and the Bank shall meet with a view to verifying the facts and then determining the extent, if any, to which part of the Consideration referred to in Sub-clause 3.1.1(a) paid by the Bank to the Commonwealth under this Agreement, and attributed by the Bank to its purchase of the exclusive right under this Agreement to provide Subsidised Advances and Instalment Relief to Entitled Applicants in future, namely \$50 million, might be refunded to the Bank to take account of the effects of such action by the Commonwealth, such refund not to exceed the following sums:

| Year in which number of applications received first falls below 4,000 | \$m |
|--|------------|
| Year 1 | 50 |
| Year 2 | 40 |
| Year 3 | 30 |

Schedule 1 Agreement between the Commonwealth of Australia and Westpac Banking Corporation

| | |
|--------|-----|
| Year 4 | 20 |
| Year 5 | 10 |
| Year 6 | Nil |

If, within a period of three (3) months after first verifying the facts, agreement has not been reached with the Commonwealth on the amount, if any, to be refunded to the Bank, then the parties shall refer the matter to arbitration in accordance with Clause 26 and any amount payable as a result of the arbitration shall be paid within seven (7) days of the determination of the arbitrator.

15.5 WARRANTIES

15.1 *Bank*

The Bank warrants that:

- 15.1.1 it undertakes and represents to the Commonwealth and it is a condition of this Agreement that the execution and delivery of this Agreement has been duly and validly authorised by all necessary corporate action on behalf of the Bank, the Bank has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations herein and this Agreement shall constitute a legal, valid and binding obligation of the Bank enforceable in accordance with its terms and does not conflict with or constitute or result in a breach of or default under any provision of the Bank's Deed of Settlement;
- 15.1.2 to the best of the Bank's knowledge, no statutory notices have been served on the Bank which might in any way impair, prevent or otherwise interfere with the Bank's performance of its obligations hereunder; and
- 15.1.3 the Bank has all necessary licences (including statutory licences) and accreditation, consents, permissions, authorities and permits for the proper carrying on of its business and knows of no factors that might in any way prejudice the continuance or renewal of any of those licences, permissions or consents.

15.2 *Commonwealth*

The Commonwealth warrants that:

- 15.2.1 it has full power and authority to enter into, execute and complete the transactions contemplated by this Agreement;

- 15.2.2 the Amending Act shall be effective to transfer all of the rights, title, interests and obligations of the Corporation in and to the Portfolio Assets to the Bank in accordance with the provisions of this Agreement;
- 15.2.3 as at the date hereof the Corporation is not a party to any action, claim, demand or suit or other legal challenge pertaining to the Portfolio Assets or any of them, which it has not disclosed in writing to the Bank prior to the date of this Agreement;
- 15.2.4 the Corporation has not entered into any arrangement or understanding with any Borrower other than an agreement or understanding authorised by the Act under which it has agreed to vary or abrogate the Corporation's rights under any relevant Portfolio Mortgage, Portfolio Contract of Sale, Portfolio Supplementary Agreement, or other Portfolio Agreement; and
- 15.2.5 the Portfolio Assets are as at the relevant Vesting Dates enforceable by the Corporation in accordance with their terms and, in the case of the Portfolio Mortgages, constitute effective security for the benefit of the Corporation.

16. INDEMNITIES

16.1 *Obligations of Bank*

The Bank shall indemnify and keep indemnified the Commonwealth, its officers, employees and agents ("the Commonwealth") from and against all and any reasonable losses, costs (including legal costs), liabilities, refunds, expenses and other outgoings incurred by the Commonwealth in connection with any claim made by a third party against the Commonwealth in relation to a Portfolio Asset to the extent to which those losses, costs, refunds, liabilities, expenses or other outgoings are incurred by the Commonwealth as a result of the Bank's failure to perform its obligations under this Agreement.

16.2 *Obligations of Commonwealth*

The Commonwealth shall indemnify and keep indemnified the Bank, its officers, employees and agents ("the Bank") from and against all and any reasonable losses, costs (including legal costs), liabilities, refunds, expenses and other outgoings incurred by the Bank in connection with any claim made by a third party against the Bank to the extent to which those losses, costs, refunds, liabilities, including tortious liabilities, expenses or other outgoings are incurred by the Bank as a result of:

- (a) the acts or omissions of the Commonwealth, the Corporation, or their servants or agents, arising prior to the relevant Vesting Dates; or
- (b) any breach by the Commonwealth of any of the warranties set out in Sub-clause 15.2.

16.3 *Obligation of Commonwealth*

The Commonwealth shall indemnify and keep indemnified the Bank from and against all and any reasonable losses and costs (including legal costs) incurred by the Bank in the event of it being not entitled to take action under any Portfolio Agreement or Portfolio Supplementary Agreement by reason of its not being a party to those Agreements.

17. DEALINGS WITH SOUTH AFRICA AND NAMIBIA

The Bank hereby agrees that:

- (i) to the best of its knowledge and understanding, as at the date of signing of this Agreement no South African or Namibian persons in aggregate have a beneficial interest in fifty (50) per cent or more of the issued shares of the Bank; and
- (ii) the Commonwealth shall be notified in writing forthwith if, during the period of operation of this Agreement, the Bank becomes aware of any actual or proposed change which will lead or is likely to lead to South African or Namibian persons in aggregate having a beneficial interest in fifty (50) per cent or more of the issued shares of the Bank.

For the purposes of this Clause, a South African or Namibian person is defined as a “natural person who is a citizen of or resides in South Africa or Namibia or alternatively is a company or body corporate or any body not being a body corporate which is incorporated or formed in South Africa or Namibia”.

18. NON-MERGING ON SETTLEMENT AND SEVERABILITY

- 18.1 Any provision in this Agreement which is to take effect after 1 December 1988 or the date of commencement of the Amending Act, whichever is the later, shall not merge on settlement but rather shall continue in full force and effect.

19. STAMP DUTY, ADMINISTRATIVE ARRANGEMENTS AND STATE/TERRITORY GOVERNMENT FEES

19.1 *Stamp Duty*

Subject to Sub-clause 19.2, any stamp duty arising out of this Agreement or its implementation shall be borne by the Bank.

19.2 *Assessment*

19.2.1 Where the Bank receives an assessment in respect of stamp duty on this Agreement or the transfer of Portfolio Assets to the Bank it shall forthwith deliver a copy of that assessment to the Commonwealth.

19.2.2 Until the earlier of twenty one (21) days after delivering a copy of such assessment to the Commonwealth or the last day for payment of any stamp duty assessed prior to the Bank becoming liable to pay any fine or penalty, the Bank shall not make payment.

19.2.3 During the period referred to in Sub-clause 19.2.2 the Bank and the Commonwealth shall, if the Commonwealth requests, discuss what action, if any, should be taken in relation to the assessment. If the Commonwealth request and indemnifies the Bank against any costs or expenses which the Bank may incur in so doing, the Bank shall:

- (a) provide the Commonwealth with sufficient information to enable it to prepare any objection or appeal;
- (b) deliver to the person issuing the assessment any objection or appeal which the Commonwealth prepares and delivers to the Bank;
- (c) prosecute such objection or appeal as may be appropriate;
- (d) if any appeal or objection under Sub-clause 19.2.3(b) is unsuccessful, commence and prosecute such legal proceedings as may be appropriate to determine the liability of the Bank for stamp duty;
- (e) promptly inform the Commonwealth of the outcome of any such appeal, objection or legal proceedings.

19.2.4 In the event that it is a condition of making any objection or appeal pursuant to Sub-clause 19.2.3(b) or commencing legal proceedings pursuant to Sub-clause 19.2.3(d) that all or any part of the stamp duty assessed be paid then, subject to Sub-clause 19.2.8, the Commonwealth shall pay the Bank the amount of such stamp duty:

- (a) where an objection or appeal is to be made by the Bank, prior to the Bank lodging such objection or appeal; and
-

- (b) where legal proceedings are to be commenced by the Bank, prior to the commencement of such legal proceedings.
- 19.2.5 Where stamp duty has been paid pursuant to Sub-clause 19.2.4 and an objection, appeal or legal proceedings establishes that all or part of such stamp duty is not chargeable and the Bank receives a refund of stamp duty paid then the Bank shall forthwith reimburse the Commonwealth the amount of stamp duty not chargeable which has been paid by the Commonwealth, and pay to the Commonwealth any interest or like compensation received by the Bank in connection with that part of the refunded stamp duty paid by the Commonwealth.
- 19.2.6 If the Commonwealth does not request the Bank to lodge any objection or appeal within the time period specified in Sub-clause 19.2.2 or to commence legal proceedings after an unsuccessful objection or appeal before the last day for payment of stamp duty prior to the Bank becoming liable to pay any fine or penalty, the Bank shall pay the stamp duty assessed and, subject to Sub-clause 19.2.8, the Commonwealth shall reimburse the Bank within fourteen (14) days of a request for payment.
- 19.2.7 At the time of informing the Commonwealth of the outcome of any legal proceedings under Sub-clause 19.2.3(e), the Bank shall, where it is determined that stamp duty is payable, notify the Commonwealth of the remaining amount payable under the indemnity given by the Commonwealth pursuant to Sub-clause 19.2.3. Upon receipt of such notification, the Commonwealth shall pay the Bank the amount payable under the indemnity and, subject to Sub-clause 19.2.8, such stamp duty.
- 19.2.8 The Commonwealth shall only be obliged to pay or reimburse the Bank in respect of stamp duty to the extent that the sum of such stamp duty and any other stamp duty paid by the Bank on this Agreement and the transfer of Portfolio Assets to the Bank exceeds \$500,000.
- 19.3 *Commonwealth to facilitate the transfer*
The Commonwealth shall inform the Governments of all States and Territories of the proposed vesting of Portfolio Assets in the Bank and shall use its best endeavours to ensure that administrative arrangements
-

are made by those Governments to facilitate the substitution of the Bank as the mortgagee (or registered proprietor or registered lessee under a Crown lease as appropriate) of all Portfolio Assets.

19.4 *Fees or charges necessary to give effect to the transfer of Portfolio Assets shall be borne by the Commonwealth*

Any other fees or charges, including lodgement or registration fees, charged by any State or Territory the payment of which is necessary to give effect to the transfer of Portfolio Assets to the Bank pursuant to the Amending Act shall be borne by the Commonwealth.

20. LEGAL AND ACCOUNTING COSTS

The parties hereto shall bear their own legal and accounting costs of and incidental to the preparation, execution and implementation of this Agreement.

21. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties hereto agree to submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory.

22. NOTICES

Any notice, approval, request, consent or other communication given or made to a party under this Agreement must be in writing and delivered in person or sent by registered post, telegram, telex or facsimile transmission to the party at the following address, telex number or facsimile number.

In the case of the Commonwealth to:

Address: Secretary
Department of Veterans' Affairs
MLC Tower
Keltie Street
Woden ACT 2606

Fax: (062) 81 3822

Telex: 62706

For attention: The Secretary

In the case of the Corporation:

Address: Defence Service Homes Corporation
MLC Tower

Keltie Street
Woden A C T 2606
Fax: (062) 85 2857
Telex: 62706
For attention: General Manager

In the case of the Bank to:
Westpac Banking Corporation
Address: 66 Pitt Street Sydney
Fax: (02) 226 4905
Telex: AA20122
Answerback: WBANK
For attention: Chief Manager Consumer Banking

or such other address, telex number or facsimile number as the party from time to time may notify to the other party for the purpose of this Clause.

Any notice, approval, request, consent or other communication given or made pursuant to this Clause shall be deemed to be duly given or made:

- (i) in the case of delivery in person when delivered to the recipient at such number or address; or
- (ii) in the case of telex, on receipt by the sender of the answerback code of the recipient at the end of transmission,

but if such delivery or receipt is later than 5 p.m. (local time) on a day on which business is generally carried on in the place to which such communication is delivered or sent, it shall be deemed to have been duly given at the commencement of business on the next such day in that place.

23. WAIVER

Failure by either party at any time to enforce any of the provisions of this Agreement or any amendments pursuant thereto by the other party shall not be construed as a waiver by such party of such provision or in any way affect the validity of this Agreement or any part thereof, or the rights of the other party thereafter to enforce each and every such provision. The waiver by either party of any provision of this Agreement shall not constitute a waiver of any future obligation to comply with such provision.

24. ENTIRE AGREEMENT

The terms and conditions in this Agreement together with any written amendments which are confirmed by the parties as amendments to this Agreement shall constitute the complete agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions in respect of this Agreement or otherwise shall be deemed to be implied in this Agreement or to exist between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Agreement and the existence of any such implication or collateral or other agreement is hereby negated.

25. AMENDMENTS OR VARIATION

No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party therefrom shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by all the parties hereto, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

26. ARBITRATION

26.1 *Notice of dispute, question or difference*

If any party considers that a dispute, question or difference has arisen as to the meaning, operation or effect of the provisions of this Agreement or the rights or liabilities of any of the parties then such party shall serve on the other party a notice of such dispute, question or difference and the parties shall meet forthwith in an attempt to settle such dispute, question or difference.

26.2 *Submitting a dispute to Arbitration*

In the event that such dispute, question or difference is not settled within fourteen (14) days from the date of service of the notice, either party may submit the dispute, question or difference to arbitration by serving a further notice on the other party stating that it requires that the dispute, question or difference be referred to arbitration and the giving of such further notice shall refer such dispute, question or difference to arbitration. Such dispute, question or difference shall then be determined, subject to the provisions of this Agreement, by an arbitrator selected by agreement in writing by the parties within fourteen (14)

days of the giving of the aforementioned further notice or, in the absence of such agreement, by an arbitrator appointed in accordance with the provisions of the law relating to arbitration in force in the Australian Capital Territory. Every reference to arbitration under this Clause shall be deemed to be a reference to arbitration within the meaning of such law. The fees and expenses of the arbitrator shall be borne equally by the Bank and the Commonwealth. The parties may be represented or assisted in any arbitration proceedings by persons of their choice.

27. ASSIGNMENT

27.1 The Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

28. DISPOSAL BY BANK

28.1 The Bank shall not, without the prior written consent of the Commonwealth, transfer, assign, sell, give or otherwise dispose of its interests, rights, title and obligations in any mortgages, including but not limited to Portfolio Assets which the Bank has obtained pursuant to this Agreement and/or the Act and/or the Amending Act, to any person, including a subsidiary, partner or joint venturer of the Bank, or any Company or organization, whether incorporated or not, in which the Bank has an interest, holds stocks or shares, or is a member of or holds a position in either directly or otherwise, unless:

- (a) arrangements are made such that Borrowers will only deal with the Bank in relation to any matter arising under Portfolio Assets, Subsidised Advances, Instalment Relief or relating to consent to Transfer of Land and Subsidy or Excess Credits;
- (b) the Bank remains liable to the Commonwealth to ensure that the Bank's obligations under this Agreement (including the provision of Subsidised Advances, the provision of Instalment Relief and the giving of effect to Commonwealth consents to Transfer of Land and Subsidy) are complied with and that the rights of Borrowers are not affected notwithstanding that Portfolio Assets or mortgages entered into in the future are transferred by the Bank to another entity or entities;
- (c) the Commonwealth shall only be obliged to pay Subsidy to the Bank; and

- (d) the Bank gives the Commonwealth thirty (30) days notice of intention to do so together with details as to the manner in which the Bank is to ensure compliance with this Clause.

29. CONFIDENTIALITY

29.1 *Bank's acknowledgement of material*

The Bank acknowledges that any information or document supplied by the Commonwealth in respect of applicants, Entitled Applicants or Borrowers pursuant to this Agreement is to be received by the Bank in confidence and is not to be copied, used, disclosed or otherwise made available to any third person in circumstances in which disclosure is not authorised by a Banker/Customer relationship.

29.1.2 The Bank agrees not to copy, use, disclose or otherwise make available other than for the Bank's own internal use or to satisfy an obligation arising from this Agreement any names and/or addresses or other identifying particulars of persons who are or were applicants, Entitled Applicants or Borrowers without the prior written consent of the applicant, Entitled Applicant or Borrower.

29.2 *Commonwealth's acknowledgement of material*

The Commonwealth acknowledges that any information or document supplied by the Bank pursuant to this Agreement is received by the Commonwealth in confidence and is not to be copied, used, disclosed or otherwise made available to any third person other than for the Commonwealth's own internal use or to satisfy an obligation arising under this Agreement or the Amended Act, without the prior written consent of the Bank and/or the applicant, entitled applicant or Borrower.

30. PERFORMANCE OF OBLIGATIONS BY CORPORATION

The Commonwealth undertakes to procure the due and proper performance by the Corporation of any obligation imposed upon the Corporation by the terms of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as at the day and year first before written:

Schedule 1 Agreement between the Commonwealth of Australia and Westpac Banking Corporation

Signed for and
on behalf of
the Commonwealth of Australia
by The Honourable
Benjamin Charles Humphreys,
Minister for Veterans' Affairs
in the presence of:
E. J. S. DAVID

BEN HUMPHREYS

SIGNED for and on behalf of
WESTPAC BANKING
CORPORATION
by STUART ATHELSTAN FOWLER
and TERENCE ARTHUR DUNNE
its duly constituted Attorneys
who are personally known to me
J. A. CADELL
Solicitor

WESTPAC BANKING
CORPORATION
by its Attorneys
who hereby respectively
state
that at the time of their
executing this instrument
they
have no notice of the
revocation of the Power of
Attorney registered in the
Office of the Registrar
General numbered 643 Book
3585
under the authority of which
they have executed this
instrument
S. A. FOWLER
Managing Director
T. A. DUNNE
Chief Manager Legal
Administration

SCHEDULE "A"

DOCUMENTS TO BE PROVIDED BY THE COMMONWEALTH

In relation to all applications for Corporation or Subsidised Advances referred to in Sub-clause 5.1, each or any of the following documents described below that are in the possession of the Corporation:

Description

- Application Forms
- Property Inspection Reports
- Title Searches

- Loan Approval Letters
- Any other documents in the possession of the Corporation that are necessary for the Bank to process applications for Subsidised Advances
- Any other documents that come into the possession of the Corporation after the date of commencement of the Amending Act or 1 December 1988, whichever is the later, and which are necessary for the Bank to process the applications for Corporation or Subsidised Advances referred to in Sub-clause 5.1.

SCHEDULE “B”

DOCUMENTS TO BE PROVIDED BY THE COMMONWEALTH
AFTER EACH RELEVANT VESTING DATE

- A. In relation to applications or requests referred to in Sub-Clause 5.2, each or any of the documents described below that are in the possession of the Corporation:
- Application Forms/Written Requests
 - Property Inspection Reports
 - Title Searches
 - Loan Approval/other approval letters
 - Any other documents in the possession of the Corporation that are necessary for the Bank to process the applications or requests referred to in Sub-clause 5.2.

Time of Supply

- Documents are to be sent to the Bank on each Vesting Date.
- B. In relation to Portfolio Assets, the documents that are in the possession of, and the data available to, the Corporation as described below:
- A computer tape containing the following information:
 - Corporation’s 7 digit account number
 - Client name (including title)
 - Client address
 - Client special address
 - Overseas mail indicator

- Second notice indicator
- Telephone number

Time of Supply

- *As agreed between the parties*
- All documents relating to Portfolio Assets held by the Corporation in its security packets, including as appropriate:
 - Title Deeds
 - Contracts of Sale
 - Mortgage documents
 - Deeds of Covenant
 - Postponements of Mortgage (if not registered)
 - Deeds of Priority (if not registered)
 - Old System Searches
 - Guarantees
 - Copy of any Mortgage Insurance Policy
 - Copy of any building Insurance Policy where the insurer is not the Corporation.

Time of Supply

- *As agreed between the parties*
- Copies of the Corporation's settlement sheet for the original Corporation Advance and all documents in the possession of the Corporation that evidence any change to the terms and conditions of the original Corporation Advance, including but not limited to changes to the identity of the Borrower, title or security details, amount of loan, interest rate(s) or repayment instalment(s).

Time of Supply

- *As agreed on between the parties*
- Computer tapes containing as at the relevant Vesting Date the following information
 - Corporation's 7 digit account number
 - Client name (including title)
 - Account balance (x tiers)
 - Arrears/excess credits (x tiers)

- Instalment Payment (x tiers)
 - Date of commencement of Advance (where available)
 - Last payment date
 - Interest rate or rates
- A hard copy of the information contained on the computer tapes referred to immediately above.

Time of Supply

The computer tapes are to be supplied on the morning of the first business day immediately following the relevant Vesting Date. The hard copy of the information contained on the Computer Tapes to be supplied within 2 weeks of the day of supply of the said tapes.

SCHEDULE “C”

The Bank’s lending criteria are:

- (a) Income
- (i) As a general principle the amount of repayments should not exceed 25% of the gross income of the applicant or Entitled Applicant.
 - (ii) Where application is being made for a Subsidised Advance together with a further loan, repayments on both advances should not exceed 25% of the gross income of the applicant or Entitled Applicant.
 - (iii) The 25 per cent of gross income rule referred to in (i) and (ii) above constitutes a broad general rule only and each case must be considered on its merits, including the amount of residual income available after meeting commitments.
- (b) Commitments
- Known commitments of an applicant or Entitled Applicant will be taken into consideration in determining the capacity of an applicant or Entitled Applicant to meet the repayments.
- (c) The applicant or Entitled Applicant will be generally required to meet a reasonable deposit/equity ratio. As a general guideline 10 per cent of the total cost/value of the property may be considered a reasonable deposit.

SCHEDULE “D”

INFORMATION TO BE PROVIDED BY THE BANK ON A MONTHLY BASIS

A. MONTHLY SUBSIDY REPORT ON SPECIFIED PORTFOLIO ASSETS AND SUBSIDISED ADVANCES (TO BE SUPPLIED BY COMPUTER TAPE)

Particulars

Subsidy Scheme (Commonwealth) File Number

Account Name (full name(s) of borrowers)

Account Number (includes Bank State Branch number)

B. MONTHLY SUBSIDY REPORT—VARIATIONS IN INTEREST ON SPECIFIED PORTFOLIO ASSETS AND BANK ADVANCES (TO BE SUPPLIED ON COMPUTER TAPE)

Particulars

Subsidy Scheme (Commonwealth) File Number

Account Name (full name(s) of borrowers)

Account Number

| | | |
|-------------------|---|--|
| Account limit | } | By tier (if applicable) in relation to each Account |
| Current balance | | |
| Interest rate | | |
| Current accrual | | |
| Benchmark accrual | | |
| Current subsidy | | |
| Claimed subsidy | | |
| Variation amount | | |

Open/Closed dates

Variations reason i.e. New Account
Repaid
Adjustment

C. SUBSIDY INVOICE—MONTHLY SUMMARY OF SUBSIDY CLAIMS (TO BE SUPPLIED ON COMPUTER TAPE AND PAPER)

Particulars

Total Limits
Total Balances
Benchmark accruals
Interest accruals
Subsidy sub-total
 Less arrears adjustment (if any)
Subsidy sub-total
Loan variations since previous month
 • Plus new loans
 • Less repaid loans
 Subsidy adjustments from previous month (plus/minus)
Next subsidy due

D. REPORT ON RETURN COPY OF CERTIFICATE OF ENTITLEMENT

Particulars—Subsidised Advances and Instalment Relief

Subsidy Scheme (Commonwealth) File Number Account Name (full name(s) of borrowers)

Subsidised Advances

Date of settlement

Date and amount of progress payments

Term of Advance

Source of unsubsidised borrowing (i.e. Bank/Other)

Amount of unsubsidised borrowing by source

Consideration of property acquired/capital cost for extensions

Certification

Instalment Relief only:

Date of settlement

Certification

E. REPORT—INDIVIDUAL ADVICE

Particulars—(as relevant)

Subsidy Scheme (Commonwealth) File Number

Account Name (full name(s) of borrowers)

Change of account name

new account name

Notice of marriage
date of marriage
name of spouse

Notice of death
name of deceased
date of death

Purported transfer of land or land and dwelling-house subject to Subsidy without Commonwealth consent
date of transfer
name of transferee

Bankruptcy or insolvency
name of bankrupt
date of bankruptcy

Seizure of dwelling-house
date of seizure
whom seized by
authority for seizure
date of proposed sale

Ownership of other dwelling house at date of Certificate of Entitlement
name of owner
address of dwelling-house

Cessation of occupation of home
date occupation ceased

Failure to use Advance for purpose set out in Certificate of Entitlement.
Title particulars of property acquired.

SCHEDULE E

WITHDRAWAL OF AMOUNTS UNDER EXCESS CREDIT ARRANGEMENTS

Amounts may be withdrawn by a borrower under an excess credit arrangement referred to in Clause 9 of this Agreement, and used, for any of the following purposes:

- (a) for paying instalments, or arrears of instalments, due to the Bank by the Borrower;

- (b) for paying premiums to the Commonwealth for insurance undertaken by it under the Defence Service Homes Insurance Scheme;
- (c) for discharging, wholly or partly, a liability incurred, or to be incurred, by the Borrower for, or in connection with:
 - (i) rates, taxes or charges in respect of the secured property;
 - (ii) insurance under a contract of insurance entered into between the Borrower and another insurer;
 - (iii) building any building or other structure on the secured property;
 - (iv) carrying out improvements on or to the secured property, dwelling-house or any other building or structure on the secured property;
 - (v) repairing, maintaining or extending the dwelling-house or any other building or structure on the secured property;
 - (vi) installing fixtures on or in the, the dwelling-house or any other building or structure on the secured property; or
 - (vii) in the case of a dwelling-house shown as a unit or lot on a plan registered or deposited under a law of a State or Territory relating to strata titles, stratum titles, unit titles or building units titles—the provisions of that law relating to payments by the borrower to the body corporate incorporated under that law in consequence of the registration or deposit of that plan;
- (d) for discharging, wholly or partly, the outstanding liability of the Borrower under the relevant Corporation Advance, Subsidised Advance or Portfolio Contract of Sale;
- (e) for paying any fees or charges payable by the Borrower to the Bank or to the Commonwealth in relation to any application under the Defence Service Homes Act or this Agreement;
- (f) for transferring money from one form of Excess Credit arrangement to another.

Schedule 1A—Agreement between the Commonwealth of Australia and Westpac Banking Corporation

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Date of Agreement

Recitals

Clause

1. Definitions and Interpretations
2. Agreement
3. Unit Fee
4. Further Amending Act
5. Grant of Exclusive Right
6. Adoption and Application of the Agreement
7. Non-merging on Settlement and Severability
8. Stamp Duty
9. Applicable Law
10. Waiver
11. Amendments or Variation
12. Assignment

Schedule of Amendments to Principal Agreement

AN AGREEMENT made the fifth day of November 1990

BETWEEN

the **COMMONWEALTH OF AUSTRALIA**

(hereinafter referred to as “the Commonwealth”) of the one part

and

WESTPAC BANKING CORPORATION

of 60 Martin Place, Sydney
in the State of New South Wales

(hereinafter referred to as “the Bank”) of the other part.

WHEREAS:

- A. Under the Agreement between the Commonwealth and the Bank dated 9 November 1988 pursuant to the Amending Act the Bank acquired from the Commonwealth the interests of the Defence Service Homes Corporation (“the Corporation”) in the Portfolio Assets and the exclusive right to provide Subsidised Advances and other benefits upon which subsidy is payable to all persons satisfying the tests of eligibility and entitlement under the Amended Act.
- B. The Commonwealth proposes to introduce legislation to vary the categories of Subsidised Advances provided pursuant to the Amended Act by varying the Subsidy Scheme so as to introduce the Variation Advances.
- C. The Bank wishes to acquire from the Commonwealth the exclusive right to provide the Variation Advances to all persons who satisfy the tests of eligibility and entitlement in respect of same under the Amended Act.
- D. The Commonwealth is willing to provide to the Bank the exclusive right to provide the Variation Advances to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans’ Affairs Legislation Amendment Bill 1990.
- E. The Commonwealth is willing to pay to the Bank a Subsidy in respect of the Variation Advances granted to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans’ Affairs Legislation Amendment Bill 1990.
- F. The Bank is willing to pay to the Commonwealth a fee in respect of each Subsidised Advance which is a Variation Advance granted by the Bank.
- G. In order to give effect to this Supplementary Agreement the Commonwealth and the Bank agree to amend the Agreement in the manner set out in the Schedule to this Supplementary Agreement and for the purposes of this Supplementary Agreement and its construction to abide by and act in accordance with the provisions of the Agreement as so amended.

H. The Commonwealth and the Bank acknowledge that this Supplementary Agreement is dependent upon the passage of legislation governing same, by the Parliament of the Commonwealth of Australia.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement except where the context otherwise requires:

1.1 Definitions

| | |
|---|---|
| Amended Agreement— | means the Agreement as amended by the Supplementary Agreement. |
| Further Amending Act— | means Part 2 of the Veterans' Affairs Legislation Amendment Act 1990. |
| Retirement Village— | has the same meaning as in the Further Amending Act. |
| Retirement Village Accommodation— | has the same meaning as in the Further Amending Act. |
| Right of residence in a retirement village— | has the same meaning as in the Further Amending Act. |
| Supplementary Agreement— | means this Agreement. |
| Unit Fee— | means the fee payable by the Bank to the Commonwealth for each Variation Advance granted pursuant to this Supplementary Agreement. |
| Unit Fee Claim Period— | means the twelve month period immediately preceding the date of the invoice referred to in Sub-clause 3.3. of this Supplementary Agreement and, for the period preceding 1 May 1991, the period between the date of execution of this Supplementary Agreement and 1 May 1991. |
| Variation Advance— | means— (a) (i) a Subsidised Advance made by the Bank in accordance with a Certificate of Entitlement issued under Subsection 18(2)(g), (h), (j) and (k) of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990; |

- (ii) a Subsidised Advance made by the Bank in accordance with a Certificate of Entitlement relating to a person's retirement village accommodation or right of residence in a retirement village issued under Subsection 18(3)(a)(ii), (d)(ii) and (f), Subsection 20(2)(a) and (b) and Subsection 21(c) of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990; and
 - (b) a Further Advance made by the Bank in accordance with a Certificate of Entitlement issued under Section 19 of the Defence Service Homes Act 1918 as amended by Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990 to a person who is or was a purchaser or borrower in relation to a Corporation advance, a Subsidised Advance or a Contract of Sale on 9 December 1987.
-

1.2.1 Where this Supplementary Agreement includes a reference to a term which is defined in the Agreement the definition in the Agreement as amended by this Supplementary Agreement is to be applied except where the contrary intention is expressed.

1.3 Interpretation

1.3.1 Words importing one gender shall include the other gender.

1.3.2 Words importing the singular shall include the plural and vice-versa.

1.3.3 A reference to a Clause shall be a reference to all of its Sub-clauses, and a reference to a Sub-clause shall be a reference to all its Sub-sub-clauses unless the context otherwise admits.

1.3.4 The Clause headings in this Supplementary Agreement are for reference only and have no effect on the construction, interpretation or meaning of the Clauses.

1.3.5 The Schedule referred to herein forms part of and is subject to the terms of this Supplementary Agreement.

1.3.6 Where in this Supplementary Agreement any period of time dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned inclusive of such day or of the day of such act or event.

- 1.3.7 Where the last day of any period prescribed or allowed by this Supplementary Agreement for the doing of anything falls on a Saturday, or on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, or Sunday or public holiday or bank holiday in that place.
- 1.3.8 Where in this Supplementary Agreement any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.
- 1.3.9 A reference to a Clause shall be a reference to a Clause in this Supplementary Agreement unless otherwise specified.
- 1.3.10 A reference to the parties shall be a reference to the parties to this Supplementary Agreement.
- 1.3.11 All sums of money and all payments made under this Supplementary Agreement shall be in Australian dollars.

2. AGREEMENT

- 2.1 The Bank agrees to provide Variation Advances in the same manner as prescribed with respect to Subsidised Advances under the provisions of the Amended Agreement.
- 2.2 The Commonwealth agrees to grant the Bank the exclusive right to receipt of Subsidy in respect of each Variation Advance pursuant to Clause 5 hereof.
- 2.3 The Commonwealth further agrees to pay to the Bank a Subsidy with respect to each Variation Advance in accordance with the provisions of Clause 11 of the Amended Agreement.
- 2.4 The Bank further agrees that with respect to each Variation Advance it shall be bound by and act at all times in accordance with this Supplementary Agreement and the Amended Agreement.
- 2.5 The Commonwealth and the Bank agree that in order to give effect to this Supplementary Agreement the provisions of the Agreement are to be amended in accordance with the provisions of the Schedule to this Supplementary Agreement.

3. UNIT FEE

- 3.1 The Bank agrees to pay to the Commonwealth
-

- (a) a minimum Unit Fee of four hundred dollars (\$400.00) for each advance falling within paragraphs (a) (i) and (b) of the definition of Variation Advance which it grants pursuant to this Supplementary Agreement; and
 - (b) in each Unit Fee Claim Period, a further amount equivalent to the product of:
 - (i) the minimum Unit Fee; and
 - (ii) the number of Borrowers the sum total of whose first advance being an advance falling within paragraphs (a) (i) or (b) of the definition of Variation Advance and any other unsubsidised loan funds from the Bank provided to the Borrowers at the same time and for the same purpose as such Variation Advance exceeds sixty thousand dollars (\$60,000.00); and
 - (iii) the fraction the numerator of which is the average amount by which each of the borrowings referred to in Sub-clause 3.1(b)(ii) exceeds sixty thousand dollars (\$60,000.00) and the denominator of which is sixty thousand dollars (\$60,000.00).
 - (c) In the event that the Commonwealth or any State or Territory legislature enacts legislation which restricts the Bank's ability to set its Establishment Fees as the Bank determines and as a result the Bank receives less by way of Establishment Fees than would otherwise have been the case the Bank shall have the right to reduce the amount payable to the Commonwealth pursuant to Sub-clause 3.1(b) by the difference between what it would have received in Establishment Fees and what it has in fact received and in the event of a dispute or disagreement arising between the Commonwealth and the Bank as to the amount of the reduction, the provisions of Sub-clause 3.6 shall apply.
- 3.2 For the purposes of this Clause the Bank shall be taken to have granted a Variation Advance to an Entitled Applicant upon the execution by the Entitled Applicant of all necessary mortgage or security documentation, or if mortgage or security documentation does not exist or is not required by the Bank, the date on which the Borrower first draws upon the Variation Advance.
- 3.3 On or after 1 May of each year commencing on 1 May 1991 the Commonwealth shall provide to the Bank a written invoice detailing
-

- its claim for payment of the Unit Fee referred to in Sub-clause 3.1 in respect of the Unit Fee Claim Period.
- 3.4 The Bank shall pay the Commonwealth the total amount by way of Unit Fee which the Bank has verified by 11:00 am. on the day which is thirty (30) days after receipt of the Commonwealth's invoice pursuant to Sub-clause 3.3.
- 3.5 Payment shall be made by depositing a cheque for the relevant amount with the Receiver of Public Monies, Department of Veterans' Affairs, Sydney, New South Wales or in such other manner as the Commonwealth may from time to time advise.
- 3.6 In the event of a dispute or disagreement arising between the Commonwealth and the Bank as to the amount payable to the Commonwealth by the Bank in accordance with this Supplementary Agreement the following provisions shall apply:
- 3.6.1 In the event that any such dispute or disagreement cannot be resolved between the Commonwealth and the Bank within a period of seven (7) days after first occurring, the dispute or disagreement is to be referred to arbitration in accordance with the procedure outlined in Clause 26 of the Agreement, except that the Commonwealth and the Bank agree that for the purpose of such dispute/disagreement the arbitrator shall be appointed by the President for the time being of the Australian Institute of Chartered Accountants.
- 3.6.2 Upon resolution of such dispute or disagreement in the event that there has been an overpayment by the Bank to the Commonwealth of the amount of the Unit Fee the Commonwealth shall pay to the Bank within seven (7) days of such resolution by way of adjustment the amount of such overpayment.
- 3.6.3 The Commonwealth and the Bank agree that the amount of adjustment shall bear interest at the Benchmark rate fixed in accordance with Sub-clause 11.10 of the Agreement.
- 4. FURTHER AMENDING ACT**
- 4.1 This Supplementary Agreement is binding on the parties but, except for this Clause, is subject to and conditional upon Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 being passed by Parliament in the form of the draft Bill initialled on behalf of the

parties at the time of execution of this Supplementary Agreement with such amendments only as are agreed in writing by the parties.

- 4.2 In the event that Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 passed by Parliament should contain any amendments from the draft Bill referred to in Sub-clause 4.1 the Commonwealth shall within two (2) days of the passage of the Veterans' Affairs Legislation Amendment Act 1990 give notice to the Bank of the amendments together with such information relating to those amendments as it wishes to provide.
- 4.3 If in the opinion of the Bank, such amendments:
- (a) alter the obligations of the Bank set out in the Agreement, the Supplementary Agreement or the draft Bill;
 - (b) alter the arrangements for the payment of Subsidy set out in the Agreement, the Supplementary Agreement or the draft Bill;
 - (c) reduce or restrict the entitlements of persons set out in the Agreement, the Act or the draft Bill in a way which is likely to reduce, from levels applying in recent years, the number of Entitled Applicants for advances;
 - (d) alter the obligations of the Commonwealth set out in the Agreement, the Supplementary Agreement, the Amended Act or the draft Bill; or
 - (e) result in any financial consequences which are adverse to the Bank,
- and are unacceptable to the Bank, the Bank shall notify the Commonwealth of such opinion within seven (7) days of receipt of the notice under Sub-clause 4.2, or such further period as may be agreed upon by the parties, and upon receipt of such notice this Supplementary Agreement shall terminate.
- 4.4 In the event that the Bank does not give notice under Sub-clause 4.3, it shall be taken to have agreed to such amendments for the purposes of Sub-clause 4.1.
- 4.5 The Commonwealth agrees that Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990 referred to in Sub-clause 4.1 which is submitted to Parliament shall have only such amendments as may be agreed in writing between the parties.
- 4.6 In the event that Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 is not passed in the form of the draft Bill

referred to in Sub-clause 4.1 and, as a result, the condition contained in Sub-clause 4.1 is not met and this Supplementary Agreement is terminated or has no force or effect, neither the Bank nor the Commonwealth will have any right to claim compensation, losses, expenses, costs or damages arising or resulting from this Supplementary Agreement against the other.

5. GRANT OF EXCLUSIVE RIGHT

- 5.1 The Commonwealth hereby grants to the Bank on the terms set out in this Supplementary Agreement the exclusive right to provide the first twenty five thousand dollars (\$25,000.00), or such other amount as may be agreed upon by the parties, of the Variation Advances upon which Subsidy is payable to all persons who satisfy the tests of eligibility and entitlement under the Defence Service Homes Act 1918 as amended by the Veterans' Affairs Legislation Amendment Bill 1990.
- 5.2 The Commonwealth agrees to notify all persons who seek Subsidised Advances in accordance with the Variation Advances under Part 2 of the Veterans' Affairs Legislation Amendment Act 1990 that the Bank has the exclusive right to grant these Variation Advances.

6. ADOPTION AND APPLICATION OF AGREEMENT

The Commonwealth and the Bank agree that they will adopt, apply, read and construe this Supplementary Agreement in accordance with the provisions of the Agreement as amended by the Schedule to this Supplementary Agreement.

7. NON-MERGING ON SETTLEMENT AND SEVERABILITY

Any provision in this Supplementary Agreement which is to take effect after the last date of commencement of Part 2 of the Veterans' Affairs Legislation Amendment Bill 1990, shall not merge on settlement but rather shall continue in full force and effect.

8. STAMP DUTY

Any stamp duty arising out of this Supplementary Agreement or its implementation shall be borne by the Bank.

9. APPLICABLE LAW

This Supplementary Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties hereto agree to submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory.

10. WAIVER

Failure by either party at any time to enforce any of the provisions of this Supplementary Agreement or any amendments pursuant thereto by the other party shall not be construed as a waiver by such party of such provision or in any way affect the validity of this Supplementary Agreement or any part thereof, or the rights of the other party thereafter to enforce each and every such provision. The waiver by either party of any provision of this Supplementary Agreement shall not constitute a waiver of any future obligation to comply with such provision.

11. AMENDMENTS OR VARIATION

No variation, modification or waiver of any provision of this Supplementary Agreement nor consent to any departure by any party therefrom shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by all the parties hereto, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

12. ASSIGNMENT

This Supplementary Agreement may not be assigned in whole or in part by either party without the prior written consent of the other party.

IN WITNESS WHEREOF the parties have executed this Agreement as at the day and year first before written:

Schedule 1A Agreement between the Commonwealth of Australia and Westpac
Banking Corporation

Signed for and on behalf of the
COMMONWEALTH OF
AUSTRALIA by The
Honourable Benjamin Charles
Humphreys, Minister for
Veterans' Affairs
in the presence of:
R J Bernau

} BEN HUMPHREYS
R. J. BERNAU

SIGNED for and on behalf of
WESTPAC BANKING
CORPORATION
by LANCE HAROLD JOHN
BAUER
and GRAHAME RALSTON
HERRON
its duly constituted
Attorneys who are personally
known to me
K. S. ANDERSON

} WESTPAC BANKING
CORPORATION by its Attorneys
who hereby respectively state that
at the time of their executing this
instrument they have no notice of
the revocation of the Power of
Attorney registered in the Office of
the Registrar General Numbered
643 Book 3585 under the authority
of which they have executed this
instrument
L. H. J. BAUER
CHIEF MANAGER
CONSUMER BANKING
G. R. HERRON
ACTING CHIEF MANAGER
LEGAL ADMINISTRATION

SCHEDULE OF AMENDMENTS TO AGREEMENT

Clause 1

Amend the following definitions:

- Establishment Fees:** Insert the words “or applications for retirement village accommodation” after the words “secured by first mortgage”.
- Housing Loan Customer:** Insert the words “or retirement village accommodation” after the words “or refinancing of a dwelling”.
- Portfolio Arrears:** Insert the words “on the last day of the month immediately preceding the month in which a Subsidy payment is being calculated” after the words “and all Subsidised Advances”.

Insert the following new definitions:

| | |
|--|---|
| Amended Agreement: | means the Agreement between the Commonwealth and the Bank signed on 9 November 1988 as amended by the Supplementary Agreement between the parties signed on fifth day of November 1990. |
| Further Amending Act: | has the same meaning as in the Supplementary Agreement. |
| Retirement Village: | has the same meaning as in the Further Amending Act. |
| Retirement Village Accommodation: | has the same meaning as in the Further Amending Act. |
| Right of residence in a retirement village: | has the same meaning as in the Further Amending Act. |
| Supplementary Agreement: | means the Agreement signed by the Commonwealth and the Bank on the fifth day of November 1990. |
| Variation Advance: | has the same meaning as in the Supplementary Agreement. |

Clause 5

5.1.2 Insert “unless the Commonwealth and the Bank otherwise agree” after the words “any such application”.

Clause 7

7.3 Insert “or such other security” after the words “first mortgage”.
Insert “(if any)” after the words “and documentation”.

Clause 8

8.3 Insert after Sub-clause 8.3(b) the word “or”.
Insert a new Sub-clause 8.3(c) after Sub-clause 8.3(b):
“(c) where the Borrower has been granted an advance falling within paragraph (a) of the definition of Variation Advance the Bank shall not be required to take any security.”

8.8 Insert the words “or any other security, if any, which the Bank deems appropriate.” At the end of the Sub-clause.

Clause 9

9.4.3 Insert the words “or other mortgage or security documentation,”

if any,” after the words “by the first mortgage”.

Clause 10

- 10.1(b)** Insert the words: “or retirement village accommodation” after the words “or land and dwelling house”.
- 10.1(e)** Insert the words “or retirement village accommodation” after the word “land and dwelling house.”
- 10.1(f)** Insert the words “or retirement village accommodation” after the words “any other dwelling house;”
- 10.1(g)** Insert the words “or retirement village accommodation” after the words “occupation of dwelling house.” And delete the word “and” at the end of this paragraph.
- 10.1(h)** Insert the word “; and” at the end of this paragraph.

Insert a new Sub-clause **10.1(i)** after Sub-clause 10.1(h) in the following terms:
“written notice that the Entitled Applicant’s right of residence in a retirement village has been terminated.”

Clause 11

Delete Sub-clause 11.5 and insert the following:

- 11.5.1** Except where the provisions of Sub-clause 11.5.2 apply upon receipt by the Commonwealth of the invoice and information referred to in Sub-clause 10.5 the Commonwealth shall pay the Bank the amount of Subsidy which the Commonwealth has verified by 11:00 am. On the eighteenth day of the month to which such invoice and information refers.
- 11.5.2** If the Bank has not complied with the requirements of Clause 11.4 in respect of its claim for Subsidy on certain Specified Portfolio Assets and Subsidised Advances, but subsequently provides the invoice and information referred to in Sub-clause 10.5, the Commonwealth shall pay to the Bank the amount of Subsidy which it has verified by 11 am on the day which is seven (7) business days after the date on which the Bank provides the said invoice and information. The Commonwealth will promptly pay to the Bank claims verified after that date.

Clause 22

Delete the Commonwealth's Fax number recorded as: (062) 813 822

Insert the following new Fax numbers for the Commonwealth:

(06) 282 3672 and/or (06) 285 2608

Insert the following after the words "For attention the Secretary":

"Notices issued to the Commonwealth should also be addressed to:

State Manager

Defence Service Homes

in the State/Territory in which the Westpac account is held."

Insert: "Notices issued to the Bank should be addressed to:

Delete the words: "66 Pitt Street, Sydney".

Insert the words:

"Australian Marketing Group

P.O. Box H258

Australia Square

Sydney, N.S.W. 2001"

Schedule D

E. REPORT—INDIVIDUAL ADVICE

Insert the words "or retirement village accommodation" after "dwelling house" wherever the latter appears."

Schedule 2—Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets

Subsection 6B(9)

Defence Service Homes Act 1918

| Provision | Modification |
|--------------------|---|
| Subsection 4A(2) | (a) Omit “Any such husband and wife”, substitute “A husband and wife who are joint tenants”. (b) Omit “an eligible person”, substitute “a”. (c) Omit “this Act”, substitute “the mortgage, contract of sale or other security”. |
| Subsection 18A(3) | Omit “The cost so allotted”, substitute “The cost allotted to a dwelling-house by the Corporation under subsection 18A(1) of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> for the making of roads or other facilities affording access to the dwelling-house or for connecting sewerage, drainage, water, gas and electric power and lighting systems to the dwelling-house”. |
| Subsection 18A(3A) | — |
| Subsection 18A(3B) | — |
| Subsection 18A(4) | (a) After “section 36” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under subsection 6B (9) of the <i>Defence Service Homes Act 1918</i> ”. (b) Omit “or advance under this Act”, substitute “, mortgage or other security”. |
| Section 19 | (a) Omit subsections (1), (1A), (2), (3) and (4). (b) Omit from subsection (6) “to the Corporation”. (c) Insert in subsection (6) “as those provisions apply as terms or conditions of a portfolio asset which vests in the Bank under subsection 6B(9) of the <i>Defence Service Homes Act 1918</i> ” after “regulations”. |

| Provision | Modification |
|------------------|--|
| | (d) Omit from subsection (6) “prescribed notice”, substitute “notice prescribed in regulation 10 as that provision applies as a term or condition of a portfolio asset which vests in the Bank under subsection 6B(9) of the <i>Defence Service Homes Act 1918</i> ”. |
| | (e) Omit from subsection (6) “prescribed form”, substitute “form prescribed in regulation 9 as that provision applies as a term or condition of a portfolio asset which vests in the Bank under subsection 6B(9) of the <i>Defence Service Homes Act 1918</i> ”. |
| | (f) Insert in subsection (6) “, together with such other documentation setting out terms of repayment as is required by the Bank,” after “contract of sale” (third occurring). |
| | (g) Omit subsection (7), substitute the following subsection: “(7) The mortgage and documentation executed by the person under subsection (6) must provide for: (a) interest to be payable on the amount secured under the mortgage, being the balance of the amount payable under the contract of sale immediately before the date of the mortgage, at the same rate that was payable on that balance; (b) where different rates of interest were payable on different parts of the balance referred to in paragraph (a), the amount secured by the mortgage is to be taken to be divided into equivalent parts with the rate of interest payable on each of those parts to be the same as that payable on the equivalent part of the balance; (c) the repayment period for the amount secured by the mortgage to be the period over which the balance referred to in paragraph (a) would have been payable under the contract of sale; (d) the amount of each monthly instalment required to repay the amount secured by the mortgage to be the same instalment required to repay the balance referred to in paragraph (a) under the contract of sale; and (e) such other terms and conditions as are applicable to a subsidised advance within the meaning of the <i>Defence Service Homes Act 1918</i> .”. |

Schedule 2 Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets

| Provision | Modification |
|--------------------|--|
| | (h) Omit from subsection (8) “this section”, substitute “subsection 19(6) of the Act as that provision applies as a term or condition of a portfolio asset which vests in the Bank under subsection 6B(9) of the Defence Service Homes Act 1918”. |
| Subsection 27(1) | Omit “this Act”, substitute “the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> ”. |
| Subsection 27(2) | Omit “this Act or the Regulations thereunder”, substitute “the mortgage, contract of sale or other security”. |
| Subsection 29(1) | — |
| Subsection 29(1A) | — |
| Subsection 29(1C) | — |
| Subsection 29AA(3) | Omit “A reduction under the last preceding subsection in the amount of the instalment”, substitute “A reduction, approved by the Minister under subsection 29AA(2) of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> in the amount of the instalment required to be paid under the contract of sale, mortgage or other security”. |
| Subsection 29AA(6) | (a) After “work done” insert “by the Corporation to keep in good order and repair the buildings, fences, fixtures and other improvements on the land”. (b) After “payments made” insert “by the Corporation to pay rates, taxes, charges or other outgoings in relation to the land or land and dwelling-house”. (c) Omit “under subsection (4) or subsection (5)”, substitute “by the Minister under subsection 29AA(4) or (5) of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> ”. (d) Omit “, subject to subsection (8),”. |
| Subsection 29AA(7) | After “section 36” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ”. |

Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets **Schedule 2**

| Provision | Modification |
|--------------------|--|
| Subsection 29AB(3) | Omit “The reduction under subsection (2) in the amount of the instalment”, substitute “A reduction, approved by the Minister under subsection 29AB(2) of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> , in the amount of the instalment required to be paid under the contract of sale, mortgage or other security”. |
| Section 30 | (a) Omit subsection (3). (b) Insert in paragraph (4)(b) “of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> ” after “20A”. |
| Subsection 30A(1) | — |
| Subsection 30A(2) | Omit from paragraph (a) “this Act or the regulations, or”. |
| Subsection 30A(2A) | — |
| Subsection 30A(3) | Omit “this Act”, substitute “the mortgage, contract of sale or other security”. |
| Subsection 30A(4) | — |
| Subsection 30A(7) | — |
| Section 31 | (a) Omit from paragraph (2)(a) “10 per centum per annum”, substitute “the rate determined by the Bank”. (b) Insert in paragraph (2)(b) “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ” after “section 36”. (c) Omit from paragraph (2)(b) “or advance under this Act”, substitute “mortgage or other security”. |
| Section 32 | — |
| Section 32A | Omit from subsection (2) “section 4A”, substitute “section 4A of the <i>Defence Service Homes Act 1918</i> as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> ”. |
| Section 34 | Omit “or 33”. |
| Subsection 35(1) | Omit paragraph (1)(b). |
| Subsection 35(1A) | Omit “in pursuance of paragraph (b) of the last preceding subsection, to a person who is not an eligible person,”, substitute |

Schedule 2 Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets

| Provision | Modification |
|-------------------|---|
| | “without the consent of the Bank”. |
| Subsection 35(2A) | (a) Omit “Corporation under paragraph (b) of the last preceding subsection in respect of”, substitute “Commonwealth or Corporation in respect of the transfer of”. (b) Omit “Corporation may”, substitute “Bank may”. |
| Subsection 35(4) | After “section 36” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ”. |
| Subsection 35(5) | — |
| Subsection 35(6) | — |
| Subsection 36(1) | (a) Omit “or advance under this Act”, substitute “mortgage or other security”. (b) Omit “although no legal demand has been made for payment”. |
| Subsection 36(1A) | — |
| Subsection 36(1B) | — |
| Subsection 36(1C) | (a) Omit from paragraph (a) “10 per centum per annum”, substitute “the rate determined by the Bank”. (b) Omit from paragraph (b) “this Part”, substitute “this provision”. |
| Subsection 36(2) | Omit “to the Commonwealth for payment by the Commonwealth to the persons appearing to the Minister to be entitled to receive it”, substitute “to the person legally entitled to receive it”. |
| Subsection 36(3) | Omit “or advance under this Act”, substitute “, mortgage or other security”. |
| Subsection 36(4) | — |
| Subsection 36A(1) | (a) Omit “Corporation” (other than the first two times occurring), substitute “Bank”. (b) Omit “transfer his interest in the dwelling-house or”. (c) Omit “transfer his interest or”. |
| Subsection 36A(3) | (a) Omit “to transfer his interest to the Corporation or”. (b) After “section 36” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ”. |

Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets **Schedule 2**

| Provision | Modification |
|-------------------|--|
| Subsection 38(4D) | <p>(a) Omit “by reason of an advance or sale by the Corporation”.</p> <p>(b) Omit from paragraph (a) “Corporation”, substitute “Defence Service Homes Insurance Scheme”.</p> <p>(c) Insert in paragraph (b) “or is approved by the Bank from time to time” after “with the Corporation”.</p> |
| Subsection 38(4E) | <p>(a) Omit “(4D)”, substitute “38(4D) of the <i>Defence Service Homes Act 1918</i> (as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i>) as a term or condition under section 6B of that Act as in force on or after that commencement”.</p> <p>(b) Omit “with the Corporation”, substitute “under the Defence Service Homes Insurance Scheme”.</p> <p>(c) Omit “to the Corporation” (second time occurring), substitute “to the Commonwealth”.</p> <p>(d) Omit “by the Corporation”, substitute “under the Defence Service Homes Insurance Scheme”.</p> |
| Subsection 43(1) | <p>(a) Omit “by this Act”, substitute “in relation to a contract of sale, mortgage or other security”.</p> <p>(b) Omit from paragraph (a) “purchased from, or in respect of which an advance has been made by, the Corporation”, substitute “secured by the contract of sale, mortgage or other security”.</p> <p>(c) Omit from subparagraph (b)(ii) “purchased from, or in respect of which an advance has been made by, the Corporation”, substitute “secured by the contract of sale, mortgage or other security”.</p> |
| Subsection 43(2) | <p>(a) Omit “this Act or the Regulations”, substitute “a contract of sale, mortgage or other security”.</p> <p>(b) Omit “by the holder of an office specified by the Corporation by notice published in the <i>Gazette</i>”, substitute “by an officer of the Bank”.</p> |
| Section 44 | Omit “Notwithstanding any other provision of this Act, where”, substitute “Where”. |
| Section 45 | — |
| Section 46 | — |

Schedule 2 Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets

| Provision | Modification |
|------------------|---|
| Section 48AB | <p>(a) Omit from subsection (1) “The Minister may, either generally or with respect to a particular case or a particular class of cases, give directions to the Corporation with respect to the payment by the Corporation of rates,” substitute “The Bank may pay rates, insurance premiums,”.</p> <p>(b) Omit from subsection (2) “in accordance with a direction under the last preceding subsection”.</p> <p>(c) Omit from paragraph (2)(b) “at 10 per centum per annum”, substitute “at such rate as the Bank determines”.</p> |
| Section 48B | — |
| Section 48C | — |
| Section 49 | — |

Defence Service Homes Regulations

| Provision | Modification |
|------------------|---|
| Regulation 9 | <p>(a) After “of the Act” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i>”.</p> <p>(b) After “is situated” insert “and which is otherwise in a form acceptable to the Bank”.</p> |
| Regulation 10 | After “of the Act” insert “as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ”. |
| Regulation 13 | — |
| Regulation 14 | Omit “Subject to section 17B of the Act, each”, substitute “Each”. |
| Regulation 15 | <p>(a) Omit “by the Corporation”, substitute “by a Manager of the Bank”.</p> <p>(b) After “Corporation shall” insert “, as between the Bank and the purchaser, borrower, tenant or applicant,”.</p> |
| Regulation 17 | <p>(a) Omit from paragraph (b) “in accordance with an agreement for the erection, completion or enlargement of a dwelling-house by the Corporation under section 17A of the Act,”.</p> <p>(b) Omit “the mortgage or by the Act or these Regulations”, substitute “a term or condition of the mortgage”.</p> |

Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets **Schedule 2**

| Provision | Modification |
|----------------------|--|
| Regulation 18 | (a) After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. (b) Omit from subregulation (1) “with the Act”, substitute “with that subsection”. |
| Regulation 20 | After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Regulation 21 | (a) Omit “it is proved to the satisfaction of the Corporation that”. (b) After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Regulation 24 | Omit “for the purposes of section 46 of the Act”. |
| Subregulation 32(1) | — |
| Regulation 33 | — |
| Regulation 35 | — |
| Regulation 36 | — |
| Regulation 37 | — |
| Regulation 38 | — |
| Regulation 39 | — |
| Regulation 40 | — |
| Regulation 42 | (a) Omit from paragraph (a) “satisfactory to”, substitute “to the reasonable satisfaction of”. (b) Omit from paragraph (b) “approved by the Corporation”. (c) Omit paragraph (c). |
| Regulation 43 | — |
| Regulation 44 | — |
| Regulation 74A | After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Subregulation 74B(1) | After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Subregulation 74B(2) | After “of the Act” insert “, as that provision applies as a term or |

Schedule 2 Provisions of Defence Service Homes Act and regulations applying as terms and conditions of vested portfolio assets

| Provision | Modification |
|----------------------|---|
| | condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Subregulation 74C(1) | (a) After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. (b) Omit “in accordance with Form B”. |
| Subregulation 74C(2) | After “of the Act” insert “, as that provision applies as a term or condition of a portfolio asset which vests in the Bank under section 6B of the <i>Defence Service Homes Act 1918</i> ,”. |
| Regulation 74E | Omit “under this Part”, substitute “of determination of tenancy”. |
| Regulation 74F | (a) Omit “under this Part”, substitute “of determination of tenancy”. (b) Omit “, in accordance with Form CA,”. |

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

| | |
|--|--|
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| C[x] = Compilation No. x | pres = present |
| Ch = Chapter(s) | prev = previous |
| def = definition(s) | (prev...) = previously |
| Dict = Dictionary | Pt = Part(s) |
| disallowed = disallowed by Parliament | r = regulation(s)/rule(s) |
| Div = Division(s) | reloc = relocated |
| ed = editorial change | renum = renumbered |
| exp = expires/expired or ceases/ceased to have effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = <i>Legislation Act 2003</i> | Sch = Schedule(s) |
| LIA = <i>Legislative Instruments Act 2003</i> | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given effect | SLI = Select Legislative Instrument |
| (md not incorp) = misdescribed amendment cannot be given effect | SR = Statutory Rules |
| mod = modified/modification | Sub-Ch = Sub-Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| | <u>underlining</u> = whole or part not commenced or to be commenced |

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|------------------------------------|-----------------|--------------|---|---|
| War Service Homes Act 1918 | 43, 1918 | 25 Dec 1918 | 6 Mar 1919 (<i>see Gazette 1919, p. 377</i>) | |
| War Service Homes Act 1919 | 28, 1919 | 28 Oct 1919 | 28 Oct 1919 | — |
| War Service Homes Act 1920 | 35, 1920 | 19 Oct 1920 | 19 Oct 1920 | — |
| War Service Homes Act 1923 | 18, 1923 | 1 Sept 1923 | ss. 7(1)(a), 8, 14, 15 and 22: 6 Mar 1919 s. 23: 1 Jan 1923 Remainder: Royal Assent | s. 25 |
| War Service Homes Act 1925 | 26, 1925 | 26 Sept 1925 | 12 Aug 1925 | — |
| War Service Homes Act 1926 | 47, 1926 | 23 Aug 1926 | 23 Aug 1926 | — |
| War Service Homes Act 1927 | 17, 1927 | 8 Apr 1927 | 8 Apr 1927 | — |
| War Service Homes Act 1929 | 13, 1929 | 22 Mar 1929 | ss. 4 and 8: 6 Mar 1919 s. 7: 1 July 1928 Remainder: Royal Assent | — |
| War Service Homes Act 1932 | 6, 1932 | 26 Mar 1932 | 26 Mar 1932 (<i>a</i>) | s. 3(2) |
| War Service Homes Act (No. 2) 1932 | 68, 1932 | 5 Dec 1932 | 1 Aug 1932 | — |
| War Service Homes Act 1934 | 63, 1934 | 17 Dec 1934 | 17 Dec 1934 | — |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--------------------------------------|------------------------|---------------|---|--|
| War Service Homes Act 1935 | 54, 1935 | 6 Dec 1935 | s. 4: 1 Feb 1935 Remainder: Royal Assent | — |
| War Service Homes Act 1937 | 25, 1937 | 16 Sept 1937 | 16 Sept 1937 | — |
| War Service Homes Act 1941 | 1, 1941 | 4 Apr 1941 | 2 May 1941 | — |
| War Service Homes Act 1946 | 8, 1946 | 18 Apr 1946 | 18 Apr 1946 | — |
| Commonwealth Public Service Act 1947 | 1, 1947 | 14 Mar 1947 | 14 Mar 1947 | s. 2(2) |
| War Service Homes Act 1947 | 38, 1947 | 12 June 1947 | 14 July 1947 (<i>see Gazette 1947, p. 1885</i>) | s. 6(2) and (3) |
| War Service Homes Act (No. 2) 1947 | 71, 1947 | 4 Dec 1947 | 4 Dec 1947 | — |
| War Service Homes Act 1948 | 67, 1948 | 9 Dec 1948 | 6 Jan 1949 | — |
| War Service Homes Act 1949 | 24, 1949 | 1 July 1949 | 1 July 1949 | — |
| War Service Homes Act 1951 | 74, 1951 | 11 Dec 1951 | 11 Dec 1951 | — |
| War Service Homes Act 1954 | 69, 1954 | 8 Nov 1954 | 8 Nov 1954 | — |
| Lands Acquisition Act 1955 (b) | 69, 1955 | 4 Nov 1955 | 16 Feb 1956 (<i>see Gazette 1956, p. 472</i>) | s. 3(2) |
| War Service Homes Act 1956 | 100, 1956 | 15 Nov 1956 | s. 3 (d): 1 Sept 1952 (<i>see s. 2(2) and Gazette 1957, p. 2631</i>) Remainder: 15 Nov 1956 | — |
| War Service Homes Act 1961 | 73, 1961 | 27 Oct 1961 | 24 Nov 1961 | s. 4(2) |

Defence Service Homes Act 1918

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Compilation No. 29

Compilation date: 14/10/2024

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|---|--|
| War Service Homes Act 1962 | 2, 1962 | 17 Mar 1962 | 17 Mar 1962 | — |
| War Service Homes Act (No. 2) 1962 | 93, 1962 | 14 Dec 1962 | 28 May 1963 (<i>see</i> s. 2 and <i>Gazette</i> 1963, p. 1869) | — |
| National Debt Sinking Fund Act 1966 | 65, 1966 | 29 Oct 1966 | 1 July 1966 | — |
| Statute Law Revision (Decimal Currency) Act 1966 | 93, 1966 | 29 Oct 1966 | s. 7: 18 Mar 1971 (<i>see</i> s. 2(2) and <i>Gazette</i> 1971, p. 2003) Remainder: 1 Dec 1966 | — |
| as amended by Public Service Act 1967 | 3, 1967 | 13 Apr 1967 | 1 Dec 1966 | — |
| War Service Homes Act 1968 | 99, 1968 | 25 Nov 1968 | ss. 3, 14, 16 and 19: 1 July 1969 Remainder: Royal Assent | ss. 14(2) and 18(2) |
| War Service Homes Act 1971 | 120, 1971 | 10 Dec 1971 | 10 Dec 1971 | — |
| Defence Service Homes Act 1973 | 31, 1973 | 15 May 1973 | ss. 4(c), (g) and 6: 3 Sept 1973 (<i>see</i> <i>Gazette</i> 1973, No. 119) Remainder: Royal Assent | s. 14(2) |
| Statute Law Revision Act 1973 | 216, 1973 | 19 Dec 1973 | 31 Dec 1973 | ss. 9(1) and 10 |
| as amended by Statute Law Revision Act 1974 | 20, 1974 | 25 July 1974 | 31 Dec 1973 | — |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|--|--|
| Defence Service Homes Act 1974 | 125, 1974 | 6 Dec 1974 | 6 Dec 1974 | ss. 13(2), 14(2), 17(2) and 18(2) |
| Australian Housing Corporation Act 1975 (c) | 25, 1975 | 18 Apr 1975 | 24 June 1975 (see <i>Gazette</i> 1975, No. S117) | s. 59(4) and (5) |
| Defence Service Homes Amendment Act 1976 (c) | 185, 1976 | 13 Dec 1976 | 13 Dec 1976 | s. 8(2) and (3) |
| Defence Service Homes Amendment Act 1977 | 79, 1977 | 16 June 1977 | 1 July 1977 | ss. 3(2) and 14 |
| Administrative Changes (Consequential Provisions) Act 1978 | 36, 1978 | 12 June 1978 | 12 June 1978 | — |
| Defence Service Homes Amendment Act 1978 | 137, 1978 | 11 Nov 1978 | ss. 11 and 15: 1 Oct 1980 (see <i>Gazette</i> 1980, No. S218) Remainder: Royal Assent | ss. 3(2), 7(2) and 17 |
| Defence Service Homes Amendment Act 1980 | 4, 1980 | 19 Mar 1980 | s. 9: 1 Oct 1980 (see s. 2 and <i>Gazette</i> 1980, No. S218) Remainder: Royal Assent | — |
| Defence Service Homes Amendment Act (No. 2) 1980 | 128, 1980 | 19 Sept 1980 | 15 Oct 1980 (see <i>Gazette</i> 1980, No. S231) | ss. 7(2), 8(2), 9(2) and 10(2) |
| Statute Law (Miscellaneous Amendments) Act (No. 2) 1982 | 80, 1982 | 22 Sept 1982 | Part XXX (ss. 84–90): 20 Oct 1982 (d) | — |

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|-----------------|--------------|--|---|
| Repatriation Legislation Amendment Act 1983 | 70, 1983 | 24 Oct 1983 | s. 4: 23 Dec 1983 (<i>see Gazette</i> 1983, No. S335) ss. 5 and 14(2): 1 Nov 1983 Remainder: Royal Assent | s. 36 |
| Statute Law (Miscellaneous Provisions) Act (No. 1) 1984 | 72, 1984 | 25 June 1984 | s. 3: 23 July 1984 (<i>e</i>) | s. 5(1) and (3) |
| Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 | 28, 1986 | 19 May 1986 | s. 61: Royal Assent Remainder: 22 May 1986 (<i>see Gazette</i> 1986, No. S225) | — |
| Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986 | 29, 1986 | 19 May 1986 | (<i>f</i>) | — |
| as amended by Veterans' Affairs Legislation Amendment Act 1987 | 78, 1987 | 5 June 1987 | s. 62: 5 June 1987 (<i>g</i>) s. 63: (<i>g</i>) | — |
| Defence Service Homes Amendment Act 1988 | 124, 1988 | 14 Dec 1988 | ss. 1 and 2: Royal Assent s. 15: 30 June 1989 (<i>see Gazette</i> 1989, No. S190) Remainder: 19 Dec 1988 (<i>see Gazette</i> 1988, No. S393) | ss. 17–19 |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|--|---|
| Defence Service Homes Amendment Act 1989 | 86, 1989 | 27 June 1989 | (<i>h</i>) | — |
| Veterans' Affairs Legislation Amendment Act 1989 | 93, 1989 | 27 June 1989 | ss. 3(1), 9, 14 and 17: 22 Dec 1988 ss. 7, 11(a), (b) and 15: 18 Feb 1989 s. 11(c): 1 Jan 1990 s. 13: 22 May 1986 Remainder: Royal Assent | — |
| Veterans' Affairs Legislation Amendment Act 1990 | 2, 1991 | 8 Jan 1991 | ss. 4–6, 7(a), (e)–(h), (k), 8–21 and 93: Royal Assent (<i>i</i>) s. 7(b) and (j): (<i>i</i>) s. 7(c): 18 Feb 1989 (<i>i</i>) s. 7(d): 2 Aug 1990 (<i>i</i>) | ss. 5, 6, 19 (2)–(4), 13(2), 21 and 93 (am. by 73, 1991, s. 21) |
| as amended by | | | | |
| Veterans' Entitlements (Rewrite) Transition Act 1991 | 73, 1991 | 25 June 1991 | (<i>see</i> 73, 1991 below) | — |
| Statute Law Revision Act 1996 | 43, 1996 | 25 Oct 1996 | Schedule 3 (item 129): 8 Jan 1991 (<i>j</i>) | — |
| Defence Force (Home Loans Assistance) Act 1990 | 14, 1991 | 21 Jan 1991 | Part 1 (ss. 1–9) and Schedule 1: Royal Assent Schedule 2: 1 Mar 1991 (<i>see Gazette</i> 1991, No. S24) Remainder: 15 May 1991 | — |

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|---|--|
| Veterans' Entitlements (Rewrite) Transition Act 1991 | 73, 1991 | 25 June 1991 | s 19: (<i>k</i>) Remainder: 1 July 1991 | — |
| Veterans' Affairs Legislation Amendment Act 1991 | 74, 1991 | 25 June 1991 | Sch 3 : 25 June 1991 (s 5) | — |
| Veterans' Affairs Legislation Amendment Act (No. 2) 1991 | 208, 1991 | 24 Dec 1991 | s 21: 24 Dec 1991 (s 2) | — |
| Veterans' Affairs Legislation Amendment Act 1992 | 70, 1992 | 26 June 1992 | s 3–11: 26 June 1992 (s 2(1)) s 88: 1 July 1991 (s 2(8)) | s 10(2) |
| Veterans' Affairs Legislation Amendment Act (No. 2) 1992 | 228, 1992 | 24 Dec 1992 | s 4, 5: 1 Jan 1993 (s 2(4)(a)) | — |
| Veterans' Affairs Legislation Amendment Act 1994 | 78, 1994 | 21 June 1994 | s 37: 21 June 1994 (s 2(1)) | — |
| Veterans' Affairs (1995-96 Budget Measures) Legislation Amendment Act 1995 | 128, 1995 | 14 Nov 1995 | Sch 1 (items 1–8, 10–47, 50, 52–59, 61–66): 1 July 1995 (s 2(2)) Sch 1 (items 9, 48, 49, 51, 60): 14 Nov 1995 (s 2(1)) | Sch 1 (item 66) |
| Veterans' Affairs Legislation Amendment Act (No. 1) 1996 | 55, 1996 | 8 Nov 1996 | Sch 1 (items 1–4, 6, 7): 8 Nov 1996 (s 2(1)) Sch 1 (item 5): 1 Nov 1996 (s 2(2)) | Sch 1 (item 7) |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|--|--|
| Veterans' Affairs Legislation Amendment (1996-97 Budget Measures) Act 1997 | 7, 1997 | 5 Mar 1997 | Sch 2: 5 Mar 1997 (s 2(1)) | — |
| Audit (Transitional and Miscellaneous) Amendment Act 1997 | 152, 1997 | 24 Oct 1997 | Sch 2 (items 709–715): 1 Jan 1998 (s 2(2)) | — |
| Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997 | 157, 1997 | 3 Nov 1997 | Sch 2: 3 Nov 1997 (s 2(1)) | — |
| Defence Service Homes Amendment Act 1997 | 183, 1997 | 27 Nov 1997 | 27 Nov 1997 (s 2) | Sch 1 (item 10) |
| Public Employment (Consequential and Transitional) Amendment Act 1999 | 146, 1999 | 11 Nov 1999 | Sch 1 (items 381, 382): 5 Dec 1999 (s 2(1), (2)) | — |
| Veterans' Affairs Legislation Amendment Act (No. 1) 1999 | 171, 1999 | 10 Dec 1999 | Sch 5 and Sch 6 (items 1–5): 10 Dec 1999 (s 2(1)) | — |
| Veterans' Affairs Legislation Amendment Act (No. 1) 2000 | 141, 2000 | 24 Nov 2000 | Sch 2: 24 Nov 2000 (s 2(1)) | — |
| Veterans' Affairs Legislation Amendment (Application of Criminal Code) Act 2001 | 16, 2001 | 30 Mar 2001 | Sch 1 (items 1, 2): 24 May 2001 (s 2) | — |
| Financial Framework Legislation Amendment Act 2005 | 8, 2005 | 22 Feb 2005 | s 4 and Sch 1 (items 135, 496): 22 Feb 2005 (s 2(1) items 2, 10) | s 4 and Sch 1 (item 496) |

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|---|--|
| Defence Home Ownership Assistance Scheme (Consequential Amendments) Act 2008 | 28, 2008 | 23 June 2008 | Sch 1 (items 6, 7): 1 July 2008 (s 2(1) item 2) | — |
| Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 | 144, 2008 | 9 Dec 2008 | Sch 15 (items 1–32): 1 July 2009 (s 2(1) item 37) | Sch 15 (items 9, 11) |
| Veterans' Affairs Legislation Amendment (Budget Measures) Act 2009 | 80, 2009 | 10 Sept 2009 | Sch 1 (items 11, 12): 11 Sept 2009 (s 2) | — |
| Veterans' Affairs Legislation Amendment (2010 Budget Measures) Act 2010 | 83, 2010 | 29 June 2010 | Sch 2 (items 9, 10) and Sch 3 (item 1): 1 July 2010 (s 2(1) item 2) | Sch 2 (item 10) |
| Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010 | 120, 2010 | 17 Nov 2010 | Sch 1 (items 6, 7): 17 Nov 2010 (s 2(1) item 2) | — |
| Statute Law Revision Act 2011 | 5, 2011 | 22 Mar 2011 | Sch 5 (items 102– 105), Sch 6 (items 34, 35) and Sch 7 (items 50, 51): 19 Apr 2011 (s 2(1) items 13, 15, 18) | — |
| Business Names Registration (Transitional and Consequential Provisions) Act 2011 | 127, 2011 | 3 Nov 2011 | Sch 2 (item 21): 20 Apr 2012 (s 2(1) item 4) | — |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|---|--|
| Privacy Amendment (Enhancing Privacy Protection) Act 2012 | 197, 2012 | 12 Dec 2012 | Sch 5 (item 32) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16) | Sch 6 (items 1, 15–19) |
| Statute Law Revision Act 2013 | 103, 2013 | 29 June 2013 | Sch 3 (items 100–107, 343): 29 June 2013 (s 2(1) item 16) | Sch 3 (item 343) |
| Veterans' Affairs Legislation Amendment (Miscellaneous Measures) Act 2014 | 5, 2014 | 28 Feb 2014 | Sch 1 (items 4, 5): 28 Feb 2014 (s 2) | Sch 1 (item 5) |
| Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 | 62, 2014 | 30 June 2014 | Sch 8 (items 118, 119) and Sch 14: 1 July 2014 (s 2(1) items 6, 14) | Sch 14 |
| as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015 | 36, 2015 | 13 Apr 2015 | Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2) | Sch 7 |
| as amended by Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2) | — |

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|---|--|
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2) | — |
| Statute Law Revision Act (No. 1) 2016 | 4, 2016 | 11 Feb 2016 | Sch 4 (item 366): 10 Mar 2016 (s 2(1) item 6) | — |
| Statute Update Act 2016 | 61, 2016 | 23 Sept 2016 | Sch 1 (item 223): 21 Oct 2016 (s 2(1) item 1) | — |
| Veterans' Affairs Legislation Amendment (Partner Service Pension and Other Measures) Act 2019 | 75, 2019 | 20 Sept 2019 | Sch 3 (items 1–3): 21 Sept 2019 (s 2(1) item 4) | — |
| Defence Service Homes Amendment Act 2019 | 112, 2019 | 9 Dec 2019 | 1 Jan 2020 (s 2(1) item 1) | Sch 1 (item 7) |
| Veterans' Affairs Legislation Amendment (Miscellaneous Measures) Act 2023 | 41, 2023 | 28 June 2023 | Sch 4: 29 June 2023 (s 2(1) item 1) | Sch 4 (item 2) |
| Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 | 38, 2024 | 31 May 2024 | Sch 15 (item 41): Oct 14 2024 (s 2(1) item 2) | — |

- (a) By virtue of subsection 3(2) of the *War Service Homes Act 1932*, the amendment made by subsection 3(1) of that Act is deemed to have commenced on the date of commencement of the *War Service Homes Act 1918*, viz.—6 March 1919.
- (b) The *Lands Acquisition Act 1955* was repealed by section 3 of the *Lands Acquisition (Repeal and Consequential Provisions) Act 1989*.
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Endnote 3—Legislation history

- (c) The *Australian Housing Corporation Act 1975* and the *Defence Service Homes Amendment Act 1976* were repealed by subsection 3(1) of the *Defence Service Homes Amendment Act 1977*. Subsection 3(2) of that Act provides that the repeals do not affect the operation of any amendment of the *Defence Service Homes Act 1918* made by a repealed Act. The amendments made by the repealed Acts are incorporated in this reprint.
- (d) The *Defence Service Homes Act 1918* was amended by Part XXX (sections 84–90) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
- (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (e) The *Defence Service Homes Act 1918* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (f) Section 2 only of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986*, section 2 of which provides as follows:
2. This Act shall come into operation immediately after the provisions of the Principal Act (other than section 61) come into operation.
- The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986* (other than section 61) came into operation on 22 May 1986 (see *Gazette* 1986, No. S225).
- (g) The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986* was amended by sections 62 and 63 only of the *Veterans' Affairs Legislation Amendment Act 1987*, subsections 2(1) and (3) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (3) Sections 61 and 63 shall be deemed to have come into operation immediately before the provisions of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than section 61 of that Act) came into operation.
- The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* (other than section 61) came into operation on 22 May 1986 (see *Gazette* 1986, No. S225).

Endnotes

Endnote 3—Legislation history

- (h) Section 2 of the *Defence Service Homes Amendment Act 1989*, section 2 of which provides as follows:
2. This Act shall be taken to have commenced immediately after the commencement of section 10 of the *Defence Service Homes Amendment Act 1988*.
- Section 10 commenced on 19 December 1988 (*see Gazette 1988*, No. S393).
- (i) The *Defence Service Homes Act 1918* was amended by sections 4–21 only of the *Veterans' Affairs Legislation Amendment Act 1990*, sections 2 and 7(b), (j) of which provide as follows:
2. Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of the provision.
- Commencement of paragraphs 7(b) and (j) provide as follows:
Immediately after the commencement of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986*.
- The *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Amendment Act 1986* (other than section 61) came into operation on 22 May 1986 (*see Gazette 1986*, No. S225).
- (j) The *Veterans' Affairs Legislation Amendment Act 1990* was amended by Schedule 3 (item 129) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (k) The *Defence Service Homes Act 1918* was amended by Schedule 4 only of the *Veterans' Entitlements (Rewrite) Transition Act 1991*, subsection 2(2) of which provides as follows:
- (2) Section 19 commences immediately after the commencement of section 22.
- Section 22 commenced 1 July 1991.

Endnote 4—Amendment history

Endnote 4—Amendment history

| Provision affected | How affected |
|----------------------|--|
| Title..... | rs No 4, 1980 am No 124, 1988; No 171, 1999 |
| Part I | |
| s 1..... | rs No 31, 1973 |
| s 4..... | am No 28, 1919; No 35, 1920; No 18, 1923; No 1, 1941; No 8, 1946; No 38, 1947; No 71, 1947; No 74, 1951; No 69, 1954; No 100, 1956; No 93, 1962; No 99, 1968; No 120, 1971; No 31, 1973; No 216, 1973; No 125, 1974; No 25, 1975; No 185, 1976; No 79, 1977; No 137, 1978; No 80, 1982; No 72, 1984; No 28, 1986; No 29, 1986 (as am by No 78, 1987); No 124, 1988; No 86, 1989; No 93, 1989; No 2, 1991; No 14, 1991; No 73, 1991; No 74, 1991; No 208, 1991; No 70, 1992; No 128, 1995; No 55, 1996; No 7, 1997; No 157, 1997; No 171, 1999; No 141, 2000; No 144, 2008; No 83, 2010; No 5, 2011; No 5, 2014; No 62, 2014; No 75, 2019; No 112, 2019 |
| s 4AAA..... | ad No 31, 1973 am No 137, 1978; No 124, 1988; No 2, 1991; No 70, 1992; No 78, 1994 |
| s 4AAB..... | ad No 31, 1973 |
| s 4AA..... | ad No 69, 1954 am No 31, 1973; No 25, 1975 rs No 79, 1977 |
| s 4AB..... | ad No 128, 1995 |
| Heading to s 4A..... | am No 144, 2008 |
| s 4A..... | ad No 38, 1947 am No 99, 1968; No 31, 1973; No 25, 1975; No 124, 1988; No 144, 2008 |
| s 4BA..... | ad No 14, 1991 am No 70, 1992; No 5, 2011 |
| s 4BB..... | ad No 70, 1992 am No 5, 2011 |
| Heading to s 4B..... | rs No 141, 2000 |
| s 4B..... | ad No 69, 1954 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| | am No 31, 1973; No 25, 1975; No 80, 1982 |
| | rs No 124, 1988 |
| | am No 141, 2000 |
| s 4C..... | ad No 124, 1988 |
| s 4D..... | ad No 55, 1996 |
| | am No 171, 1999 |
| s 4E..... | ad No 16, 2001 |
| Part II | |
| s 6..... | ad No 125, 1974 |
| s 6A..... | ad No 79, 1977 |
| | am No 124, 1988 |
| s 6B..... | ad No 124, 1988 |
| | am No 141, 2000 |
| s 6C..... | ad No 124, 1988 |
| | am No 141, 2000 |
| | ed C26 |
| s 6D..... | ad No 124, 1988 |
| Part III | |
| Heading to Part III..... | rs No 128, 1995 |
| Part III..... | ad No 124, 1988 |
| s 15..... | ad No 124, 1988 |
| | am No 128, 1995; No 141, 2000 |
| s 16..... | ad No 124, 1988 |
| | am No 171, 1999 |
| s 17..... | ad No 124, 1988 |
| | am No 128, 1995; No 183, 1997; No 141, 2000 |
| s 17A..... | ad No 128, 1995 |
| | am No 144, 2008 |
| Heading to s 18..... | am No 171, 1999 |
| s 18..... | ad No 124, 1988 |

Endnote 4—Amendment history

| Provision affected | How affected |
|-------------------------|---|
| | am No 2, 1991; No 74, 1991; No 70, 1992; No 228, 1992; No 128, 1995; No 171, 1999; No 141, 2000; No 144, 2008 |
| s 19..... | ad No 124, 1988 |
| | rs No 86, 1989; No 2, 1991 |
| | am No 171, 1999 |
| s 20..... | ad No 124, 1988 |
| | am No 2, 1991; No 74, 1991; No 128, 1995; No 141, 2000; No 144, 2008; No 103, 2013; No 75, 2019 |
| s 21..... | ad No 124, 1988 |
| | am No 2, 1991 (as am by No 43, 1996); No 128, 1995; No 141, 2000; No 103, 2013 |
| s 21A..... | ad No 171, 1999 |
| | am No 141, 2000 |
| s 22..... | ad No 124, 1988 |
| | am No 2, 1991; No 128, 1995; No 171, 1999; No 141, 2000 |
| s 23..... | ad No 124, 1988 |
| | am No 2, 1991; No 74, 1991; No 171, 1999; No 141, 2000; No 144, 2008; No 103, 2013; No 75, 2019 |
| s 23A..... | ad No 128, 1995 |
| | am No 171, 1999; No 141, 2000; No 103, 2013 |
| Part IIIA | |
| Part IIIA..... | ad No 55, 1996 |
| s 23A..... | ad No 55, 1996 |
| Renumbered s 23AA | No 171, 1999 |
| s 23B..... | ad No 55, 1996 |
| | am No 141, 2000 |
| s 23C..... | ad No 55, 1996 |
| s 23D..... | ad No 55, 1996 |
| s 23E..... | ad No 55, 1996 |
| | am No 171, 1999; No 141, 2000 |
| s 23F..... | ad No 55, 1996 |
| | am No 141, 2000 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s 23..... | ad No 55, 1996 am No 171, 1999; No 141, 2000 |
| s 23H..... | ad No 55, 1996 |
| s 23J..... | ad No 55, 1996 am No 146, No 171, 1999 |
| s 23K..... | ad No 55, 1996 |
| s 23L..... | ad No 55, 1996 |
| Part IV | |
| Part IV..... | ad No 124, 1988 |
| s 24..... | ad No 124, 1988 am No 2, 1991; No 128, 1995; No 141, 2000 |
| s 24A..... | ad No 28, 2008 |
| s 25..... | ad No 124, 1988 am No 2, 1991; No 74, 1991; No 70, 1992; No 128, 1995; No 171, 1999; No 141, 2000 |
| s 26..... | ad No 124, 1988 am No 2, 1991; No 128, 1995; No 141, 2000; No 144, 2008 |
| Heading to s 27..... | am No 141, 2000 |
| s 27..... | ad No 124, 1988 am No 141, 2000 |
| s 27A..... | ad No 128, 1995 am No 141, 2000; No 144, 2008 |
| s 28..... | ad No 124, 1988 rs No 141, 2000 |
| s 29..... | ad No 124, 1988 am No 2, 1991; No 128, 1995; No 141, 2000 |
| s 30..... | ad No 124, 1988 |
| Part V | |
| Part V..... | ad No 124, 1988 |
| s 31..... | ad No 124, 1988 am No 141, 2000 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s 32..... | ad No 124, 1988 am No 74, 1991; No 141, 2000 |
| s 33..... | ad No 124, 1988 rs No 7, 1997; No 183, 1997 am No 141, 2000 |
| s 34..... | ad No 124, 1988 rs No 2, 1991; No 128, 1995 am No 183, 1997; No 141, 2000 |
| s 35..... | ad No 124, 1988 am No 183, 1997; No 141, 2000 |
| s 35AAA..... | ad No 171, 1999 am No 141, 2000 |
| s 35AA..... | ad No 183, 1997 am No 141, 2000 |
| s 35AB..... | ad No 183, 1997 |
| s 35AC..... | ad No 183, 1997 |
| s 35AD..... | ad No 183, 1997 |
| Heading to s 35A..... | am No 141, 2000 |
| s 35A..... | ad No 55, 1996 am No 141, 2000 |
| s 36..... | ad No 124, 1988 am No 2, 1991; No 74, 1991; No 128, 1995; No 171, 1999; No 141, 2000 |
| s 37..... | ad No 124, 1988 |
| Part VI | |
| Part VI..... | ad No 124, 1988 |
| s 38..... | ad No 124, 1988 am No 2, 1991; No 14, 1991; No 112, 2019 |
| s 38A..... | ad No 124, 1988 am No 14, 1991; No 41, 2023 |
| s 38B..... | ad No 124, 1988 |
| s 38C..... | ad No 124, 1988 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| | am No 2, 1991; No 14, 1991; No 128, 1995; No 171, 1999; No 144, 2008 rs No 112, 2019 |
| Heading to s 38CA | am No 80, 2009 |
| s 38CA | ad No 14, 1991 rep No 112, 2019 |
| s 38CAA | ad No 80, 2009 rep No 112, 2019 |
| s 38CB | ad No 14, 1991 |
| s 38D..... | ad No 124, 1988 am No 128, 1995 rep No 112, 2019 |
| s 38E | ad No 124, 1988 am No 14, 1991; No 128, 1995; No 171, 1999; No 141, 2000 rs No 112, 2019 |
| s 38EA | ad No 14, 1991 rep No 112, 2019 |
| s 38EAA | ad No 80, 2009 rep No 112, 2019 |
| s 38FA..... | ad No 2, 1991 rep No 112, 2019 |
| s 38F | ad No 124, 1988 am No 14, 1991 |
| s 38G..... | ad No 124, 1988 |
| s 38GA..... | ad No 120, 2010 |
| s 38H..... | ad No 124, 1988 |
| Part VII | |
| Heading to Part VII..... | rs No 99, 1968 |
| Heading to s 40..... | am No 152, 1997 rs No 8, 2005 |
| s 40..... | am No 38, 1947; No 67, 1948 rs No 31, 1973 |

Endnote 4—Amendment history

| Provision affected | How affected |
|------------------------|---|
| | am No 25, 1975; No 137, 1978; No 124, 1988; No 70, 1992; No 152, 1997 rs No 8, 2005 |
| | am No 120, 2010; No 62, 2014 |
| Heading to s 40A | am No 152, 1997 rs No 8, 2005 |
| s 40A | ad No 99, 1968 am No 31, 1973; No 36, 1978; No 4, 1980; No 152, 1997 rs No 8, 2005 am No 5, 2011 |
| s 41 | ad No 124, 1988 am No 141, 2000 |
| Part VIII | |
| s 43 | rs No 6, 1932 am No 38, 1947; No 25, 1975 rs No 124, 1988 am No 141, 2000 |
| s 44 | ad No 120, 1971 am No 25, 1975 rs No 124, 1988 am No 2, 1991; No 141, 2000; No 38, 2024 |
| Heading to s 45 | am No 141, 2000 |
| s 45 | am No 38, 1947; No 25, 1975 rs No 124, 1988 am No 2, 1991; No 70, 1992; No 55, 1996; No 183, 1997; No 141, 2000 |
| s 45A | ad No 124, 1988 am No 2, 1991; No 141, 2000; No 144, 2008 |
| s 45B | ad No 124, 1988 am No 141, 2000 |
| s 45C | ad No 28, 2008 am No 197, 2012 |
| s 46 | am No 38, 1947; No 25, 1975; No 124, 1988 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 47..... | am No 28, 1919; No 38, 1947; No 25, 1975; No 4, 1980; No 80, 1982 rs No 124, 1988 |
| s 50A..... | ad No 28, 1919 am No 38, 1947; No 69, 1954; No 93, 1966 (as am by No 3, 1967); No 31, 1973; No 216, 1973; No 25, 1975; No 124, 1988; No 16, 2001; No 127, 2011; No 4, 2016; No 61, 2016 |
| s 50B..... | ad No 35, 1920 am No 38, 1947; No 69, 1954 rs No 99, 1968 am No 31, 1973; No 25, 1975; No 79, 1977; No 36, 1978; No 72, 1984 rs No 124, 1988 am No 86, 1989; No 5, 2011 |
| s 51..... | am No 125, 1974; No 185, 1976; No 124, 1988 |
| Schedules | |
| Schedule 1..... | ad No 124, 1988 |
| Schedule 1A..... | ad No 2, 1991 |
| Schedule 2..... | ad No 124, 1988 am No 183, 1997 |

Endnote 5—Miscellaneous**Repeal Table**

The amendment history of the repealed provisions of the *Defence Services Homes Act 1918* up to and including the *Defence Service Amendment Act 1998* (No 124 of 1988) appears in the table below.

| Provision affected | How affected |
|---------------------------|---|
| s. 3..... | rs. No. 73, 1961 am. No. 99, 1968; No. 31, 1973 rep. No. 216, 1973 |
| ss. 5A–5C..... | ad. No. 79, 1977 rep. No. 124, 1988 |
| s. 5..... | am. No. 13, 1929 rs. No. 38, 1947 am. No. 99, 1968 rs. No. 31, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 6..... | rep. No. 38, 1947 |
| s. 7..... | rep. No. 38, 1947 ad. No. 25, 1975 rep. No. 124, 1988 |
| s. 8..... | am. No. 18, 1923; No. 54, 1935 rep. No. 38, 1947 ad. No. 25, 1975 rs. No. 79, 1977 rep. No. 124, 1988 |
| s. 9..... | am. No. 25, 1937; No. 1, 1947 rep. No. 38, 1947 |
| ss. 10, 11 | rep. No. 38, 1947 |
| s. 12..... | am. No. 26, 1925 rep. No. 38, 1947 |

Endnotes

Endnote 5—Miscellaneous

| Provision affected | How affected |
|--|---|
| s. 13..... | rep. No. 38, 1947 |
| s. 14..... | am. No. 38, 1947; No. 69, 1954; No. 216, 1973 rep. No. 25, 1975 |
| s. 14A..... | ad. No. 35, 1920 am. No. 18, 1923; No. 38, 1947; No. 74, 1951; No. 93, 1966 (as am. by No. 3, 1967); No. 25, 1975; No. 185, 1976 rep. No. 124, 1988 |
| s. 15..... | am. No. 25, 1937 rep. No. 1, 1947 |
| Part III..... (ss. 16A, 16B, 17, 17A, 17B, 18A) | rep. No. 124, 1988 |
| s. 16..... | am. No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 38, 1947; No. 69, 1954; No. 69, 1955; No. 216, 1973 rep. No. 25, 1975 |
| s. 16A..... | ad. No. 18, 1923 am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 16B..... | ad. No. 38, 1947 am. No. 93, 1966 (as am. by No. 3, 1967); Nos. 31 and 216, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 17..... | am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 17A..... | ad. No. 35, 1920 am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 17B..... | ad. No. 38, 1947 am. No. 31, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 25, 1975; No. 79, 1977 rep. No. 124, 1988 |
| s. 18..... | am. No. 28, 1919; No. 18, 1923 rs. No. 17, 1927 |

Endnote 5—Miscellaneous

| Provision affected | How affected |
|---|--|
| | am. No. 63, 1934; No. 8, 1946; No. 38, 1947; No. 24, 1949 rep. No. 74, 1951 |
| s. 18A..... | ad. No. 18, 1923 |
| | am. No. 17, 1927; No. 38, 1947; No. 74, 1951; No. 31, 1973; No. 125, 1974; No. 25, 1975; No. 128, 1980 rep. No. 124, 1988 |
| Part IV..... (ss. 19, 19A, 19B) | rep. No. 124, 1988 |
| s. 19..... | am. No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 8, 1946; No. 38, 1947; No. 24, 1949; No. 74, 1951; No. 69, 1954; No. 2, 1962; No. 93, 1966 (as am. by No. 3, 1967); No. 99, 1968; No. 120, 1971; No. 31, 1973; No. 125, 1974; No. 25, 1975; No. 185, 1976; No. 137, 1978; Nos. 4 and 128, 1980 rep. No. 124, 1988 |
| s. 19A..... | ad. No. 35, 1920 am. No. 13, 1929; No. 38, 1947; No. 25, 1975; No. 80, 1982 rep. No. 124, 1988 |
| s. 19B..... | ad. No. 18, 1923 am. No. 38, 1947; No. 25, 1975; No. 80, 1982 rep. No. 124, 1988 |
| Part V..... (ss. 20, 20A, 21–23, 25–27, 27A, 27B) | rep. No. 124, 1988 |
| s. 20..... | am. No. 28, 1919; No. 35, 1920; No. 8, 1946; No. 38, 1947; No. 74, 1951; No. 31, 1973; No. 25, 1975; No. 28, 1986 rep. No. 124, 1988 |
| s. 20A..... | ad. No. 18, 1923 am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 21..... | am. No. 28, 1919; No. 18, 1923 rs. No. 17, 1927 |

Endnotes

Endnote 5—Miscellaneous

| Provision affected | How affected |
|--|---|
| | am. No. 63, 1934; No. 8, 1946; No. 38, 1947; No. 24, 1949; No. 74, 1951; No. 69, 1954; No. 2, 1962; No. 93, 1966 (as am. by No. 3, 1967); No. 99, 1968; No. 120, 1971; No. 31, 1973; No. 125, 1974; No. 185, 1976; No. 4, 1980; No. 128, 1980 |
| | rep. No. 124, 1988 |
| s. 22..... | rep. No. 124, 1988 |
| s. 23..... | am. No. 35, 1920; No. 38, 1947; No. 31, 1973; No. 25, 1975; No. 80, 1982 |
| | rep. No. 124, 1988 |
| s. 24..... | am. No. 38, 1947; No. 100, 1956; No. 31, 1973; No. 25, 1975 |
| | rep. No. 4, 1980 |
| s. 25..... | am. No. 38, 1947; No. 25, 1975; No. 4, 1980 |
| | rep. No. 124, 1988 |
| s. 26..... | rs. No. 99, 1968 |
| | am. No. 216, 1973; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 27..... | am. No. 38, 1947; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 27A..... | ad. No. 137, 1978 |
| | rep. No. 124, 1988 |
| s. 27B..... | ad. No. 137, 1978 |
| | rep. No. 124, 1988 |
| Part VI..... | rep. No. 124, 1988 |
| (ss. 28, 29, 29AA, 29AB, 29A, 30, 30A, 30B, 31, 32, 32A, 33–35, 36, 36A, 37, 38, 38A, 38B) | |
| s. 28..... | am. No. 18, 1923; No. 38, 1947; No. 125, 1974; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 28A..... | ad. No. 35, 1920 |
| | am. No. 18, 1923 |
| | rep. No. 17, 1927 |
| s. 28B..... | ad. No. 18, 1923 |

Endnote 5—Miscellaneous

| Provision affected | How affected |
|--------------------|---|
| | rep. No. 13, 1929 |
| s. 29..... | am. No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 68, 1932; No. 38, 1947; No. 69, 1954; No. 73, 1961; No. 93, 1966 (as am. by No. 3, 1967); No. 31, 1973; No. 125, 1974; No. 25, 1975; No. 137, 1978; No. 4, 1980; No. 70, 1983; No. 73, 1984 |
| | rep. No. 124, 1988 |
| s. 29AA..... | ad. No. 54, 1935 |
| | rs. No. 99, 1968 |
| | am. No. 31, 1973; No. 125, 1974; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 29AB..... | ad. No. 125, 1974 |
| | rep. No. 124, 1988 |
| s. 29A..... | ad. No. 35, 1920 |
| | am. No. 38, 1947; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 30..... | am. No. 216, 1973 |
| | rs. No. 125, 1974 |
| | am. No. 25, 1975; No. 185, 1976; No. 79, 1977; No. 128, 1980 |
| | rep. No. 124, 1988 |
| s. 30A..... | ad. No. 28, 1919 |
| | am. No. 18, 1923; No. 38, 1947; No. 73, 1961; No. 99, 1968; No. 120, 1971; No. 31, 1973; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 30B..... | ad. No. 120, 1971 |
| | am. No. 31, 1973; No. 216, 1973; No. 125, 1974; No. 25, 1975; No. 79, 1977; No. 128, 1980 |
| | rep. No. 124, 1988 |
| s. 31..... | am. No. 28, 1919; No. 13, 1929; No. 6, 1932; No. 38, 1947; No. 24, 1949; No. 74, 1951; No. 31, 1973; No. 125, 1974; No. 25, 1975; No. 128, 1980 |
| | rep. No. 124, 1988 |
| s. 32..... | am. No. 28, 1919; No. 18, 1923; No. 38, 1947; No. 25, 1975 |

Endnotes

Endnote 5—Miscellaneous

| Provision affected | How affected |
|---------------------------|---|
| s. 32A..... | rep. No. 124, 1988 ad. No. 31, 1973 am. No. 25, 1975; No. 137, 1978 rs. No. 80, 1982 rep. No. 124, 1988 |
| s. 33..... | rs. No. 28, 1919 am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 34..... | am. No. 31, 1973; No. 79, 1977 rep. No. 124, 1988 |
| s. 35..... | am. No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 13, 1929; No. 38, 1947; No. 73, 1961; No. 99, 1968; No. 31, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 36..... | am. No. 18, 1923; No. 6, 1932; No. 54, 1935; No. 38, 1947; No. 24, 1949; No. 74, 1951; No. 73, 1961; No. 99, 1968; No. 120, 1971; No. 125, 1974; No. 25, 1975; No. 79, 1977; No. 137, 1978; No. 128, 1980 rep. No. 124, 1988 |
| s. 36A..... | ad. No. 35, 1920 am. No. 18, 1923; No. 38, 1947; No. 31, 1973; No. 25, 1975; No. 137, 1978 rep. No. 124, 1988 |
| s. 37..... | am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 38..... | rs. No. 28, 1919 am. No. 67, 1948; No. 25, 1975 rs. No. 137, 1978 am. No. 4, 1980; No. 70, 1983 rep. No. 124, 1988 |
| s. 38A..... | ad. No. 31, 1973 am. No. 25, 1975 rep. No. 124, 1988 |
| s. 38B..... | ad. No. 31, 1973 |

Endnote 5—Miscellaneous

| Provision affected | How affected |
|--------------------|--|
| | am. No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 39..... | am. No. 35, 1920; No. 13, 1929; No. 54, 1935; No. 38, 1947; No. 74, 1951; No. 65, 1966 |
| | rs. No. 99, 1968 |
| | am. No. 31, 1973 |
| | rep. No. 25, 1975 |
| | ad. No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 39A..... | ad. No. 54, 1935 |
| | am. No. 38, 1947; No. 93, 1966 (as am. by No. 3, 1967) |
| | rs. No. 99, 1968 |
| | am. No. 31, 1973; No. 25, 1975 |
| | rs. No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 39AB..... | ad. No. 125, 1974 |
| | am. No. 25, 1975 |
| | rep. No. 79, 1977 |
| s. 39B..... | ad. No. 99, 1968 |
| | rep. No. 25, 1975 |
| | ad. No. 79, 1977 |
| | am. No. 137, 1978 |
| | rep. No. 124, 1988 |
| s. 39C..... | ad. No. 99, 1968 |
| | am. No. 31, 1973 |
| | rep. No. 25, 1975 |
| | ad. No. 79, 1977 |
| | am. No. 137, 1978 |
| | rep. No. 124, 1988 |
| s. 41..... | rs. No. 28, 1919 |

Endnotes

Endnote 5—Miscellaneous

| Provision affected | How affected |
|---------------------------|--|
| | am. No. 54, 1935; No. 38, 1947; No. 67, 1948; No. 31, 1973; No. 25, 1975 |
| | rep. No. 137, 1978 |
| s. 42..... | am. No. 38, 1947 |
| | rs. No. 99, 1968 |
| | rep. No. 25, 1975 |
| | ad. No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 42A..... | ad. No. 99, 1968 |
| | rep. No. 25, 1975 |
| | ad. No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 42B..... | ad. No. 79, 1977 |
| | am. No. 36, 1978 |
| | rep. No. 124, 1988 |
| s. 42C..... | ad. No. 79, 1977 |
| | rs. No. 137, 1978 |
| | rep. No. 124, 1988 |
| s. 42D..... | ad. No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 44..... | am. No. 8, 1946; No. 38, 1947 |
| | rep. No. 69, 1954 |
| s. 48..... | am. No. 38, 1947; No. 25, 1975; No. 79, 1977 |
| | rep. No. 124, 1988 |
| s. 48A..... | ad. No. 18, 1923 |
| | am. No. 38, 1947; No. 69, 1954; No. 216, 1973; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 48AA..... | ad. No. 99, 1968 |
| | am. No. 31, 1973; No. 216, 1973; No. 25, 1975 |
| | rep. No. 124, 1988 |
| s. 48AB..... | ad. No. 99, 1968 |

Endnote 5—Miscellaneous

| Provision affected | How affected |
|---------------------------|--|
| | am. No. 31, 1973; No. 125, 1974; No. 25, 1975; No. 128, 1980 rep. No. 124, 1988 |
| s. 48B | ad. No. 18, 1923 |
| | am. No. 38, 1947; No. 69, 1954; No. 216, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 48C | ad. No. 13, 1929 |
| | am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 48D | ad. No. 120, 1971 |
| | am. No. 31, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 48E | ad. No. 120, 1971 |
| | am. No. 31, 1973 rep. No. 124, 1988 |
| s. 49 | am. No. 38, 1947; No. 25, 1975 rep. No. 124, 1988 |
| s. 50 | am. No. 18, 1923; No. 47, 1926; No. 38, 1947; No. 99, 1968; No. 216, 1973; No. 25, 1975 rep. No. 124, 1988 |
| s. 50C | ad. No. 13, 1929 rep. No. 8, 1946 |
| The Schedule | ad. No. 38, 1947 am. No. 31, 1973; No. 216, 1973 (as am. by No. 20, 1974); No. 79, 1977 rep. No. 124, 1988 |