

Defence Service Homes Act 1973

No. 31 of 1973

AN ACT

To amend the *War Service Homes Act 1918-1971*.

[Assented to 15 May 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Defence Service Homes Act 1973*.
- (2) The *War Service Homes Act 1918-1971** is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the *Defence Service Homes Act 1918-1973*.

Commence-
ment.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Paragraphs 4 (c) and (g) and section 6 shall come into operation on a date to be fixed by Proclamation.

* Act No. 43, 1918, as amended by No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 26, 1925; No. 47, 1926; No. 17, 1927; No. 13, 1929; Nos. 6 and 68, 1932; No. 63, 1934; No. 54, 1935; No. 25, 1937; No. 1, 1941; No. 8, 1946; Nos. 1, 38 and 71, 1947; No. 67, 1948; No. 24, 1949; No. 74, 1951; No. 69, 1954; No. 69, 1955; No. 100, 1956; No. 73, 1961; Nos. 2 and 93, 1962; No. 65, 1966; No. 93, 1966 (as amended by No. 3, 1967); No. 99, 1968; and No. 120, 1971.

3. Section 3 of the Principal Act is amended by omitting the figures "38" and substituting the figures "38B". Parts.

4. Section 4 of the Principal Act is amended—

Inter-
pretation.

(a) by inserting in sub-section (1), after the definition of "Advance", the following definition:—

" '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;";

(b) by omitting from the definition of "Australian Soldier" in sub-section (1) all the words after paragraph (f) and substituting the words—

" and includes—

(g) a person who is a member of the Forces for the purposes of the *Repatriation (Special Overseas Service) Act 1962-1973*;

(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;";

(c) by inserting in sub-section (1), after the definition of "Contract of Sale", the following definition:—

" 'Director' means the Director of Defence Service Homes, and includes any person for the time being performing the duties of the office of Director of Defence Service Homes;";

(d) by inserting in the definition of "Eligible person" in sub-section (1), before the word "satisfies", the words "in the case of a male person,";

- (e) by inserting in sub-section (1), after the definition of "Munition worker", the following definition:—

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

- (f) by inserting in sub-section (1), after the definition of "Purchaser", the following definition:—

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

- (g) by omitting from sub-section (1) the definition of "The Director";
 (h) by omitting sub-section (3) and substituting the following sub-section:—

" (3) Where, in the case of a person, being a female, who is—

(a) a member of the Forces for the purposes of the *Repatriation (Special Overseas Service) Act 1962-1973*; 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 sub-section (1A) of section 19 or of sub-section (2) of section 20, be deemed to be a person included in paragraph (b) of the definition of "Australian Soldier" in sub-section (1) of section 4."; and

- (i) by omitting sub-section (5) and substituting the following sub-section:—

" (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 Director 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."

5. After section 4 of the Principal Act the following sections are inserted:—

Regular
serviceman.

" 4AAA. (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 7th December, 1972, and, during that service, has, whether before or after that date, completed three years' effective full-time service as such a member;

- (b) he was engaged to serve as a member of the Defence Force for a period of continuous full-time service of not less than three years but that service ended, on or after 7th 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 whose appointment was for a period of continuous full-time service of less than three years), but that service ended, on or after 7th 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.

“(2) For the purposes of paragraph (a) of sub-section (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
- (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.

“(3) Paragraphs (b) and (c) of sub-section (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 sub-section (1) does not apply in relation to a period of service referred to in paragraph (h) of sub-section (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 sub-section (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 sub-section (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.

“(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.

National
serviceman.

“4AAB. Subject to this section, a person is a national serviceman for the purposes of this Act if—

- (a) he was, immediately before 70 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.”.

6. Section 5 of the Principal Act is repealed and the following section substituted:—

“ 5. (1) There shall be a Director of Defence Service Homes.

“ (2) The Director is, subject to the directions of the Minister, responsible for the execution of this Act.

Director
of Defence
Service
Homes.

“ (3) The Director shall be appointed and employed in accordance with, and be subject to the provisions of, the *Public Service Act 1922-1972*.

“ (4) The body corporate that existed by virtue of the section for which this section was substituted, under the name of the Director of War Service Homes continues in existence, by force of this sub-section, under the name of the Director of Defence Service Homes, and the person from time to time occupying the office of Director of Defence Service Homes constitutes the body corporate continued in existence by force of this sub-section.

“ (5) The body corporate continued in existence by force of sub-section (4)—

- (a) has perpetual succession and an official seal;
- (b) is capable of suing and being sued; and
- (c) subject to this Act, has power to acquire, purchase, sell, lease and hold real and personal property, and, with the consent of the Treasurer, to borrow money, for the purposes of this Act.

“ (6) All courts, judges and persons acting judicially shall take judicial notice of—

- (a) the seal of the Director affixed to a document after the commencement of this section;
- (b) the seal of the Director of War Service Homes affixed to a document on or after 14th July, 1947, and before the commencement of this section; and
- (c) the seal of the War Service Homes Commissioner affixed to a document before 14th July, 1947.

“ (7) The alteration of name and constitution effected by sub-section (4) does not affect any property, powers, rights, authorities, duties, functions, liabilities or obligations of the corporation continued in existence by force of that sub-section or render defective any legal or other proceedings instituted or to be instituted by or against the corporation, and any legal or other proceedings may be continued or commenced by or against the corporation by the name of the Director of Defence Service Homes that might have been continued or commenced by or against the corporation by the name of the Director of War Service Homes.

“ (8) A reference in a law in force at the commencement of this section to the Director of War Service Homes shall be read as including a reference to the Director of Defence Service Homes.”

Sale of dwelling houses.

7. Section 19 of the Principal Act is amended—

(a) by omitting paragraphs (a) and (b) of sub-section (3) and substituting the following paragraph:—

“(a) the Director shall, subject to paragraphs (d) and (e), require a deposit of five per centum of the purchase money;” and

(b) by omitting from sub-section (4) the words “Nine thousand dollars” (wherever occurring) and substituting the words “Twelve thousand dollars”.

Advances to acquire land, &c.

8. Section 20 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(4) Subject to this Act, upon receipt of an application in writing from an eligible person, who is a person entitled to the special rate of pension payable under the first paragraph of the Second Schedule of the *Repatriation Act 1920–1973*, the Director shall make an advance to that person, for the purposes specified in paragraph (f) of sub-section (1), of section 20 of this Act.”.

Maximum advance.

9. Section 21 of the Principal Act is amended by omitting the words “Nine thousand dollars” (wherever occurring) and substituting the words “Twelve thousand dollars”.

Payment of purchase money and repayment of advance.

10. Section 29 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (1) the words “Australian soldier” and substituting the words “eligible person”;

(b) by omitting from sub-paragraph (iv) of paragraph (a) of sub-section (3A) the word “or” (last occurring); and

(c) by adding at the end of that paragraph the following word and sub-paragraph:—

“or (vi) in the case of a dwelling-house shown as a unit or lot on a plan registered or deposited in accordance with 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;”.

Purchaser or borrower may occupy dwelling-house as tenant of Director.

11. Section 30A of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(6) Where—

(a) a court, upon application made to it by the Director, issues, or makes an order for the issue of, a warrant under sub-section (5) with respect to a dwelling-house and land; and

- (b) the Commonwealth has incurred expense in relation to that application,

the Director may, by instrument in writing, determine that there shall be added to the balance of the moneys due under the contract of sale or advance with respect to that dwelling-house and land an amount equal to the amount of that expense.

“(7) Where—

- (a) the Director determines a tenancy under this section; and
 (b) there is no new tenant under this section in relation to the dwelling-house and land concerned,

the Director, at the request of the person who was the tenant, may, by instrument in writing, reinstate the person as tenant as from a date specified in the instrument, and, on and after that date, the person shall again be deemed to be a tenant of the Director in accordance with sub-section (1).”.

12. After section 32 of the Principal Act the following section is inserted:—

“32A. (1) Where—

- (a) a person had, at the time of the sale to him of, or the making of an advance to him in connexion with, land or land and a dwelling-house under this Act (whether the sale or the making of the advance occurred before or after the commencement of this section), declared that he was not, or that neither he nor his spouse was, the owner of any dwelling-house other than the one to which the sale or advance related; and
 (b) it has subsequently (whether before or after the commencement of this section) come to the knowledge of the Director that the declaration was untrue,

the Director may, unless the estate or interest of the person in the land or land and dwelling-house has passed to another person otherwise than as the personal representative of the first-mentioned person, call up, by notice in writing given to the person or to the personal representative of the person, the whole of the moneys secured under the contract of sale or the mortgage or other security concerned and, thereupon, those moneys become due and payable.

“(2) A reference in paragraph (a) of sub-section (1) to a sale or advance made to a person shall be read as including a reference to a sale or advance made to the person and the wife or husband of the person jointly in accordance with section 4A.”.

13. After section 38 of the Principal Act the following sections are inserted in Part VI:—

“38A. The Director may enter into a contract or arrangement with an insurer with the object of ensuring that moneys will be available to the Director to assist in meeting his liabilities under insurances effected with him in accordance with section 38.

Call up of moneys on false statement concerning ownership of other dwelling-house.

Reinsurance by Director.

Payments
for fire
brigade
services.

“ 38B. (1) Where, in accordance with a law of a State, a person carrying on in the 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, for the purpose of assisting to meet the cost of the fire brigade services in the State, the Director may make payments to the State, or to the authority, for that purpose.

“ (2) The amount of a payment under sub-section (1) shall not exceed the amount that the Director would be required to pay under the law of the State if that law were applicable to him.”.

14. (1) Section 40 of the Principal Act is repealed and the following section substituted:—

Defence
Service
Homes
Insurance
Trust
Account.

“ 40. (1) The Trust Account known, immediately before the commencement of this section, as the War Service Homes Insurance Trust Account continues in existence under the name of the Defence Service Homes Insurance Trust Account and continues to be a trust account within the meaning of section 62A of the *Audit Act* 1901–1969.

“ (2) To that Trust Account there shall be credited all payments to the Director in connexion with his activities as an insurer under this Act, including a payment to him under a contract or arrangement referred to in section 38A.

“ (3) To that Trust Account there shall be debited all payments by the Director in connexion with his activities as an insurer under this Act, including —

(a) a payment by him under a contract or arrangement referred to in section 38A; and

(b) a payment by him under section 38B.”.

(2) All payments made to the Director of War Service Homes on or after 1st July, 1971, and before the commencement of this section in connexion with his activities as an insurer under this Act that have not been credited to the War Service Homes Insurance Trust Account shall, on the commencement of this section, be credited to the Defence Service Homes Insurance Trust Account.

Interest
on moneys
invested
from the
Defence
Service
Homes
Insurance
Trust
Account.

15. Section 40A of the Principal Act is amended by omitting the words “ War Service Homes Insurance Trust Account ” (wherever occurring) and substituting the words “ Defence Service Homes Insurance Trust Account ”.

Adjustment
on
destruction
of or damage
to property.

16. Section 41 of the Principal Act is amended by omitting the words “ War Service Homes Insurance Trust Account ” and substituting the words “ Defence Service Homes Insurance Trust Account ”.

17. Section 50A of the Principal Act is amended by inserting in sub-section (2), after the words " " War Service Homes " ", the words " " or ' Defence Service Homes ' ".

Improper use of certain words.

18. The Schedule to the Principal Act is amended by omitting the words " War Service Homes Act 1918-1947 " (wherever occurring) and substituting the words " Defence Service Homes Act 1918-1973 ".

The Schedule.

19. The Principal Act is amended as set out in the Schedule.

Formal amendments.

SCHEDULE

Section 19

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting any number expressed in words that is used, whether with or without the addition of a letter or letters, to identify a section of that Act or of another Act, and substituting that number expressed in figures:—

Sections 4 (1) (definitions of " Australian Soldier ", " Borrower " and " Purchaser ") 4AA (1) and (2), 4A (5), 4B (1) and (4), 18A (2) and (4), 19 (1A) and (7), 20 (2), 21 (1A), 23 (a), 24, 29AA (7), 30B (8), 31 (2) (b), 34, 35 (4), 36A (3), 39, 39A (2), 39C, 41, 48AA (2) (b), 48AB (3), 48D (1), 48E and the Schedule.

2. The following provisions of the Principal Act are amended by omitting the words " of this Act ", " to this Act ", " of this Part ", " of this section ", " of this sub-section ", " of this paragraph " and " of this definition " (wherever occurring):—

Sections 4 (1) (definitions of " Australian Soldier ", " Borrower " and " Purchaser "), 4AA (2), 4A (5), 4B (1), (3) and (4), 16B (7), 17B (2) and (3), 18A (2) and (4), 19 (1A) (a), (4) (b) and (7), 20 (2) and (3), 21 (1A), 23, 24, 29 (3B) and (3C), 29AA (6), (7) and (8), 30B (4) and (8), 31 (2) (b), 34, 35 (2) (a) and (4), 36A (3), 39, 39A (2), 40A (3), 41, 48AA (2) (b), 48AB (3), 48D (1), 48E and 50B (3).

3. The following provisions of the Principal Act are amended by omitting the words " One thousand nine hundred and fourteen " (wherever occurring) and substituting the figures " 1914 ":—

Section 4 (1) (definitions of " Australian Soldier ", " Eligible person ", " Munition worker " and " War worker ").

4. The following provisions of the Principal Act are amended by omitting the words " the third day of September, One thousand nine hundred and thirty-nine " (wherever occurring) and substituting the words " 3rd September, 1939 ":—

Section 4 (1) (definitions of " Australian Soldier " and " Eligible person ") and 4 (2).

5. The Principal Act is amended as set out in the following table:—

Provision	Amendment
Section 4 (1)	From the definition of " Australian Soldier "— (i) omit " the third day of September, One thousand nine hundred and forty-five ", substitute " 3rd September, 1945 "; and (ii) omit " the first day of July, One thousand nine hundred and forty-seven ", substitute " 1st July, 1947 ".
Section 4 (2) (a)	(a) Omit " the twenty-sixth day of June, One thousand nine hundred and fifty ", substitute " 26th June, 1950 "; and (b) Omit " the twenty-eighth day of June, One thousand nine hundred and fifty ", substitute " 28th June, 1950 ".