

DEFENCE SERVICE HOMES AMENDMENT ACT 1977

No. 79 of 1977

An Act to amend the *Defence Service Homes Act 1918*, and for related purposes.

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

- Short title &c. 1. (1) This Act may be cited as the *Defence Service Homes Amendment Act 1977*.¹
- (2) The *Defence Service Homes Act 1918*² is in this Act referred to as the Principal Act.
- Commence- 2. This Act shall come into operation on 1 July 1977.
- ment.
- Repeal. 3. (1) The following Acts are repealed:—
Australian Housing Corporation Act 1975;
Defence Service Homes Amendment Act 1976.
- (2) The repeal of an Act by sub-section (1) does not affect the operation of any amendment of the Principal Act made by the repealed Act.
4. Section 4AA of the Principal Act is repealed and the following section substituted:—
- Extension of “4AA. This Act extends to Norfolk Island.”
- Act to
Norfolk
Island.
- Interpret- 5. Section 4 of the Principal Act is amended by inserting in sub-
ation. section (1), after the definition of “Regular serviceman”, the following definition:—
 “ ‘Secretary’ means the Secretary to the Department of Veterans’ Affairs; ”.
6. Before section 5 of the Principal Act the following sections are inserted in Part II:—
- Defence “5A. (1) For the purposes of this Act, there shall be a body corpor-
Service ate under the name ‘Defence Service Homes Corporation’.
- Homes “(2) The body corporate that existed by virtue of the Acts repealed
Corporation. by section 3 of the *Defence Service Homes Amendment Act 1977* under the name ‘Defence Service Homes Corporation’—

- (a) continues in existence by force of this section as the body corporate referred to in sub-section (1) of this section, under that name;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

“5B. (1) The affairs of the Corporation shall be conducted and controlled by the Secretary. Secretary to conduct affairs of Corporation.

“(2) All acts and things done in the name of, or on behalf of, the Corporation by the Secretary, or under the authority of the Secretary, shall be deemed to have been done by the Corporation.

“5C. (1) The seal of the Corporation shall be kept in the custody of the Secretary and shall not be used except as authorized by the Secretary. Seal.

“(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document on or after 13 December 1976 and shall presume that it was duly affixed.”.

7. After section 6 of the Principal Act the following section is inserted:—

“6A. (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 section 5B. Delegation by Secretary.

“(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.”.

8. Section 8 of the Principal Act is repealed and the following section substituted:—

“8. The staff necessary to assist the Corporation in the administration of this Act shall be persons appointed or employed under the *Public Service Act 1922*.” Staff of Corporation.

Rates of interest chargeable on purchases or advances.

9. Section 30 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:—

“(4) Subject to sub-section (5), where—

- (a) a purchaser or borrower has, at any time (whether before or after the commencement of this sub-section), paid to the Corporation the balance of the moneys outstanding under a contract of sale or advance under this Act, being moneys that, at the time of payment, were not due and payable; and
- (b) the Corporation, by virtue of an approval given by the Minister under section 19B or 20A (not being an approval given before 18 September 1974), has entered, or enters, into a further contract of sale or advance with the person who was the purchaser or borrower referred to in paragraph (a),

the rate of interest to be charged to the person in relation to that further contract of sale or advance, in respect of—

- (c) where the amount of advance is greater than the amount of the balance of the moneys referred to in paragraph (a)—that part of the amount of advance that is equal to the amount of that balance; or

(d) in any other case—the whole of the amount of advance, is the rate of interest that, at the time when that balance was paid to the Corporation, was payable in respect of that balance, and, in the case referred to in paragraph (c) of this sub-section, the rate of interest to be charged to the person in respect of the remainder of the amount of advance is the prescribed rate.”.

Action on instalments being overdue.

10. Section 36 of the Principal Act is amended by inserting in sub-section (2), after the words “(if any)”, the words “to the Commonwealth for payment by the Commonwealth”.

11. Sections 39A and 39AB of the Principal Act are repealed and the following sections substituted:—

Defence Service Homes Trust Account.

“39. (1) An account is hereby established to be known as the Defence Service Homes Trust Account.

“(2) The Defence Service Homes Trust Account is a Trust Account for the purposes of section 62A of the *Audit Act* 1901.

Payments into Defence Service Homes Trust Account.

“39A. (1) There shall be credited to the Defence Service Homes Trust Account—

- (a) moneys paid to the Corporation out of moneys appropriated by the Parliament from time to time for the purpose of providing capital for the Corporation or otherwise for the purposes of the account; and
- (b) all moneys received by the Corporation under this Act, not being payments that are required by section 40 to be credited to the Defence Service Homes Insurance Trust Account.

“(2) Interest on the investment of any moneys standing to the credit of the Defence Service Homes Trust Account shall be credited to that account.

“39B. (1) Moneys standing to the credit of the Defence Service Homes Trust Account may be expended on making payments required or permitted to be made by the Corporation under this Act (other than payments for which moneys are appropriated under paragraph (a) of section 39C), but, subject to sub-section (2) and to section 42, shall not be expended otherwise.

Payments
out of
Defence
Service
Homes Trust
Account.

“(2) There shall be paid into the Consolidated Revenue Fund out of the Defence Service Homes Trust Account—

- (a) amounts payable to the Commonwealth under sub-section (1) or (2) of section 42B;
- (b) amounts equal to amounts deposited with the Corporation under sub-section (2) of section 29 after the commencement of this section or on or after 24 June 1975 and before the commencement of this section; and
- (c) amounts payable to the Commonwealth under sub-section (2) of section 36.

“39C. There are payable out of the Consolidated Revenue Fund, which is appropriated accordingly—

Appropriation of
moneys for
the purposes
of this Act.

- (a) payments by the Corporation under sub-section (3A) of section 29; and
- (b) amounts payable by the Commonwealth under sub-section (2) of section 36 to persons appearing to the Minister to be entitled to receive the amounts.”

12. After section 41 of the Principal Act the following sections are inserted in Part VII:—

“42. Where—

- (a) a payment is made to the Corporation; and
- (b) in accordance with this Act, the payment is required to be credited in part to the Defence Service Homes Trust Account and in part to the Defence Service Homes Insurance Trust Account,

Payments
payable to
two
accounts.

the whole of the payment shall be credited to the Defence Service Homes Trust Account and an amount equal to that part of the payment that, but for this section, would be required to be credited to the Defence Service Homes Insurance Trust Account, shall be paid to that Account out of the Defence Service Homes Trust Account.

Capital of Corporation.

“42A. The capital of the Corporation at any time is the sum of—

- (a) the amount of the capital of the Corporation under section 38 of the *Defence Service Homes Corporation Act 1976* immediately before the commencement of this section; and
- (b) amounts credited to the Defence Service Homes Trust Account in accordance with paragraph (a) of sub-section (1) of section 39A, being amounts paid to the Corporation out of moneys appropriated by the Parliament for the purpose of providing capital for the Corporation,

less the sum of any amounts of capital repaid to the Commonwealth by the Corporation after the commencement of this section.

Payments to the Commonwealth.

“42B. (1) Interest is payable to the Commonwealth on the capital of the Corporation at such rates of interest and at such times as the Treasurer determines.

“(2) Capital of the Corporation is repayable to the Commonwealth at such times and in such amounts (if any) as the Minister determines.

“(3) In the making of a determination under sub-section (2), the Minister shall have regard to any advice that the Secretary, on behalf of the Corporation, furnishes to him in relation to the financial affairs of the Corporation.

Proper accounts to be kept.

“42C. The Corporation shall keep proper accounts and financial records in relation to its operations under this Act in accordance with generally accepted accounting principles and shall do all things necessary to ensure that all payments out of the moneys of the Commonwealth are properly authorized and correctly made and that adequate control is maintained over the moneys and over property of the Commonwealth or of the Corporation and the incurring of liabilities by the Corporation.

Audit.

“42D. (1) The Auditor-General shall inspect and audit the accounts and records kept in accordance with section 42C and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so.

“(2) The Auditor-General may, in his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

“(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

“(4) The Auditor-General, or an officer authorized by him, is entitled at all reasonable times to full access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or to the acquisition, receipt, custody or disposal of assets by the Corporation.

“(5) The Auditor-General, or an officer authorized by him, may make copies of, or take extracts from, any such accounts, records, documents or papers.

“(6) The Auditor-General, or an officer authorized by him, may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

“(7) A person who contravenes sub-section (6) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$200.”.

13. Section 50B of the Principal Act is amended—

Annual
report.

(a) by inserting after sub-section (1) the following sub-section:—

“(2A) The report shall set out all directions as to matters of general policy with respect to the performance of the functions or the exercise of the powers of the Corporation given by the Minister to the Corporation during the year to which the report relates.”; and

(b) by omitting from paragraph (b) of sub-section (2) the words “and show fairly the financial operations”.

14. (1) There shall be paid into the Defence Service Homes Trust Account all moneys held by the Corporation as at the commencement of this Act and any bank interest credited, after the commencement of this Act, to a bank account opened before the commencement of this Act in accordance with section 43 of the *Defence Service Homes Corporation Act 1976*. Transitional.

(2) The Minister may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Defence Service Home Trust Account, and may authorize the Corporation to continue to maintain and operate, until such time as all those moneys have been paid to that Account, any bank account referred to in sub-section (1).

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

Formal
amendments.

SCHEDULE

Section 15

FORMAL AMENDMENTS

1. Section 17B of the Principal Act is amended by omitting from paragraph (b) of sub-section (3) the word “its” and substituting the word “his”.

SCHEDULE—continued

2. Section 30B of the Principal Act is amended by omitting from sub-section (6) the word “he” (last occurring) and substituting the word “it”.
 3. Section 34 of the Principal Act is amended by omitting the words “either of the last two preceding sections” and substituting the words “section 32 or 33”.
 4. Section 36 of the Principal Act is amended by omitting from paragraph (b) of sub-section (1C) the word “his” and substituting the word “its”.
 5. Section 48 of the Principal Act is amended by omitting the word “him” and substituting the word “it”.
 6. The Schedule to the Principal Act is amended—
 - (a) by omitting the figures “-1973” (wherever occurring); and
 - (b) by omitting the words “Minister of State for Housing and Construction” and substituting the words “Minister of State for Veterans’ Affairs”.
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NOTES

1. Act No. 79, 1977; assented to 16 June 1977.
2. Act No. 43, 1918, as amended. For previous amendments *see* Act 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; No. 120, 1971; No. 31, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 125, 1974; No. 25, 1975; and No. 185, 1976.