



Defence Service Homes Amendment Act 1988

No. 124 of 1988

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NEW SCHEDULE 2 TO BE INSERTED IN
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HOMES ACT 1918



Defence Service Homes Amendment Act 1988

No. 124 of 1988

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

[Assented to 14 December 1988]

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

Short title etc.

1. (1) This Act may be cited as the *Defence Service Homes Amendment Act 1988*.

(2) In this Act, "Principal Act" means the *Defence Service Homes Act 1918*¹.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Section 15 commences on a day to be fixed by Proclamation.

(3) The remaining provisions of this Act commence on a day to be fixed by Proclamation, being a day that is earlier than the day fixed under subsection (2).

Long title

3. The title of the Principal Act is amended by omitting “to provide” and substituting “relating to the provision of”.

Interpretation

4. Section 4 of the Principal Act is amended:

- (a) by omitting “Corporation” from paragraphs (c) and (d) of the definition of “Australian Soldier” in subsection (1) and substituting “Secretary”;
- (b) by omitting “, for not less than 3 years immediately before his death” from the definition of “Widow” in subsection (1);
- (c) by omitting from subsection (1) the definitions of “Advance”, “Amount of advance”, “Borrower”, “Contract of Sale” and “Purchaser”;
- (d) by inserting in subsection (1) the following definitions:

“‘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;

‘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 in force from time to time;

‘amending Act’ means the *Defence Service Homes Amendment Act 1988*;

‘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;

‘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;

‘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;

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- 'Corporation advance' has the same meaning as in the agreement;
- 'further advance' means a subsidised advance to a person who has been a purchaser or borrower but is not a purchaser or borrower immediately before the advance is made;
- '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 a borrower;
- 'instalment relief' has the same meaning as in the agreement;
- 'notice of eligibility' means a notice of eligibility issued under this Act;
- 'portfolio asset' has the same meaning as in the 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;
- 'reviewable decision' means a decision of the Secretary:
- (a) refusing to issue a notice of eligibility or a certificate of entitlement;
 - (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;
 - (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;
- 'specified portfolio asset' has the same meaning as in the agreement;
- 'subsidised advance' has the same meaning as in the agreement;
- 'subsidy' means a subsidy payable under Part IV by the Commonwealth to the Bank, being an amount calculated and payable in the manner provided in the agreement;
- 'the Bank' means Westpac Banking Corporation and, as the context requires and subject to the agreement, any body to which it assigns all or any of its rights or obligations under the agreement, the portfolio assets or subsidised advances or any security for those advances, as provided by the agreement;

'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;

'widower', in relation to an eligible person who died after the commencement of paragraph 4 (d) of the amending Act, includes a man who lived with the eligible person as her husband on a permanent and *bona fide* domestic basis, although not legally married to her;

'widow's 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.”;

- (e) by omitting from subsection (2D) “Corporation” (wherever occurring) and substituting “Secretary”;
- (f) by omitting from subsection (3A) all the words after “that woman”;
- (g) by omitting from subsection (3B) all the words after “that man”;
- (h) by omitting from subsection (3C) “Corporation” and substituting “Secretary”;
- (j) by omitting from paragraph (4) (b) “Corporation” and substituting “Secretary”;
- (k) by omitting from paragraph (5) (b) “Corporation” and substituting “Secretary”.

Regular Serviceman

5. Section 4AAA of the Principal Act is amended by adding at the end of subsection (1) after paragraph (1) (c) “; but does not include a person whose first service in the Defence Force began after 14 May 1985”.

Eligible person and spouse may be treated together as eligible person

6. Section 4A of the Principal Act is amended:

- (a) by omitting from subsection (1) “Corporation may, in its” and substituting “Secretary may, in his or her”;
- (b) by omitting from subsection (1) all the words from and including “a husband and wife” and substituting “a wife or husband of that eligible person who is so treated.”;
- (c) by omitting subsection (2);
- (d) by omitting from subsection (3) “Corporation” and substituting “Secretary”;
- (e) by omitting subsection (5).

7. Section 4B of the Principal Act is repealed and the following sections are substituted:

Approval of agreement etc.

“4B. The agreement, as executed on 9 November 1988, and its execution on behalf of the Commonwealth, are approved.

Compensation for acquisition of property

“4C. (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.”.

Delegation by Secretary

8. Section 6A of the Principal Act is amended by omitting from subsection (1) “section 5B” and substituting “this Act (except this power of delegation) and any powers that the Secretary exercises on behalf of the Commonwealth under Part VI”.

9. After section 6A of the Principal Act the following sections are inserted:

Transfer of portfolio assets to the Bank

“6B. (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 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 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

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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
 - (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.

Dealings relating to vested portfolio assets

“6C. (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 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.

Transfer of certain other assets to Commonwealth

“6D. (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
- (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;

‘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.”.

10. Parts III, IV, V and VI of the Principal Act are repealed and the following Parts are substituted:

“PART III—NOTICES OF ELIGIBILITY AND CERTIFICATES OF ENTITLEMENT

Applications for notices and certificates

“15. (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 the Bank;
- (c) a certificate of entitlement in relation to consent that the person may seek from the Bank to a transfer;
- (d) a certificate of entitlement in relation to instalment relief that the person may seek from the Bank.

“(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.

Notice of eligibility

“16. (1) Where, on application by a person for a notice of eligibility, the Secretary is satisfied that the applicant is an eligible person, 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.

Certificate of entitlement: advances

“17. (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 the Bank, issue to the applicant a certificate of entitlement certifying that subsidy is payable by the Commonwealth to the Bank if, in accordance with the agreement, the Bank makes that advance to 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) specify the purpose of the advance;
- (d) specify the rate of interest payable on the advance; and
- (e) contain particulars of such other matters as are specified in the agreement.

Criteria for issue of certificate of entitlement: advances other than widows' advances and advances for essential repairs

“18. (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 the Bank unless satisfied that:

- (a) the person is an eligible person, or the husband or wife of an eligible person who is temporarily or permanently insane;
- (b) the person is not the owner of any dwelling-house other than that in respect of which the advance is payable;
- (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;
- (d) the person has not received money from the Commonwealth after 9 December 1987 by way of:

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- (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;
- (e) if the person has a husband or wife (other than a husband or wife from whom he or she is permanently separated)—the husband or wife is not the owner of any dwelling-house other than that in respect of which the advance is payable;
- (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 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) except as provided by the agreement, such advance will be secured by a first mortgage over the relevant holding of the person.

“(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 the Bank 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;
- (b) to purchase land and build a dwelling-house on the land;
- (c) to purchase a dwelling-house together with the land on which it is built;
- (d) to complete a partially built dwelling-house owned by the person;
- (e) to enlarge a dwelling-house owned by the person; or
- (f) to discharge any mortgage, charge or encumbrance already existing on a holding of the person.

“(3) The Secretary shall not issue a certificate of entitlement in relation to subsidy on an additional advance that a person may seek from the Bank unless satisfied that the advance is for the purpose of enabling the person:

- (a) to enlarge a dwelling-house owned by the person to the extent necessary to provide essential extra sleeping accommodation or to instal essential utility services;
- (b) to meet the cost of roadmaking if the person is liable to meet that cost but is otherwise unable to do so;
- (c) if the person is a widow or widower who is the registered owner of a motor vehicle and is unable to meet the cost of building a garage for the motor vehicle—to build a garage for the motor vehicle;
- (d) to raise a dwelling-house owned by the person above the level of periodic flooding; or
- (e) to discharge any mortgage, charge or encumbrance already existing on a holding of the person.

“(4) The Secretary shall not issue a certificate of entitlement in relation to subsidy on an initial advance, an additional advance or a further advance

that a person may seek from the Bank for the purposes referred to in paragraph (2) (f) or (3) (e) if the mortgage concerned was raised with the consent of the Corporation under section 32 of this Act, as in force before the commencing day, or, in any other case, unless satisfied that:

- (a) the mortgage, charge or encumbrance concerned was raised by the person with the consent or approval of the Corporation or the Secretary, as the case may be;
- (b) the mortgage, charge or encumbrance is over land and the person intends to use the advance partly to discharge the mortgage, charge or encumbrance and partly to build a dwelling-house on that land;
- (c) the terms of the mortgage, charge or encumbrance are onerous and, having regard to the person's income, compliance with those terms is causing the person serious financial hardship; or
- (d) the person is suffering serious financial hardship for other reasons beyond the control of the person.

“(5) Subsection (4) does not apply where the person concerned is an eligible person who is receiving, or is eligible to receive, a pension under Part II of the *Veterans' Entitlements Act 1986* and is a person to whom section 24 of that Act applies.

“(6) In this section:

‘advance’ means a subsidised advance other than a widow's advance or an advance for essential repairs.

Certificate of entitlement not to be issued in certain other cases

“19. (1) Except with the approval of the Minister, the Secretary shall not issue a certificate of entitlement in relation to subsidy on a subsidised advance (other than an additional advance, a widow's advance or an advance for essential repairs) that a person may seek from the Bank if the person is, or was at any time, a purchaser or a prescribed borrower or a person to whom an initial advance is taken to have been made under section 37.

“(2) In this section:

‘prescribed borrower’ means a borrower other than a borrower in relation to an initial advance or a further advance, or a Corporation advance granted after 9 December 1987 for a term of 25 years or less.

Criteria for issue of certificate of entitlement: widows' advances

“20. (1) The Secretary shall not issue a certificate of entitlement in relation to subsidy on a widow's advance that a person may seek from the Bank unless satisfied that:

- (a) the person is the widow, or widowed mother, of an eligible person, or the wife of an eligible person who is temporarily or permanently insane;
- (b) the person is a purchaser or a borrower in relation to land or land and a dwelling-house; and

- (c) the widow's advance relates to that land or land and dwelling-house.

“(2) The Secretary shall not issue a certificate of entitlement in relation to a subsidy on a widow's advance that a person may seek from the Bank unless satisfied that:

- (a) the advance is for the purpose of keeping the buildings, fences, fixtures and other improvements on the relevant land in good order and repair and it would cause financial hardship to the person if 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 or land and dwelling-house and it would cause financial hardship to the person if she were to pay those rates, taxes, charges or other outgoings.

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

“21. 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 the Bank unless satisfied that:

- (a) the person is an eligible person who is a purchaser or a borrower in relation to land or land and a dwelling-house;
- (b) the advance relates to that land or land and dwelling-house;
- (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 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.

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

“22. (1) While any land, or land and dwelling-house, is subject to a specified portfolio asset which vests in the Bank under section 6B or a mortgage securing a subsidised advance, a transfer of the estate or interest of the purchaser or borrower in that land, or land and dwelling-house, being a transfer subject to that specified portfolio asset or mortgage, has no effect unless the 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 the Bank 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 may be issued to a proposed transferee who is not an eligible person.

“(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, is transferred to a transferee who is not an eligible person, 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, or land and a dwelling-house, to the Bank as a result of the exercise by the Bank of its powers under the relevant mortgage or other security; or
- (b) where the purchaser or owner of land, or land and a dwelling-house, dies—a transmission of the land, or land and dwelling-house, to the executor or administrator of the estate of the purchaser or owner.

Certificate of entitlement: instalment relief

“23. (1) Where, on application by a person for a certificate of entitlement in relation to instalment relief that the person may seek from the Bank, the Secretary is satisfied that:

- (a) the applicant is the widow or widowed mother of an eligible person, or the wife of an eligible person who is temporarily or permanently insane, and is a purchaser or a borrower; 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 and the amounts of the instalments payable 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.

“(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 Bank.

“(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 Bank grants instalment relief to the applicant, reduced by the amount specified in the certificate during the period specified in the certificate.

“PART IV—SUBSIDY ON ADVANCES ETC.

Subsidy payable by Commonwealth

“24. (1) Subject to this Part, subsidy is payable by the Commonwealth to the Bank on a subsidised advance to 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 a subsidised advance, where the land, or land and dwelling-house, 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.

Maximum amounts for which subsidy is payable

“25. (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 the Bank 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;
- (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

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by which \$25,000 exceeds 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;

- (c) in the case of a widow's 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) if the Minister's approval in relation to the further advance was required under section 19—the sum of:
 - (A) the amount of the outstanding balance of the previous contract of sale or Corporation advance, and of any previous additional advance, immediately before the person ceased to be a purchaser or borrower in relation to that contract of sale or advance; and
 - (B) any additional amount that the Secretary determines is necessary to give effect to the purpose for which the further advance is made;
 - or \$25,000 whichever is less; and
 - (ii) in any other case—the amount of the outstanding balance of the previous Corporation advance or subsidised advance immediately before the person ceased to be a borrower in relation to that advance.

“(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.

Cancellation of subsidy

“26. (1) Where the Commonwealth is paying subsidy on a subsidised advance to 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;
- (b) the person was not, when a certificate of entitlement in relation to the advance was issued to the person, entitled to the certificate;
- (c) 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, or land and dwelling-house, by a transfer that is subject to that specified portfolio asset or the mortgage securing 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.

“(3) Where the Commonwealth is paying subsidy on a specified portfolio asset or a subsidised advance and the Bank takes action to enforce the asset or the mortgage securing the 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 the husband or wife 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 to the Bank.

“(6) Where the Secretary cancels subsidy under this section, that subsidy ceases to be payable on the date specified in the notice of cancellation.

Cancellation of subsidy where subclause 11.16 of the agreement applies

“27. (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 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 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.

Deferral of subsidy by Minister

“28. The Minister may, by notice in writing given to the Bank, defer payments of subsidy to the Bank in accordance with clause 12 of the agreement.

Recovery of subsidy

“29. (1) Where subsidy in relation to a person ceases to be payable under section 26 or 27 for a reason referred to in paragraph 26 (1) (a), (b) or (c) or subsection 26 (2), or paragraph 27 (1) (a), (b) or (c), 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;

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- (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 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 to the Bank.

“(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) the Bank sells any property of a person by way of enforcing a specified portfolio asset or a mortgage securing a subsidised advance; and

(b) the Secretary has given the person a notice under this section;

the Bank 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 Bank to the person; or

(d) such part of the amount specified in the notice as remains unpaid; whichever is less.

“(6) A payment by the Bank 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 Bank to the person under the specified portfolio asset or mortgage.

Waiver etc.

“30. (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;

(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

Rate of interest on initial advances

“31. 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 the Bank is 6.85% per year.

Rate of interest on widows’ advances

“32. The rate of interest that shall be specified under paragraph 17 (3) (d) in a certificate of entitlement in relation to a widow’s advance that a person may seek from the Bank is 3.75% per year.

Rate of interest on additional advances

“33. The rate of interest that shall be specified under paragraph 17 (3) (d) in a certificate of entitlement in relation to an additional advance that a person may seek from the Bank is 10% per year.

Rate of interest on further advances

“34. (1) The rate of interest that shall be specified under paragraph 17 (3) (d) in a certificate of entitlement in relation to a further advance that a person may seek from the Bank is:

- (a) if the amount of the further advance is equal to or less than the outstanding balance under the previous contract of sale, subsidised advance or Corporation advance immediately before the day on which the person ceased to be a purchaser or borrower in relation to that contract of sale or advance—the rate of interest payable on that balance immediately before that day; or
- (b) in any other case:
 - (i) the rate of interest specified in paragraph (a) on so much of the further advance as equals the amount of the balance referred to in that paragraph; and
 - (ii) 10% per year on the remainder of the further advance.

“(2) Where different rates of interest were payable on different parts of the balance referred to in paragraph (1) (a), subsection (1) applies as if:

- (a) paragraph (1) (a) provided that, in the circumstances referred to in that paragraph, the amount of the further advance is to be taken to be divided into parts equivalent to the different parts of the balance and the rate of interest payable on each of those parts of the further advance is the same as the rate of interest payable on the equivalent part of the balance immediately before that day; and

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- (b) subparagraph (1) (b) (i) referred to the rate of interest payable under paragraph (1) (a) on each of the parts of so much of the further advance as is equal to the amount of the balance.

Rate of interest on advances for essential repairs

“35. 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 the Bank is 10% per year.

Maximum terms of advances

“36. (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 the Bank is:

- (a) in the case of an initial advance—25 years;
- (b) in the case of an additional advance, a widow’s 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;
- (c) in the case of a further advance in respect of which the Minister’s approval under section 19 is required:
 - (i) a term equal to the time by which 25 years exceeds the prescribed period; or
 - (ii) if the Secretary is satisfied that the application of subparagraph (i) would cause financial hardship to the borrower—such other term, being a term not longer than 25 years, as the Secretary determines;
- (d) in the case of a further advance to which paragraph (c) does not apply—a term equal to the time by which 25 years exceeds the prescribed period; 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, the maximum term of that specified portfolio asset or advance shall be taken to have been

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increased by a period equal to the period by which the term of that asset or advance was so increased.

“(4) In this section:

‘prescribed period’ means:

- (a) the period starting on the day on which the initial advance or Corporation advance, or the contract of sale (being the advance or contract of sale that preceded the further advance) was granted to or entered into by the relevant person and ending on the day on which that person ceased to be a borrower or purchaser in relation to that advance or contract of sale, as the case may be; and
- (b) if there was more than one such preceding advance or contract of sale—the period equal to the sum of the periods worked under paragraph (a) in relation to each such advance or contract of sale.

Conversion of contract of sale into mortgage

“37. 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

Defence Service Homes Insurance Scheme

“38. 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, land, building materials and improvements of the kind referred to in section 38C.

Powers of Commonwealth to be exercised by the Secretary

“38A. (1) The powers and functions of the Commonwealth under this Part shall be exercised by the Secretary on behalf of the Commonwealth.

“(2) The Secretary shall, in exercising the powers of the Commonwealth under section 38C, comply with the Statement of Conditions, or the Statement of Conditions as varied under this section, and, for that purpose:

- (a) any references in the Statement to the Corporation shall be treated as references to the Commonwealth; and
- (b) any references in the Statement to insurance undertaken by or with the Corporation shall be treated as references to insurance undertaken by or with the Commonwealth under this Part.

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“(3) The Minister may, by notice in writing given to the Secretary, vary the Statement of Conditions in relation to all or any of the following matters:

- (a) the risks against which the Commonwealth will undertake insurance;
- (b) other terms and conditions relating to insurance undertaken by the Commonwealth.

“(4) The Minister shall not 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 variation.

“(5) The Minister shall cause copies of any variation of the Statement of Conditions to be laid before each House of the Parliament within 15 sitting days of that House after the variation is made.

“(6) In this section:

‘Statement of Conditions’ means the Statement of Conditions in force immediately before the commencing day under section 38 of this Act as then in force.

Transfer of assets and liabilities

“38B. (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;

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'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.

Insurance of dwelling-houses etc.

"38C. (1) The Commonwealth may undertake insurance of, or in relation to:

- (a) a dwelling-house in which the Corporation has an interest;
- (b) a dwelling-house in respect of which a subsidised advance has been made;
- (c) a dwelling-house in respect of which the Corporation proposes to make a Corporation advance, being a dwelling-house in which the applicant for that advance has an interest;
- (d) a dwelling-house in respect of which a person has applied for a certificate of entitlement, being a dwelling-house in which that person has an interest;
- (e) a dwelling-house that is the subject of a contract of sale, mortgage or other security which vests in the Bank under section 6B, being a dwelling-house owned by:
 - (i) a person who is a borrower or purchaser in respect of that dwelling-house;
 - (ii) the widow or widower of such a person; or
 - (iii) the personal representative of such a person, widow or widower;
- (f) a dwelling-house that has been (whether before or after the commencing day), but has ceased to be, the subject of:
 - (i) a contract of sale or mortgage entered into under this Act before the commencing day; or
 - (ii) a mortgage securing a subsidised advance or a Corporation advance granted after the commencing day;
being a dwelling-house owned by:
 - (iii) a person who was a borrower or purchaser in respect of that dwelling-house;
 - (iv) the widow or widower of such a person; or

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- (v) the personal representative of such a person, widow or widower;
- (g) a dwelling-house on land in which the Corporation has had an interest (whether before or after the commencing day), being a dwelling-house owned by:
 - (i) a person who was a borrower or purchaser in respect of another dwelling-house on that land;
 - (ii) the widow or widower of such a person; or
 - (iii) the personal representative of such a person, widow or widower;
- (h) building materials on the site of a dwelling-house:
 - (i) in which the Corporation has or will have an interest; or
 - (ii) in respect of which a subsidised advance has been made or a person has applied for a certificate of entitlement;being materials used in the building of, or otherwise in relation to, the dwelling-house; or
- (j) any permanent domestic improvement of a structural kind that has been made to a dwelling-house referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), or on the land on which such a dwelling-house is built, and any building materials on the site of, and used in the building of, or in relation to, such an improvement.

“(2) The Commonwealth may undertake insurance against risks related to the land on which a dwelling-house referred to in paragraph (1) (a), (b), (c), (d), (e), (f) or (g) is built or on which a dwelling-house referred to in paragraph (1) (h) is being, or is to be, built.

“(3) 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 subsection, 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.

Insurance of dwelling-house etc. in which Corporation has an interest

“38D. (1) While the Corporation has an interest in a dwelling-house, or in any building materials on the site of a dwelling-house, because of a Corporation advance or a sale by the Corporation, the person liable to repay the advance, or to pay the balance of the purchase money, shall keep the dwelling-house or building materials insured:

- (a) with the Commonwealth; or
- (b) under a contract of insurance with an approved person for such amount and against such risks as the Secretary reasonably requires, having regard to the Corporation’s interest.

“(2) If property, being a dwelling-house or building materials referred to in subsection (1), is at any time not insured as required by that subsection,

the property shall be taken to be insured with the Commonwealth and the person required by that subsection to keep it insured is liable to the Commonwealth for premiums due to the Commonwealth in respect of the insurance of the property that the Commonwealth is to be taken to have undertaken.

“(3) In this section:

‘approved person’ means a person authorised under the *Insurance Act 1973* to carry on insurance business and who has entered into an agreement of the kind known as a concessions agreement with the Commonwealth in respect of all dwelling-houses insured with that person in which the Corporation has interests.

Termination of insurance

“38E. (1) This section applies where:

- (a) the Commonwealth has undertaken insurance in relation to a dwelling-house only because the Corporation proposed to make a Corporation advance, or a person has applied for a certificate of entitlement, in relation to that dwelling-house; and
- (b) the applicant for the advance or certificate dies or any of the following things happen otherwise than because the applicant has disposed of his or her interest in the dwelling-house:
 - (i) the Corporation no longer proposes to make the Corporation advance;
 - (ii) the Secretary refuses to issue the certificate of entitlement to the applicant;
 - (iii) the Bank refuses to make a subsidised advance to the applicant in relation to the dwelling-house;
 - (iv) the certificate of entitlement issued to the applicant ceases to have effect under the agreement.

“(2) Where this section applies:

- (a) the insurance undertaken in relation to the dwelling-house does not cease to have effect because of the death of the applicant or the happening of any of the things referred to in subparagraph (1) (b) (i), (ii), (iii) or (iv); and
- (b) unless the insurance has already ceased to have effect for some other reason, the Secretary shall give reasonable notice in writing to each person having an interest in the dwelling-house that the insurance will cease to have effect on a day specified in the notice.

“(3) Where 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.

“(4) Where this section applies because of the death of the applicant and the applicant is survived by a widow or widower, the Secretary shall not give a notice under paragraph (2) (b) in relation to the dwelling-house

unless the Secretary is satisfied that a Corporation advance or a subsidised advance will not be, or is unlikely to be, made to the widow or widower in respect of that dwelling-house.

Reinsurance

“38F. 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 section 38C.

Payments for fire brigade services

“38G. (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.

Limitation of liability of Commonwealth

“38H. (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.”.

11. After section 40A of the Principal Act the following section is inserted:

Appropriation

“41. The following payments by the Commonwealth to the Bank 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 agreement.”.

12. Sections 43, 44 and 45 of the Principal Act are repealed and the following sections are substituted:

Internal review of reviewable decisions

“43. (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 the Bank.

Review of decisions by Administrative Appeals Tribunal

“44. (1) Where:

- (a) a person makes a decision under subsection 43 (6) affirming or varying a reviewable decision; or
- (b) the Minister makes a decision refusing to give an approval under section 19;

the person or the Minister, as the case may be, shall cause a notice in writing to be given to the person whose interests are affected by the decision (other than the Bank) 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 Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates.

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“(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 Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person other than the Bank for a review of a decision made under subsection 43 (6) affirming or varying a reviewable decision or a decision by the Minister refusing to give an approval under section 19.

“(4) In this section:

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Certain provisions of agreement not to be revoked or amended

“45. An agreement between the Commonwealth and the Bank that revokes, amends or otherwise affects the operation of subclause 8.1, 8.3, 11.2, 11.3, 11.5, 11.7.6, 11.9, 11.10, 11.11, 11.12 or 11.13 of the agreement, as executed on 9 November 1988, has no effect.

Bankruptcy of purchaser or borrower

“45A. (1) Except with the approval of the Secretary, the estate or interest of a purchaser or borrower in any land or land and dwelling-house 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 the Bank or another mortgagee in the exercise of powers under a contract of sale, or a mortgage or other security.

“(2) Where a husband and wife are joint purchasers or borrowers in relation to land or land and a dwelling-house, 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.

Exchange of information

“45B. (1) The Commonwealth shall give the Bank, as provided by the agreement, any information in the possession of the Commonwealth that is required to be disclosed or provided to the Bank under the agreement.

“(2) The Bank shall give the Commonwealth, as provided by the agreement, any information in the possession of the Bank that is required to be disclosed or provided to the Commonwealth under the agreement.”

13. Section 47 of the Principal Act is repealed and the following section is substituted:

Dwelling-houses for incapacitated soldiers

“47. 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.”.

14. Section 50B of the Principal Act is repealed and the following section is substituted:

Annual Report

“50B. (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 Minister for Finance 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 Minister for Finance 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 Minister for Finance 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 financial records;
- (b) whether the statements are in agreement with those accounts and financial 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.”.

Repeal of provisions relating to Corporation and finance

15. (1) Sections 5A, 5B, 5C, 5, 7, 8 and 14A of the Principal Act are repealed.

(2) Sections 39, 39A, 39B, 39C, 42, 42A, 42B, 42C and 42D of the Principal Act are repealed.

Schedule

16. The Schedule to the Principal Act is repealed and the Schedules set out in Schedules 1 and 2 to this Act are substituted.

Saving: contracts of sale, Corporation advances etc.

17. (1) In spite of this Act, the Principal Act, as in force immediately before the commencing day, continues to apply in relation to:

- (a) a Corporation advance, or a contract of sale entered into under the Principal Act at any time before that day;
- (b) the granting of an additional advance or additional assistance under section 20, 29AA, 29AB or 31 of the Principal Act as in force immediately before that day to a person who is a purchaser or borrower within the meaning of that Act;
- (c) any additional advance or additional assistance of the kind referred to in paragraph (b) granted under the Principal Act as in force immediately before that day; and
- (d) the performance or exercise by the Corporation of any functions or powers under the Principal Act as in force immediately before that day in connection with any such contract of sale, Corporation advance, additional advance or additional assistance;

until the contract of sale, or mortgage or other security securing the advance or assistance, vests in the Bank under section 6B of the Principal Act as amended by this Act.

(2) In this section:

“commencing day” means the day on which section 10 of this Act commences.

Other savings provisions

18. (1) In spite of the repeal of section 17B of the Principal Act by this Act, subsections 17B (1) and (2) of that Act, as in force immediately before the commencing day, continue to apply in relation to a dwelling-house built before that day.

(2) In spite of anything in this Act, or in the Principal Act as amended by this Act, section 30 of the Principal Act, as in force immediately before the commencing day, continues to apply on and after that day in relation to the rate of interest to be charged to a borrower, within the meaning of the Principal Act as amended by this Act, in respect of a subsidised advance to the borrower under subclause 5.1.2 of the agreement.

Defence Service Homes Amendment No. 124, 1988

(3) In spite of the repeal of section 38 of the Principal Act by this Act, a contract of insurance under paragraph 38 (4D) (b) of that Act, as in force immediately before the commencing day, continues to have effect on and after that day as if it were a contract of insurance under paragraph 38D (1) (b) of the Principal Act as amended by this Act.

(4) A dwelling-house that was, immediately before the commencing day, taken to be insured with the Corporation under regulations made under subsection 38 (5) of the Principal Act, as in force immediately before that day, shall on and after that day be taken to be insured with the Commonwealth until the interest of the Corporation in the dwelling-house vests in the Bank or the Commonwealth under section 6B or 6D of the Principal Act as amended by this Act.

(5) In spite of the repeal of section 36 of the Principal Act by this Act, subsection 36 (2) of the Principal Act, as in force immediately before the commencing day, continues to apply on and after that day in relation to the application of the proceeds of a sale made by the Corporation under Part VI of the Principal Act, whether before, on or after that day.

(6) In spite of the repeal of sections 36 and 39C of the Principal Act by this Act, section 39C of the Principal Act, as in force immediately before the commencing day, continues to apply on and after that day in relation to amounts payable under subsection 36 (2) of the Principal Act, as continued in effect by this Act.

(7) In this section:

“commencing day” means the day on which section 10 of this Act commences.

Transitional

19. (1) An application or request under the Principal Act, being an application or request referred to in subclause 5.1 or 5.2 of the agreement, shall be dealt with in accordance with the agreement.

(2) Where, under subclause 5.1.4 of the agreement, the Corporation is required to make an advance, the Principal Act, as in force immediately before the commencement of section 10 of this Act, continues to apply in relation to the making of that advance and to any advance so made until the mortgage securing it vests in the Bank.

(3) A mortgage securing an advance referred to in subsection (2) shall be taken to be a specified portfolio asset and shall vest in the Bank on the relevant vesting date under section 6B of the Principal Act as amended by this Act.

Further amendments

20. The Principal Act is further amended as set out in Schedule 3.

Defence Service Homes Amendment No. 124, 1988

SCHEDULE 1

Section 16

**NEW SCHEDULE 1 TO BE INSERTED
IN PRINCIPAL ACT**

SCHEDULE 1

Subsection 4 (1)

**AGREEMENT BETWEEN THE COMMONWEALTH OF AUSTRALIA
AND WESTPAC BANKING CORPORATION**

SCHEDULE 1—continued

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Defence Service Homes Amendment No. 124, 1988

SCHEDULE 1—continued

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**

SCHEDULE 1—continued

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*

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.

Defence Service Homes Amendment No. 124, 1988

SCHEDULE 1—continued

- 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 by the Corporation, whether before or after that day.
- Date of Proclamation:** means the day on which section 10 of the Amending Act commences.

SCHEDULE 1—continued

- 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 the Bank pursuant to a Certificate of Entitlement.

SCHEDULE 1—continued

- 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—continued

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.

SCHEDULE 1—continued

- 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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

- 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

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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

SCHEDULE 1—continued

- (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

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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".

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

- 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.

SCHEDULE 1—continued

- 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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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 Subclause 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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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

SCHEDULE 1—continued

(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.

SCHEDULE 1—continued

- 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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

- 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:

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

- 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

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

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;

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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

SCHEDULE 1—continued

(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

SCHEDULE 1—continued

(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
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:

SCHEDULE 1—continued

- 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.

SCHEDULE 1—continued

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

SCHEDULE 1—continued

- (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;

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

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

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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,

SCHEDULE 1—continued

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.

SCHEDULE 1—continued

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:

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

SCHEDULE 1—continued

SIGNED for and on behalf of
WESTPAC BANKING
CORPORATION
by STUART ATHELSTAN FOWLER
and TERRENCE 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

SCHEDULE 1—continued

- 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

SCHEDULE 1—continued

- 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 1—continued

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)

Account limit

Current balance

Interest rate

Limit reduction

Interest accrual

Benchmark accrual

Subsidy amount

Arrears amount

By tier
(if applicable)
in relation to
each Account

SCHEDULE 1—continued

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

Current balance

Interest rate

Current accrual

Benchmark accrual

Current subsidy

Claimed subsidy

Variation amount

} By tier
(if applicable)
in relation to
each Account

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

SCHEDULE 1—continued

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 1—continued

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 2

Section 16

**NEW SCHEDULE 2 TO BE INSERTED
IN PRINCIPAL ACT**

SCHEDULE 2

Subsection 6B (9)

**PROVISIONS OF DEFENCE SERVICE HOMES ACT AND
REGULATIONS APPLYING AS TERMS AND CONDITIONS OF
VESTED PORTFOLIO ASSETS**

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".

SCHEDULE 2—continued

**Provision
Section 19**

Modification

- (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 *Defence Service Homes Act 1918*” after “regulations”.
- (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 *Defence Service Homes Act 1918*”.
- (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 *Defence Service Homes Act 1918*”.
- (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;

SCHEDULE 2—continued

Provision

Modification

- (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 *Defence Service Homes Act 1918*.”.
- (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 *Defence Service Homes Act 1918* as in force before the commencement of section 10 of the *Defence Service Homes Amendment Act 1988*”.

SCHEDULE 2—continued

Provision	Modification
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> ”.

SCHEDULE 2—continued

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	—

SCHEDULE 2—continued

Provision	Modification
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 “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”.

SCHEDULE 2—continued

Provision	Modification
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> ”.
Subsection 38 (4D)	(a) Omit “by reason of an advance or sale by the Corporation”. (b) Omit from paragraph (a) “Corporation”, substitute “Defence Service Homes Insurance Scheme”. (c) Insert in paragraph (b) “or is approved by the Bank from time to time” after “with the Corporation”.
Subsection 38 (4E)	(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”. (b) Omit “with the Corporation”, substitute “under the Defence Service Homes Insurance Scheme”. (c) Omit “to the Corporation” (second time occurring), substitute “to the Commonwealth”. (d) Omit “by the Corporation”, substitute “under the Defence Service Homes Insurance Scheme”.

SCHEDULE 2—continued

Provision	Modification
Subsection 43 (1)	(a) Omit “by this Act”, substitute “in relation to a contract of sale, mortgage or other security”. (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”. (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”.
Subsection 43 (2)	(a) Omit “this Act or the Regulations”, substitute “a contract of sale, mortgage or other security”. (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”.
Section 44	Omit “Notwithstanding any other provision of this Act, where”, substitute “Where”.
Section 45	—
Section 46	—
Section 48AB	(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.”. (b) Omit from subsection (2) “in accordance with a direction under the last preceding subsection”. (c) Omit from paragraph (2) (b) “at 10 per centum per annum”, substitute “at such rate as the Bank determines”.
Section 48B	—
Section 48C	—

SCHEDULE 2—continued

Provision	Modification
Section 49	—
	<i>Defence Service Homes Regulations</i>
Regulation 9	(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) After “is situated” insert “and which is otherwise in a form acceptable to the Bank”.
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	(a) Omit “by the Corporation”, substitute “by a Manager of the Bank”. (b) After “Corporation shall” insert “, as between the Bank and the purchaser, borrower, tenant or applicant,”.
Regulation 17	(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,”. (b) Omit “the mortgage or by the Act or these Regulations”, substitute “a term or condition of the mortgage”.
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”.

SCHEDULE 2—continued

Provision	Modification
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 23	(a) After “when an amount” insert “, other than a prepayment of principal,”. (b) Omit paragraphs (a), (b), (c), (d), (da), (e), (f) and (g), substitute the following paragraphs: “(a) where there is only one loan tier and one interest rate applicable to the specified portfolio asset and the amount paid is equal to or less than the scheduled instalment, the whole of the amount will be credited to the subsidised advance loan account; (b) where there is more than one loan tier and more than one interest rate applicable to the specified portfolio asset and the amount paid is equal to or less than the sum of the scheduled instalments, the whole of the amount will be credited to the subsidised advance loan account by apportioning the amount paid to each tier in the ratio of the scheduled instalments;

SCHEDULE 2—continued

Provision

Modification

- (c) where an amount is paid in excess of the scheduled instalment, or in excess of the sum of the scheduled instalments where there is more than one loan tier, for credit to a subsidised advance loan account that is in arrears, the excess amount will be credited or apportioned to the subsidised advance loan account in accordance with paragraph (a) or (b) as appropriate; and
- (d) where an amount is paid in excess of the scheduled instalment, or in excess of the sum of the scheduled instalments where there is more than one loan tier, and paragraph (c) either does not apply or has been satisfied, the amount of the excess will be treated as an excess credit and, if it is to be held under a loan interest offset arrangement:
 - (i) where there is only one loan tier, the excess will be credited to the subsidised advance loan account to reduce the balance on which interest is charged; or
 - (ii) where there is more than one loan tier, the excess will be credited to the subsidised advance loan account and apportioned to each tier of the loan in the ratio of the loan limits to reduce the balance on which interest is charged in each tier.”.
- (c) add at the end the following subregulation:
 - “(2) For the purposes of subregulation (1):

SCHEDULE 2—continued

Provision	Modification
	(a) 'loan tier' means an amount outstanding under a specified portfolio asset, being part of a balance of an advance made by the Corporation under section 20, or of a contract of sale or expenditure by the Corporation under section 18A, 29AA or 31, of the Act, as in force before the commencement of section 10 of the <i>Defence Service Homes Amendment Act 1988</i> , in respect of which a particular interest rate is payable;
	(b) 'scheduled instalment' means the monthly amount that a purchaser or borrower has contracted under a specified portfolio asset to repay on the balance outstanding under a loan tier;
	(c) 'arrears', 'balance', 'excess credit', 'limit', 'loan interest offset arrangement', 'prepayment', 'specified portfolio asset' and 'subsidised advance loan account' have the same respective meanings as in the agreement between the Commonwealth and Westpac Banking Corporation set out in Schedule 1 to 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	—

SCHEDULE 2—continued

Provision	Modification
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 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,”.

**FURTHER AMENDMENTS OF THE DEFENCE SERVICE HOMES
ACT 1918**

Subsection 4 (3):

Omit "subsection (1A) of section 19 or of subsection (2) of section 20", substitute "paragraph 18 (1) (f)".

Subsection 40 (2):

(a) Omit "Corporation", substitute "Commonwealth".

(b) Omit "38A", substitute "38F".

Subsection 40 (3):

Omit "Corporation", substitute "Commonwealth".

Paragraph 40 (3) (a):

Omit "38A", substitute "38F".

Paragraph 40 (3) (b):

Omit "38B", substitute "38G".

Section 46:

Omit "Corporation shall", substitute "Secretary may".

Section 48:

Repeal the section.

Section 48A:

Repeal the section.

Section 48AA:

Repeal the section.

Section 48AB:

Repeal the section.

Sections 48B, 48C, 48D and 48E:

Repeal the sections.

Section 49:

Repeal the section.

Section 50:

Repeal the section.

SCHEDULE 3—continued

Subsection 50A (1):

Omit “Corporation” (first occurring), substitute “Secretary”.

Section 51:

Omit all the words after “in relation to,” substitute “the undertaking of insurance by the Commonwealth under Part VI.”

NOTE

1. No. 43, 1918, as amended. For previous amendments, see 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; Nos. 65 and 93, 1966; No. 3, 1967; No. 99, 1968; No. 120, 1971; Nos. 31 and 216, 1973; No. 125, 1974; No. 25, 1975; Nos. 37 and 185, 1976; No. 79, 1977; Nos. 36 and 137, 1978; Nos. 4 and 128, 1980; No. 80, 1982; No. 70, 1983; No. 72, 1984; and Nos. 28 and 29, 1986.

*[Minister's second reading speech made in—
House of Representatives on 10 November 1988
Senate on 25 November 1988]*