



Defence Force (Home Loans Assistance) Act 1990

No. 14 of 1991

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SCHEDULE 1

AGREEMENT BETWEEN THE COMMONWEALTH AND THE BANK

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918



Defence Force (Home Loans Assistance) Act 1990

No. 14 of 1991

**An Act providing for the payment of home loan subsidies
in respect of certain members of the Defence Force and
certain other persons, and for related purposes**

[Assented to 21 January 1991]

The Parliament of Australia enacts:

PART 1—INTRODUCTORY

Short title

1. This Act may be cited as the *Defence Force (Home Loans Assistance) Act 1990*.

Commencement

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

(2) Subject to subsection (3), the remaining provisions of this Act (including Schedule 2) commence on a day or days to be fixed by Proclamation.

(3) If a provision referred to in subsection (2) does not commence under that subsection before 15 May 1991, it commences on that day.

Definitions

3. In this Act, unless the contrary intention appears:

“**advanced amount**” means the amount advanced to a person by the Bank under a subsidised loan;

“**agreement**” means the agreement made between the Commonwealth and the Bank on 5 November 1990 (a copy of which is set out in Schedule 1), as that agreement is in force from time to time;

“**approved form**” means a form approved by the Secretary for the purpose of the provision in which the expression is used;

“**Bank**” means National Australia Bank Limited, or any person or body to whom it assigns all or any of its rights or obligations under the agreement;

“**basic service period**” means:

- (a) in relation to a person covered by subparagraph (a) (i) of the definition of “eligible person”—6 years of effective full-time service; and
- (b) in relation to a person covered by subparagraphs (b) (i), (ii) and (iii) of that definition—6 years of effective full-time service less the number of years of effective full-time service completed before the person’s discharge; and
- (c) in relation to a person covered by subparagraph (d) (i) of that definition—the number of years of effective full-time service set out in Column 2 of the following table opposite the number of years specified in Column 1 that applies to the person:

Column 1	Column 2
Number of years of effective full-time service completed before the person’s discharge	Number of years of effective full-time service to be completed by the person after again becoming a member
10 or fewer	6
11	5
12	4
13	3
14	2
15	1

“**benchmark rate**” has the same meaning as in the agreement;

“**child**”, in relation to a person, means a child, stepchild or legally adopted child of the person who is:

- (a) under 16; or
- (b) a student;

“commencing day” means the day on which Part 2 commences;

“compensable disability” means any physical or mental incapacity or disability suffered by a member (whether before, on or after the commencing day) in respect of which compensation is payable under:

- (a) the *Commonwealth Employees’ Rehabilitation and Compensation Act 1988*; or
- (b) the *Veterans’ Entitlements Act 1986*; or
- (c) a law of the Commonwealth prescribed by the regulations;

“continuous full-time service” means an unbroken period of full-time service by a member in the Defence Force;

Note: See section 7 for some special circumstances in which a period of full-time service is taken to have been broken.

“DSH Act” means the *Defence Service Homes Act 1918*;

“effective full-time service” means a period of continuous full-time service by a member, other than:

- (a) a period longer than 21 consecutive days during which the member is:
 - (i) on leave of absence without pay; or
 - (ii) absent without leave; or
 - (iii) awaiting or undergoing trial for an offence of which the member is later convicted; or
 - (iv) undergoing detention or imprisonment; or
- (b) in the case of a member who:
 - (i) is an officer of the Defence Force; and
 - (ii) on his or her appointment was enrolled as a student in a degree or diploma course at a university or other tertiary educational institution; and
 - (iii) was required by an appropriate authority in the Defence Force to continue those studies after appointment;

the period, determined by an appropriate authority in the Defence Force, during which the member cannot be treated as rendering effective full-time service because of the need to engage in those studies or in activities connected with them;

“eligible person” means:

- (a) a person who:
 - (i) is a non-DSH member (other than an operational service member, a rejoining member or a person covered by paragraph (b) or (d)); and
 - (ii) completes (whether before, on or after the commencing day) the basic service period applicable to the person; or
- (b) a person who:
 - (i) on or after the commencing day, is discharged from the Defence Force because of a compensable disability; and
 - (ii) immediately before the discharge, was a non-DSH

- member engaged or appointed for a period of less than 6 years; and
- (iii) again becomes a member within 2 years after the day on which the discharge took effect; and
- (iv) then completes the basic service period applicable to the person; or
- (c) an incapacitated person; or
- (d) a person who:
 - (i) having been an incapacitated person, again becomes a member within 2 years after the day on which his or her discharge as an incapacitated person took effect; and
 - (ii) then completes the basic service period applicable to the person; or
- (e) a rejoining member; or
- (f) an operational service member; or
- (g) a person (other than an incapacitated person) who:
 - (i) before, on or after the commencing day resigns, retires or is discharged from the Defence Force; and
 - (ii) immediately before the resignation, retirement or discharge was an operational service member, or a non-DSH member covered by paragraph (a), (b), (d), (e) or (f); and
 - (iii) has not again become a member;

“entitled person” means a person who is the holder of an entitlement certificate that is in force;

“entitlement certificate” means a certificate issued under Part 2;

“Family Court” means the Family Court of Australia;

“finishing day” means 31 December 2006;

“government authority” means an authority (including a local governing body) established for a public purpose by or under a law of the Commonwealth, or of a State or Territory;

“holder”, in relation to an entitlement certificate, means the person to whom the certificate was issued;

“house” means a dwelling-house and includes a single unit held under a strata title system, but does not include:

- (a) a house that is unfit for anyone to live in or that is the subject of a condemnation order; or
- (b) a house that is to be, or has been, compulsorily acquired by the Commonwealth or a State or Territory, or by a government authority; or
- (c) a building that is a block of flats, or a flat that is not held under a strata title system; or
- (d) a caravan or any kind of mobile house;

“incapacitated person” means a person who, on or after the commencing day, is discharged from the Defence Force because of a compensable disability and who, immediately before the discharge:

(a) had been a non-DSH member engaged or appointed for a period that would have allowed the person to complete at least 6 years of effective full-time service; and

(b) had completed less than 16 years of effective full-time service;

“intestacy law” means a law of, or in force in, a State or Territory that provides for the devolution of the estate of a person who dies intestate;

“member” means a member of the Defence Force;

“Middle-East operational area” means the area comprising the following countries and sea areas:

(a) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Island of Cyprus;

(b) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;

(c) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next:

(i) 20° 30'N 70° 40'E;

(ii) 14° 30'N 67° 35'E;

(iii) 8° 30'N 60° 00'E;

(iv) 6° 20'N 53° 52'E;

(v) 5° 48'N 49° 02'E;

(d) the sea areas contained within the Suez Canal and the Mediterranean Sea east of 30°E;

“non-DSH member” means:

(a) a member whose first service in the Defence Force began after 14 May 1985 and who is not covered by paragraph (ga) of the definition of “Australian Soldier” in subsection 4 (1) of the DSH Act; or

(b) a member:

(i) whose first service in the Defence Force began on or before 14 May 1985; or

(ii) whose first service in the Defence Force began after 14 May 1985 and who is covered by paragraph (ga) of the definition of “Australian Soldier” in subsection 4 (1) of the DSH Act;

and who has made an election under section 4BA of the DSH Act;

“operational service member” means a non-DSH member allotted (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for duty anywhere within the

Middle-East operational area and at any time on or after 2 August 1990;

“rejoining member” means a person who:

- (a) before, on or after the commencing day resigns, retires or is discharged from the Defence Force; and
- (b) immediately before the resignation, retirement or discharge was an eligible person; and
- (c) again becomes a member within 2 years after the day on which the resignation, retirement or discharge took effect;

“reviewable decision” means a decision:

- (a) refusing to issue an entitlement certificate; or
- (b) cancelling an entitlement certificate; or
- (c) refusing to grant approval under section 15 or 18; or
- (d) that subsidy is not payable under subsection 20 (2); or
- (e) giving a notice under section 27; or
- (f) refusing an application under section 31 or 32; or
- (g) revoking an approval; or
- (h) refusing to extend the period for making an application under section 33;

“Secretary” means the Secretary to the Department;

“spouse”, in relation to a person, includes a person of the opposite sex to the person who lives with the person as his or her spouse, on a permanent and *bona fide* domestic basis, although not legally married to the person;

“student” means a person who is:

- (a) at least 16 but under 25; and
- (b) receiving full-time education at a school or college, or at a university or other tertiary education establishment;

“subsidised borrower” means a person who:

- (a) is liable, either alone or jointly with another person, to pay the outstanding amount of a subsidised loan; and
- (b) is an entitled person, or was an entitled person before the first payment of subsidy was made on the loan;

“subsidised loan” has the same meaning as in the agreement;

“subsidy” means a subsidy payable under Part 3 by the Commonwealth to the Bank on a loan by the Bank, being a monthly amount calculated under this Act and payable, for the benefit of the borrower, in the manner provided in the agreement;

“subsidy period”, in relation to a person, means the period to which the person is entitled under section 23;

“widow”, in relation to a man, includes a woman who lived with the man as his wife on a permanent and *bona fide* domestic basis, although not legally married to him;

Note: See also section 8.

“widower”, in relation to a woman, includes a man who lived with the woman as her husband on a permanent and *bona fide* domestic basis, although not legally married to her.

Note: See also section 8.

When do former members stop being eligible members?

4. An eligible person who is not a member stops being an eligible person at the end of 2 years after the day on which his or her resignation, retirement or discharge from the Defence Force took effect.

Ownership of house

5. (1) For the purposes of paragraphs 15 (1) (b) and 20 (2) (d), a person who is a part owner of a house is taken to own the house if:

- (a) the person owns an interest in the house that is more than a half interest; or
- (b) the person owns, together with his or her spouse or child or children, an interest in the house that is more than a half interest; or
- (c) the person owns an interest in the house that, when added to any other interest in the house owned separately by the person’s spouse or child or children, is more than a half interest.

(2) In this section:

“interest” includes a legal or equitable interest and a life interest, but does not include an interest as lessee unless the relevant lease is a Crown lease for a term of more than 50 years.

Family members

6. For the purposes of this Act, the members of a person’s family are:

- (a) the person’s spouse; and
- (b) a child of the person or of the person’s spouse; and
- (c) a parent of the person, or of the person’s spouse, who is ordinarily dependent on the person.

Breaking continuity of service

7. (1) Without otherwise limiting the meaning of “continuous full-time service” as defined in section 3, a period of full-time service by a member in the Defence Force is taken to be broken, for the purposes of this Act, if:

- (a) the member is absent on leave without pay (other than prescribed leave) for longer than 12 consecutive months; or
- (b) in connection with a transfer of the member between 2 arms of the Defence Force, the member stops serving in one such arm

and there is a delay of more than 21 consecutive days before the member starts serving in the other.

(2) Paragraph (1) (b) does not apply if the delay was caused by the processing of the transfer by the relevant authorities in the Defence Force and was beyond the member's control.

(3) A period of full-time service by a member of the Defence Force is not taken to have been broken by a period described in paragraph (a) or (b) of the definition of "effective full-time service" in section 3.

Multiple widows or widowers

8. (1) Where a deceased person is survived by more than one widow or widower, the widow or widower who was living with the person immediately before his or her death is taken, for the purposes of Division 1 of Part 2 and paragraph 29 (h), to be the person's sole surviving widow or widower.

(2) Where, immediately before the death of a person, the person was temporarily living apart from his or her spouse, the person is taken, for the purposes of this section, to have been living with his or her spouse at that time.

Approval of agreement etc.

9. The agreement, as executed on 5 November 1990, and its execution on behalf of the Commonwealth, are approved.

PART 2—ENTITLEMENT CERTIFICATES, LOAN INCREASES AND SALES, PURCHASES AND TRANSFERS

Division 1—Entitlement certificates

Application for certificate

10. (1) A person may apply to the Secretary for an entitlement certificate.

(2) An application must be in writing, in the approved form and must be made in accordance with the agreement.

(3) An application by a person who is not an eligible person but who is the widow or widower of a deceased eligible person must be made within 2 years after:

- (a) if the eligible person was not a member—his or her resignation, retirement or discharge from the Defence Force took effect; or
- (b) in any other case—the death of the eligible person.

Issue of certificate

11. (1) Subject to this Act, the Secretary must, on application by a person for an entitlement certificate, issue to the person an entitlement certificate, in the approved form, certifying that the person is an entitled person.

(2) An entitlement certificate remains in force, unless it is sooner cancelled, until:

- (a)** if a subsidised loan is made to the entitled person by the Bank within 12 months after the day on which the certificate is issued—the first payment of subsidy is made on the loan; or
- (b)** in any other case—the end of the 12 months period mentioned in paragraph (a).

Criteria for issue of certificate

12. (1) The Secretary must not issue an entitlement certificate to a person unless satisfied that:

- (a)** the person is not the holder of an entitlement certificate that is in force; and
- (b)** the person:
 - (i)** is an eligible person, or was an eligible person when he or she applied for the certificate; or
 - (ii)** is the widow or widower of such an eligible person; and
- (c)** if the person is a member (other than an operational service member or a rejoining member)—the person has completed 6 months of effective full-time service after the end of the person's basic service period; and
- (d)** if the person is an operational service member—the person has completed 6 months of effective full-time service; and
- (e)** if the person is a rejoining member who is not entitled to a subsidy period when he or she becomes a rejoining member—the person has completed 6 months of effective full-time service after becoming a rejoining member; and
- (f)** the person's subsidy period has not ended.

(2) The Secretary must not issue an entitlement certificate to an eligible person who is not a member, otherwise than on an application made under subsection (4) or (5), if:

- (a)** 2 or more entitlement certificates were previously issued to the person; and
- (b)** at least one of those certificates was issued after the day on which the person's resignation, retirement or discharge from the Defence Force took effect.

(3) The Secretary must not issue an entitlement certificate to a person who is a widow or widower of the kind mentioned in subsection

10 (3) (otherwise than on an application under subsection (4) of this section) if:

- (a) where subsection 30 (6) applies in relation to the person—one entitlement certificate was previously issued to the person within the period applicable to the person under subsection 10 (3); or
- (b) in any other case—2 entitlement certificates were previously issued to the person within that period.

(4) In spite of anything else in this Division, but subject to subsection (5), where a subsidised loan to a person who was an entitled person is discharged as a result of:

- (a) the destruction of the house to which the loan relates; or
- (b) the compulsory acquisition of the property to which the loan relates by the Commonwealth or a State or Territory, or by a government authority; or
- (c) the sale or transfer of the property to which the loan relates under an order of a court, other than an order made under the *Bankruptcy Act 1966* or in proceedings for the recovery of a judgment debt;

the Secretary must issue to the person an entitlement certificate if the person applies for the certificate within 12 months after the loan is discharged.

(5) In spite of anything else in this Division, where:

- (a) a subsidised loan is made to a person; and
- (b) the person is discharged from the Defence Force on or after the commencing day because of any compensable disability suffered by the person (whether or not the person is an incapacitated person); and
- (c) the subsidised loan is discharged as a result of the sale or transfer of the property to which the loan relates;

the Secretary must issue to the person an entitlement certificate if, and only if:

- (d) the person applies for the certificate within 12 months after the loan is discharged; and
- (e) the Secretary is satisfied that the sale or transfer was reasonably necessary as a result of that disability.

(6) An entitlement certificate must not be issued after the finishing day.

Cancellation of certificate

13. (1) Where the Secretary is satisfied that:

- (a) an entitlement certificate was issued to a person as a result of a false or misleading statement made by the person; or
- (b) an entitlement certificate was issued to a person who, when it was so issued, was not entitled to it;

the Secretary may, by written notice of cancellation given to the person, cancel the certificate.

(2) The Secretary must cause a copy of a notice of cancellation to be given to the Bank.

Division 2—Loan increases

Application for approval in relation to loan increase

14. (1) A subsidised borrower who:

- (a) has obtained an advanced amount of less than \$40,000; and
- (b) wishes to increase that amount;

may apply to the Secretary for approval of the payment of subsidy in respect of the increase.

(2) An application must be in the approved form.

(3) An application by a person who has resigned, retired or been discharged from the Defence Force (other than a rejoining member) must be made within 2 years after the day on which the resignation, retirement or discharge took effect.

(4) An application by a person who is not an eligible person but who is the widow or widower of a deceased eligible person must be made within 2 years after:

- (a) if the eligible person was not a member—his or her resignation, retirement or discharge from the Defence Force took effect; or
- (b) in any other case—the death of the eligible person.

Grant of approval

15. (1) On receipt of an application for approval under section 14, the Secretary must grant the application if, and only if, the Secretary is satisfied that:

- (a) the person's subsidy period has not ended; and
- (b) the person, or the person's spouse, is not the owner of a house in Australia (other than that in respect of which the loan was made) being a house acquired after the person obtained the subsidised loan.

Note: See section 5.

(2) Subsidy does not become payable in relation to an increase in an advanced amount under a subsidised loan to a person unless or until the Secretary is satisfied that the amount of the increase has been used by the person:

- (a) to enlarge, renovate or repair the house in respect of which the loan was made, or to construct any permanent improvements on the land on which the house is built; or
- (b) to discharge another loan used by the person for a purpose of

the kind mentioned in subparagraph 20 (2) (g) (i), (ii), (iii), (iv) or (v).

(3) The Secretary must not grant an approval after the finishing day.

(4) Where the Secretary approves the payment of subsidy in relation to an increase in an advanced amount, the Secretary must cause a notice of approval, in the approved form, to be sent to the applicant and the Bank.

(5) An approval under this section stops having any effect if the increase to which it relates is not obtained within 12 months after the approval is granted.

Revocation of approval

16. (1) Where the Secretary is satisfied that an approval was granted to a person as a result of a false or misleading statement made by the person, the Secretary may, by written notice given to the person, revoke the approval.

(2) The Secretary must cause a copy of a revocation to be given to the Bank.

(3) Where an approval is revoked under this section it is taken never to have been granted.

Division 3—Sale etc. of houses subject to subsidised loans

Application for approval in relation to sale, purchase or transfer

17. (1) Where:

- (a) a subsidised borrower who is the sole owner of the property to which the subsidised loan relates wishes, by a sale or transfer of part of his or her interest in the property, to own the property together with his or her spouse as joint tenants; or
- (b) a subsidised borrower who owns the property to which the subsidised loan relates together with his or her spouse, as joint tenants, wishes, by a purchase or transfer of the spouse's interest, to become the sole owner of the property;

the borrower may apply to the Secretary for approval of the continued payment of subsidy in relation to the property after the sale, purchase or transfer takes place.

(2) An application must be in the approved form and given to the Secretary at any time before the relevant sale, purchase or transfer takes place.

Grant of approval

18. (1) On receipt of an application under section 17, the Secretary must grant the approval sought if, and only if, satisfied that:

- (a) the proposed sale, purchase or transfer has not been ordered by the Family Court; and
- (b) as a result of the proposed sale, purchase or transfer, the property concerned will be owned by the subsidised borrower, or by the subsidised borrower and his or her spouse as joint tenants, and will not be owned by any other person.

(2) Where the Secretary grants an approval under this section, the Secretary must cause a notice of approval, in the approved form, to be sent to the applicant and to the Bank.

Revocation of approval

19. (1) Where the Secretary is satisfied that an approval was granted to a person as a result of a false or misleading statement made by the person, the Secretary may, by written notice given to the person, revoke the approval.

(2) The Secretary must cause a copy of a revocation to be given to the Bank.

(3) Where an approval is revoked under this section it is taken never to have been granted.

PART 3—SUBSIDY

When does subsidy become payable?

20. (1) Subject to this Part, subsidy is payable to the Bank on a loan made by the Bank in accordance with the agreement.

(2) Subsidy does not become payable on a loan to a person unless and until the Secretary is satisfied that:

- (a) the person is an entitled person; and
- (b) the person's subsidy period has not ended; and
- (c) each borrower has consented in writing to the recovery by the Commonwealth in accordance with the agreement and this Act of amounts to which subclauses 8.2 and 8.4 of the agreement apply; and
- (d) the person, or the person's spouse, is not the owner of any house in Australia other than that in respect of which the loan was made; and

Note: See section 5.

- (e) the house in respect of which the loan was made:
 - (i) is owned by the person, or by the person and the person's spouse as joint tenants (whether or not the spouse is also

- an entitled person) and is not owned by any other person; and
- (ii) is used by the person as a home for the person and members of his or her family (if any); and
- (iii) is suitable for use as such a home, having regard to all the relevant circumstances, including the person's financial position, the needs of the members of his or her family (if any) and the location of the house; and
- (iv) is not ordinarily used for the purpose of carrying on a business, trade or profession; and
- (f) except where the agreement provides otherwise, the loan is secured by a first mortgage over the property to which it relates; and
- (g) the loan has been used to enable the person to do any of the following things:
 - (i) to buy land and build the house to which the loan relates on the land;
 - (ii) to build that house on land already owned by the person;
 - (iii) to buy that house together with the land on which it is built;
 - (iv) if that house was partly built and already owned by the person—to complete the house;
 - (v) if that house was complete and already owned by the person—to enlarge, renovate or repair the house, or to construct any permanent improvements on the land on which the house is built;
 - (vi) to discharge another loan used by the person for a purpose mentioned in subparagraph (i), (ii), (iii), (iv) or (v).

(3) Subsidy is not payable in respect of a house situated outside Australia.

(4) Subsidy is not payable on a loan to a person in respect of a house if:

- (a) subsidy was payable on a previous loan to the person in respect of the same house; and
- (b) that subsidy was cancelled under section 28 at the person's request; and
- (c) more than 12 months has elapsed since subsidy stopped being payable as a result of that cancellation.

(5) Subject to this Part, subsidy may be payable on 2 or more successive loans by the Bank to the same subsidised borrower, whether in respect of the same house or different houses.

(6) For the purposes of paragraphs (2) (e) and (2) (g), but without limiting their meaning:

- (a) a person is taken to own a house in respect of which a loan is made if the person has an interest in the house as a lessee under a Crown lease granted for a term of more than 50 years; and
- (b) a person is taken to have bought a house if the person has bought an interest in the house as such a lessee.

Maximum amounts on which subsidy is payable

21. (1) Subject to this Part, the amount on which subsidy is payable is:

- (a) the advanced amount; or
- (b) \$40,000;

whichever is less.

(2) If:

- (a) a person obtains an advanced amount of less than \$40,000; and
- (b) the person later borrows a further amount by increasing that amount; and
- (c) the payment of subsidy in respect of the increase is approved under section 15;

then, subject to this Part, the amount on which subsidy is payable is:

- (d) the total of the borrowed amounts; or
- (e) \$40,000;

whichever is less.

Minimum amounts on which subsidy is payable

22. (1) Subsidy is not payable on a loan of less than \$10,000.

(2) Where an advanced amount is increased by a further borrowed amount of less than \$10,000, subsidy is not payable in respect of the further amount unless the total of the borrowed amounts is at least \$40,000.

Subsidy period—eligible persons

23. (1) Subject to this Part, subsidy is payable on a subsidised loan to an eligible person while the person remains entitled to a subsidy period.

(2) An eligible person is at any particular time entitled to a subsidy period, being a period that at that time equals the person's entitlement period less the person's used subsidy period (if any).

(3) In this section:

“entitlement period” means:

- (a) in relation to a member (other than an operational service member or a rejoining member):
 - (i) the number of completed years of effective full-time

service served by the member after completing his or her basic service period; or

(ii) 20 years;

whichever is less; or

(b) in relation to an operational service member:

(i) the number of completed years of effective full-time service served by the member; or

(ii) 20 years;

whichever is less; or

(c) in relation to a rejoining member who is a subsidised borrower 2 years after the day on which his or her resignation, retirement or discharge from the Defence Force took effect:

(i) the number of completed years of effective full-time service served by the person after completing the basic service period (if any) that last applied to the person before he or she became a rejoining member; or

(ii) 20 years;

whichever is less; or

(d) in relation to a rejoining member, other than a rejoining member covered by paragraph (c):

(i) the period equal to the number of completed years of effective full-time service served by the person:

(A) after he or she became a rejoining member; and

(B) after completing the basic service period (if any) that last applied to the person before he or she became a rejoining member;

plus the total period (if any) during which subsidy was paid on any subsidised loan to the person before he or she became a rejoining member; or

(ii) 20 years;

whichever is less; or

(e) in relation to an incapacitated person:

(i) the number of completed years of effective full-time service served by the person; or

(ii) 10 years;

whichever is less; or

(f) in relation to any other eligible person who is not a member:

(i) the number of completed years of effective full-time service served by the person after completing the basic service period (if any) that last applied to the person before the day on which his or her resignation, retirement or discharge from the Defence Force took effect; or

(ii) 20 years;

whichever is less;

“**used subsidy period**”, in relation to a person, means the total period during which subsidy has been paid on any subsidised loan to the person.

Subsidy period—widows and widowers

24. (1) Subject to this Part, subsidy is payable on a subsidised loan to the widow or widower of a deceased eligible person while the widow or widower remains entitled to a subsidy period.

(2) Subject to subsection (3), the widow or widower of a deceased eligible person is at any particular time entitled to a subsidy period that at that time is the same as the period that would have applied at that time under section 23 if the loan had been made to the eligible person.

(3) If the deceased is a prescribed member, subsection (2) applies to the widow or widower as if the deceased had been an incapacitated person immediately before his or her death.

(4) In this section:

“**prescribed member**” means a deceased member:

- (a) who had completed less than 16 years of effective full-time service immediately before his or her death; and
- (b) in respect of whose death compensation is payable under:
 - (i) the *Commonwealth Employees’ Rehabilitation and Compensation Act 1989*; or
 - (ii) the *Veterans’ Entitlements Act 1986*; or
 - (iii) a law of the Commonwealth prescribed by the regulations;

“**widow or widower**” does not include a widow or widower who is an eligible person.

Calculation of amounts of subsidy

25. (1) Each monthly amount of subsidy is the amount that results from working out the relevant regular monthly repayment (“RMR”) amount under subsection (2) and then using that amount in the formula set out in subsection (3).

(2) The RMR amount must be worked out using the formula:

$$\frac{\text{LA} \times \frac{\text{BR}}{12}}{1 - \left[\frac{\text{BR}}{12} + 1 \right]^{-300}}$$

where:

“**BR**” is the benchmark rate;

“**LA**” (**loaned amount**) is the amount on which subsidy is payable.

(3) The monthly subsidy amount must be worked out using the formula:

$$\frac{(\text{RMR} \times 300) - \text{LA}}{300} \times 0.4$$

where:

“LA” has the same meaning as in subsection (2);

“RMR” is the amount worked out under that subsection.

Joint loans to entitled persons who are spouses

26. (1) Where a subsidised loan is made to 2 entitled persons jointly, each of whom is the spouse of the other, then:

- (a) while both of them remain entitled to a subsidy period, this Act applies in relation to the loan as if the references in paragraphs 14 (1) (a), 21 (1) (b) and 21 (2) (e), and in subsection 22 (2), to \$40,000 were references to \$80,000; and
- (b) when only one of them remains entitled to a subsidy period, paragraph (a) stops applying and the other provisions of this Act thereafter apply in relation to the loan as if he or she were the sole subsidised borrower.

(2) If, when paragraph (1) (a) applies in relation to a loan, one of the spouses dies:

- (a) this Act continues to apply in relation to the loan in the manner mentioned in that paragraph until:
 - (i) the end of the subsidy period of the deceased spouse as at the date of death; or
 - (ii) the end of the subsidy period to which the widow or widower is separately entitled;whichever happens first; and
- (b) when one of those things happens, paragraph (a) stops applying and the other provisions of this Act thereafter apply in relation to the loan as if the widow or widower were the sole subsidised borrower.

Cancellation of subsidy

27. (1) Where the Commonwealth is paying subsidy on a loan to a person and the Secretary is satisfied that:

- (a) the relevant entitlement certificate was issued to the person as a result of a false or misleading statement by the person; or
- (b) when the certificate was issued to the person, the person was not entitled to it; or
- (c) all or any of the criteria set out in subsection 20 (2) were not in fact met, although the subsidy became payable on the basis that the Secretary was, at the time the subsidy became so payable, satisfied that they had been met;

the Secretary may, by written notice given to the person, notify the person that subsidy will not be paid on the loan on or after the date of the notice.

(2) Where:

- (a) the Commonwealth is paying subsidy on an increase on an advanced amount under a subsidised loan to a person; and
- (b) the Secretary is satisfied that the approval under section 15 relating to the increase was granted as a result of a false or misleading statement by the person;

the Secretary may, by written notice given to the person, notify the person that subsidy will not be paid in respect of the amount of the increase on or after the date of the notice.

(3) The Secretary must cause a copy of a notice to be given to the Bank in accordance with the agreement.

(4) Where the Secretary gives a notice under subsection (1) in relation to subsidy on a loan:

- (a) subsidy stops being payable on that loan on and after the date of the notice; and
- (b) all amounts of subsidy paid on the loan before that date are taken, for the purposes of section 31, to be amounts not payable under this Act.

(5) Where the Secretary gives a notice under subsection (2) in relation to subsidy on an increased amount of a loan:

- (a) subsidy stops being payable on the amount of the increase on and after the date of the notice; and
- (b) all amounts of subsidy paid on the amount of the increase before that date are taken, for the purposes of section 31, to be amounts not payable under this Act.

Request to cancel subsidy

28. (1) A subsidised borrower may, by a signed request in the approved form, ask the Secretary to cancel subsidy on the borrower's subsidised loan.

(2) Only one request may be made in respect of any one subsidised loan.

(3) On receipt of a request, the Secretary must, by notice of cancellation given to the subsidised borrower, cancel the subsidy accordingly.

(4) The Secretary must cause a copy of a notice of cancellation to be given to the Bank in accordance with the agreement.

(5) Where subsidy on a subsidised loan is cancelled under this section, subsidy stops being payable on the loan on and after:

- (a) the date of the notice; or
- (b) if a later date is specified in the notice—that later date.

When does subsidy stop?

29. Subject to sections 27 and 28, subsidy stops being payable on a subsidised loan to a person who is a subsidised borrower when any of the following things happen:

- (a) all outstanding amounts due under the loan are paid;
- (b) the person's subsidy period ends;
- (c) if the property to which the loan relates is owned by the person and his or her spouse as joint tenants—the joint tenancy is converted into a tenancy in common;
- (d) the property to which the loan relates is transferred under an order of the Family Court to the person's spouse or former spouse, or to the person and his or her former spouse, whether as joint tenants or as tenants in common;
- (e) the property to which the loan relates, or any interest in it, is sold or transferred to another person (other than under an order of the Family Court) without an approval under section 18;
- (f) the person (being a person to whom subsection 30 (6) applies) dies;
- (g) the person (being a person who is or was an eligible person) dies and is not survived by a widow or widower;
- (h) the person (being a person who is or was an eligible person) dies and the property to which the loan relates, or any interest in it, is sold or transferred under the person's will or an intestacy law to someone other than the person's widow or widower.

What happens on the death of a borrower who is an eligible person?

30. (1) Where:

- (a) a prescribed borrower dies and is survived by a widow or widower; and
- (b) the house to which the subsidised loan relates was, immediately before the borrower's death, owned jointly by the borrower and the surviving widow or widower;

then, subject to section 29, subsidy continues to be payable on the loan.

(2) Where:

- (a) a prescribed borrower dies and is survived by a widow or widower; and
- (b) the house to which the subsidised loan relates was, immediately before the borrower's death, owned solely by the borrower;

subsidy on the loan is suspended until the house is sold or transferred under the borrower's will or an intestacy law.

(3) If:

- (a) subsidy is suspended; and
- (b) the house to which the subsidised loan relates is transferred under the borrower's will or an intestacy law to a surviving widow or widower of the borrower who was living with the borrower immediately before the borrower's death; and
- (c) the house is so transferred subject to the loan;

then, subject to section 29, the suspension ends and subsidy is payable on the loan on and after the day on which the suspension took effect.

(4) If:

- (a) subsidy is suspended; and
- (b) the house to which the subsidised loan relates is transferred under the borrower's will or an intestacy law to a surviving widow or widower who was legally married to the borrower; and
- (c) the house is so transferred subject to the loan; and
- (d) no surviving widow or widower of the borrower was living with the borrower immediately before the borrower's death;

then, subject to section 29, the suspension ends and subsidy is payable on the loan on and after the day on which the suspension took effect.

(5) Where subsidy is suspended, the Secretary must cause a written notice of the suspension to be given to the Bank in accordance with the agreement.

(6) When subsidy is payable on a loan under this section, the relevant widow or widower is to be treated, for the purposes of this Act, as if he or she were the subsidised borrower in relation to the loan.

(7) In this section:

“prescribed borrower” means a subsidised borrower who is or was an eligible person.

Recovery of certain payments by Commonwealth

31. (1) Where:

- (a) an amount has been paid to the Bank by the Commonwealth by way of subsidy on a loan to a person; and
- (b) the amount is not payable under this Act; and
- (c) neither subclause 8.1 nor 8.5 of the agreement applies in relation to the amount; and
- (d) the Bank is not required to pay the due amount to the Commonwealth under subclause 8.2 of the agreement;

the due amount is payable to the Commonwealth by the person.

(2) Where:

- (a) the Bank sells any property by way of enforcing a mortgage securing a loan to a person; and
 - (b) as a result of the sale, the Commonwealth is required to pay an amount to the Bank under subclause 8.4 of the agreement;
- an amount equal to that amount is payable to the Commonwealth by the person.

(3) Where:

- (a) the Bank sells any property that is, or was at any time, subject to a subsidised loan to a person; and
- (b) the sale is by way of enforcing a mortgage securing that loan or another loan to the person; and
- (c) a due amount is payable under this section to the Commonwealth by the person;

the Bank must pay to the Commonwealth an amount equal to:

- (d) the part of the proceeds of the sale that, apart from this subsection, would have been payable by the Bank to the person; or

(e) the unpaid part of the due amount;

whichever is less.

(4) A payment by the Bank to the Commonwealth under subsection (3) is, to the extent of the payment, a discharge of any liability of the person referred to in that subsection to the Commonwealth and of any liability of the Bank to the person under the mortgage or the loan agreement.

(5) Where:

- (a) an amount is payable to the Commonwealth under this section by a person other than the Bank; and
- (b) the person does not pay the amount;

the amount may be recovered from the person in a court of competent jurisdiction as a debt due to the Commonwealth.

(6) Where:

- (a) a due amount is payable to the Commonwealth under this section by a person other than the Bank; and
- (b) the Secretary is satisfied, on written application by the person, that payment of the due amount in full would cause the person, or the person's family, unreasonable financial hardship;

the Secretary may, by notice in writing given to the person, reduce the due amount by such amount as the Secretary specifies in the notice and this section applies in relation to the reduced amount as if it were the due amount.

(7) The Secretary must cause a copy of a notice under subsection (6) to be given to the Bank in accordance with the agreement.

(8) In this section:

“**due amount**” means an amount equal to the amount incorrectly paid to the Bank by way of subsidy on a loan to a person plus interest on that amount at the benchmark rate from time to time applicable from the day the incorrect payment was made until payment is made to the Commonwealth under the agreement or this section, as the case requires.

Waiver etc.

32. (1) Subject to this section, the Secretary may, on behalf of the Commonwealth, decide in writing:

- (a) to write off an amount payable to the Commonwealth by a person under section 31; or
- (b) to waive the right of the Commonwealth to recover from a person the whole or part of such an amount; or
- (c) to allow such an amount to be paid by such instalments as are specified in the decision.

(2) The Secretary may make a decision under subsection (1) on his or her own initiative or on written application by the person concerned.

(3) The Secretary must not make a decision under paragraph (1) (a), (b) or (c) on the application of a person unless satisfied that a refusal of the application would cause the person, or the person’s family, unreasonable financial hardship.

(4) A decision under subsection (1) takes effect:

- (a) on the day specified in the decision, 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.

(5) In this section:

“**person**” does not include the Bank.

PART 4—MISCELLANEOUS

Internal review of reviewable decisions

33. (1) The Secretary must, 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; and
- (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 must 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 must, 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 must refer an application for review of the decision to the Minister and the Minister must 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 does not include the Bank.

Review of decisions by Administrative Appeals Tribunal

34. (1) Where a person makes a decision under subsection 33 (6) affirming or varying a reviewable decision, the person must cause a notice in writing to be given to the person whose interests are affected by the decision (other than the Bank) containing:

- (a) the terms of the decision; and
- (b) the reasons for the decision; and
- (c) 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.

(2) Failure to include in a notice under subsection (1) a statement of the kind mentioned in paragraph (1) (c) 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 33 (6) affirming or varying a reviewable decision.

(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

35. An agreement between the Commonwealth and the Bank that revokes, amends or otherwise affects the operation of subclause 5.15 or 8.4 of the agreement, as executed on 5 November 1990, has no effect.

Exchange of information

36. (1) The Commonwealth must disclose or give to the Bank, in accordance with the agreement, any information in the Commonwealth's possession that is required to be disclosed or given to the Bank under the agreement.

(2) The Bank must disclose or give to the Commonwealth, in accordance with the agreement, any information in the Bank's possession that is required to be disclosed or given to the Commonwealth under the agreement.

Delegation

37. The Secretary may, by signed instrument, delegate all or any of the Secretary's powers and functions under this Act to a person who is:

- (a) an officer of the Department; or
- (b) a member (being an officer) of the Defence Force; or
- (c) a member, or member of the staff, of the Defence Housing Authority.

Appropriation

38. The following payments by the Commonwealth to the Bank are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) payments of subsidy;
- (b) payments made under subclause 8.4 of the agreement.

Annual report

39. (1) The Secretary must, as soon as practicable after each 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.

(2) The Minister must cause a copy of each report 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.

Regulations

40. The Governor-General may make regulations not inconsistent with this Act prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1

Section 3

**AGREEMENT BETWEEN THE COMMONWEALTH
AND THE BANK**

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AN AGREEMENT made the 5th day of November 1990 BETWEEN THE COMMONWEALTH OF AUSTRALIA (“the Commonwealth”) of the one part, and NATIONAL AUSTRALIA BANK LIMITED of 500 Bourke Street, Melbourne in the State of Victoria of the other part,

WHEREAS:

- A. The Commonwealth wishes to introduce, with effect from 15 May 1991, a Scheme to assist certain Members and former Members of the Defence Force and their spouses to meet repayments on Housing Loans provided to them by the lender under the Scheme.
- B. The Bank provides Housing Loans in its ordinary course of business and has offered to be the lender under the Scheme.
- C. Assistance will be provided in the form of Subsidy payments by the Commonwealth paid to the Bank for the benefit of persons entitled to Subsidy and their spouses where appropriate.
- D. Entitlement to Subsidy will be determined by the Commonwealth in accordance with the Act.

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 Force (Home Loans Assistance) Act 1990 as amended from time to time. |
| Agreement: | means this agreement between the Commonwealth and the Bank signed on the above date. |
| Application for Payment of Subsidy: | means an application to the Commonwealth for payment of Subsidy by an Entitled Person or Subsidised Borrower. |
| Bank: | means National Australia Bank Limited or any person or body to whom it assigns all or any of its rights or obligations under this Agreement. |
| Benchmark Rate: | means the rate of interest calculated in accordance with Sub-clause 5.15. |

SCHEDULE 1—continued

Business Day:	means a day upon which banks are open for business in Canberra and in Melbourne.
Calendar Year:	means a period of twelve (12) Months, beginning on 1 January.
Commencement Date:	means the day on which the entire Act comes into effect or 15 May 1991 whichever is the later.
Entitled Person:	means a person who has been issued with an Entitlement Certificate pursuant to the Act.
Entitlement Certificate:	means an entitlement certificate issued pursuant to the Act by the Commonwealth.
Financial Year:	means a period of twelve (12) Months commencing on 1 July.
Franchise Term:	means the period from the Commencement Date to 31 December 2006.
Further Housing Loan:	means a Housing Loan made by the Bank in respect of the Property and is a loan which is in addition to the Subsidised Loan.
Grant of Approval:	means a grant of approval given by the Commonwealth pursuant to the Act.
Housing Loan:	means a loan from a bank to a borrower for any of the purposes for which Subsidised Loans may be made or increased under the Act and is a loan in respect of a dwelling in which it is intended that the borrower shall reside or is residing.
Joint Borrower:	means a person, not being a Subsidised Borrower, joined as a mortgagor on Title with a Subsidised Borrower.
Lending Criteria	means the lending criteria set out in Sub-clause 5.7.
Member:	means a member of the Defence Force.
Month:	means a calendar month.
Mortgage:	shall mean the mortgage, including statutory mortgages under a Torrens system of registration, securing the Subsidised Loan.

SCHEDULE 1—continued

- Property:** means the property over which the Subsidised Loan is, or is to be secured, and shall be either:
- (a) real property; or
 - (b) a Crown lease of real property where the term of the lease is more than fifty (50) years.
- Rest Day:** means the last Business Day of each Month.
- Scheme:** means the scheme of Housing Loan assistance established by the Act and this Agreement.
- Subsidy:** means a payment of subsidy to the Bank by the Commonwealth pursuant to the Act.
- Subsidised Borrower:** has the same meaning as in the Act.
- Subsidised Loan:** means a Housing Loan made by the Bank under Clause 5 in respect of which:
- (a) Subsidy is being paid;
 - (b) a right to be paid Subsidy has been established; or
 - (c) Subsidy will be paid provided the requirements of the Act and of this Agreement are satisfied.
- Subsidised Loan Account:** means the loan account maintained by the Bank in the name of a Subsidised Borrower or, Subsidised Borrower and Joint Borrower where applicable, in connection with a Subsidised Loan.
- Subsidy Payment Commencement:** means in respect of a Subsidised Loan the making of the first payment of Subsidy by the Commonwealth to the Bank in respect of a Subsidised Loan which shall occur when the first payment is included in an amount deposited with the Bank pursuant to Sub-clause 7.3.2.
- Title:** means the documents, deeds or instruments confirming or evidencing title to the Property.

1.2 Interpretation

- 1.2.1** Words importing one gender shall include the other gender.

SCHEDULE 1—continued

- 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 of its Sub-Sub-clauses.
 - 1.2.4 The Clause headings in this Agreement are for reference only and have no effect on the construction, interpretation or meaning of the Clauses.
 - 1.2.5 The Schedules referred to herein form part of and are subject to the terms of this Agreement.
 - 1.2.6 Where in this Agreement any period of time dating from a given day, act or event is prescribed or allowed for any purpose, the time shall 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, a public holiday or a 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 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 or their permitted assigns.
 - 1.2.11 All sums of money referred to in this Agreement and all payments made under this Agreement shall be in Australian dollars.
- 2. AGREEMENT**
- 2.1 Parties to be bound by this Agreement.
The parties hereby agree to be bound by all terms and conditions set out in this Agreement.
 - 2.2 Bank to act in accordance with Scheme
The Bank further agrees to be bound by and to act at all times in accordance with the Scheme.
- 3. FRANCHISE**
The Commonwealth hereby grants to the Bank;

SCHEDULE 1—continued

- (a) during the Franchise Term the exclusive right to participate as the lender under the Scheme; and
 - (b) in respect of Subsidised Loans advanced during the Franchise Term the exclusive right to receive Subsidy for the benefit of Subsidised Borrowers, or Subsidised Borrowers and Joint Borrowers, as the case may be,
- and the Bank accepts these grants.

4. FRANCHISE PAYMENTS

4.1 Payments

The Bank agrees to pay to the Commonwealth:

- (a) forty-two million dollars (\$42 million); and
- (b) for each of the periods set out in Column 1 of Schedule A a payment calculated in accordance with the following formula:

$$P = (a - b) \times c$$

Where

P = the payment due to the Commonwealth;

a = the total number of Subsidy Payment Commencements made during the period set out in Column 1 of Schedule A, or 4,500 whichever is the lesser;

b = the number set out in Column 2 on the same line as the period in Column 1; and

c = the amount set out in column 3 on the same line as the period in Schedule A;

provided that where P is a figure less than one (1), no payment shall be due to the Commonwealth in respect of that period.

4.2. Provision of invoices

The Commonwealth agrees to provide the Bank with a written invoice detailing its claim for payments due under Sub-clause 4.1 (b).

4.3 Times for payment

The payments referred to in Sub-clause 4.1 shall be made as follows:

- (a) the sum of forty-two million dollars (\$42 million) referred to in Sub-clause 4.1 (a) on the Commencement Date by 11.00 A.M; and
- (b) the payments referred to in Sub-clause 4.1 (b) at the times set out in Column 4 of Schedule A or within seven (7) days after receipt by the Bank of an invoice under Sub-clause 4.2, whichever is the later.

4.4 Checking of invoices by the Bank

SCHEDULE 1—continued

- 4.4.1 The Bank agrees that, upon receipt of an invoice referred to in Sub-clause 4.2, it shall conduct a reasonable examination of such of its records as the Bank considers relevant to determine the correctness or otherwise of the invoice. If, following the examination, the Bank is of the opinion that the Commonwealth has omitted to claim sums to which the Commonwealth is entitled it shall immediately advise the Commonwealth in writing of the omission.
- 4.4.2 Where an invoice omits to claim sums to which the Commonwealth is entitled and the Bank has advised the Commonwealth of the omission pursuant to Sub-clause 4.4.1, the Commonwealth shall provide the Bank with a further written invoice in respect of the omitted sum, such invoice to be payable by the Bank within seven (7) days of receipt.
- 4.5 **Manner of payment**
The sums referred to in Sub-clause 4.1 shall be paid by means of a Bank cheque made payable to the Receiver of Public Moneys, Department of Finance and shall be delivered by hand to the Receiver of Public Moneys, Department of Finance, 624 Bourke Street, Melbourne, or as may be otherwise decided by the Commonwealth and notified to the Bank.
- 4.6 **Resolution of disputes as to payments under Sub-clause 4.1 (b).**
Where a dispute, question or difference has arisen between the Commonwealth and the Bank as to a sum payable under Sub-clause 4.1 (b), the Bank shall pay to the Commonwealth the sum about which there is no dispute, question or difference and the matter that is in dispute may be referred to arbitration by one of the parties in accordance with Clause 24.
- 4.7 **Provision for possible refund of part or all of \$42 million referred to in Clause 4.1 (a)**
- 4.7.1 The Commonwealth agrees that, pursuant to this Sub-clause, the Bank may be entitled to a refund of part or all of the sum of \$42 million referred to in Clause 4.1 (a) of this Agreement if, before 31 December 1995, the Commonwealth should:
- (a) pass legislation to reduce the benefits available to Entitled Persons under the Scheme;
 - (b) pass legislation to change in a restrictive way the eligibility criteria for participation in the Scheme; or
 - (c) introduce another scheme of Housing Loan assistance for members of the Defence Force who are eligible under this Scheme,

SCHEDULE 1—continued

and this causes:

- (d) the number of persons to whom Subsidised Loans are provided by the Bank under the Scheme to fall below:
 - (i) 2,000 in the period from the Commencement Date to 31 December 1992; or
 - (ii) 2,000 in the 1993 Calendar Year, the 1994 Calendar Year or the 1995 Calendar Year.

4.7.2 Where the Bank is of the opinion that any of the above facts have occurred or will occur, it may give notice of that situation to the Commonwealth in writing. On receipt of such notice the Commonwealth and the Bank shall meet with a view to verifying the facts and then determining the extent to which part or all of the sum of \$42 million referred to in Clause 4.1(a) shall be refunded to the Bank by the Commonwealth to take account of the effects of such action by the Commonwealth, such refund not to exceed the following sums:

Period within which number of Subsidised Loans provided by the Bank first falls below 2,000	\$ Million
Commencement Date to 31 December 1992	42
1993 Calendar Year	30
1994 Calendar Year	20
1995 Calendar Year	10
1996 Calendar Year	NIL

4.7.3 If within a period of three (3) months after verifying the facts, agreement has not been reached with the Commonwealth on the amount, if any, to be refunded to the Bank pursuant to this Clause, then the matter may be referred to arbitration by one of the parties in accordance with Clause 24.

5. SUBSIDISED LOANS

5.1 Preliminary Enquiries

Where a person enquires of the Bank regarding the Scheme, the Bank shall immediately provide the person with:

- (a) an application for an Entitlement Certificate; and
- (b) Commonwealth and Bank publications describing the Scheme.

5.2 Entitlement Certificates

SCHEDULE 1—continued

- 5.2.1 Where the Bank receives a completed and signed application for an Entitlement Certificate from a person, the Bank shall immediately forward by registered mail the application to the Commonwealth.
- 5.2.2 A person may apply directly to the Commonwealth for an Entitlement Certificate in which case the Commonwealth agrees to:
- (a) advise the person that the Bank has an exclusive right under this Agreement to participate as the lender under the Scheme; and
 - (b) provide the person with an application for an Entitlement Certificate.
- 5.2.3 The parties acknowledge that a person who wishes his or her right to an Entitlement Certificate to be determined may apply for the issue of an Entitlement Certificate at any time whether or not the person has at that time purchased a property or obtained, or applied for, a loan from the Bank.
- 5.2.4 Where the Commonwealth has determined that a person is entitled to an Entitlement Certificate it shall forward a copy of the Entitlement Certificate to any branch of the Bank nominated by the person.
- 5.2.5 An Entitlement Certificate shall include the particulars set out in Schedule B.
- 5.3 Application for Subsidised Loan
- 5.3.1 Where an Entitled Person wishes to apply for a Subsidised Loan the person shall lodge with the Bank:
- (a) loan application documents reasonably required by the Bank;
 - (b) an application for payment of Subsidy which is completed except for Part D of the application; and
 - (c) an Entitlement Certificate in which the Entitled Person's entitlement to Subsidy is stated.
- Upon receipt of the above documents, the Bank shall consider the application for the Subsidised Loan.
- 5.3.2 An Application for Payment of Subsidy shall include the particulars set out in Schedule B and Part D of the application shall be in the form set out in Schedule C.
- 5.3.3 The Bank shall consider and assess an application for a Subsidised Loan in accordance with the Lending Criteria and shall advise the Entitled Person of the outcome within fifteen (15) days from the date of receipt of the documents specified in Sub-clause 5.3.1.

SCHEDULE 1—continued

- 5.4 Obligation of the Bank to make a Subsidised Loan**
- 5.4.1** Where an Entitled Person satisfies the Lending Criteria and provides security in accordance with Sub-clause 5.12, the Bank shall make a Subsidised Loan of an amount sought in the application for the Subsidised Loan on the date specified by the Entitled Person.
- 5.4.2** After making a Subsidised Loan in accordance with Sub-clause 5.4.1 a Manager of a branch of the Bank shall complete Part D of the application for Payment of Subsidy and shall attach to it all documents supplied by the Entitled Person in support of the application. The Bank shall then immediately forward to the Commonwealth by registered mail the Application for Payment of Subsidy and documents in support of the application.
- 5.4.3** Nothing in this Agreement shall be construed as:
- (a) preventing the Bank from making or agreeing to make a Housing Loan to a person who has not obtained an Entitlement Certificate; or
 - (b) obliging the Commonwealth to pay Subsidy in respect of a Housing Loan until the provisions of Sub-clause 7.1 have been satisfied.
- 5.4.4** Where an Entitled Person fails to satisfy the Lending Criteria and the Bank nevertheless agrees to make a Subsidised Loan the Bank may require appropriate security in addition to that set out in Sub-clause 5.12, whether by way of guarantee or otherwise from a person other than the Entitled Person, or may require additional security from the Entitled Person.
- 5.5 Increase in the amount of a Subsidised Loan**
- 5.5.1** Where:
- (a) a person has obtained a Grant of Approval under the Act to increase the amount of a loan upon which Subsidy is payable; and
 - (b) the person has lodged with the Bank loan application documents in respect of the increase reasonably required by the Bank,
- the Bank agrees that, provided the Lending Criteria are satisfied, it will grant an increase in the amount of the Subsidised Loan.
- 5.5.2** The Bank acknowledges that Subsidy in respect of an increase in the amount of the Subsidised Loan shall not be payable by the Commonwealth until:

SCHEDULE 1—continued

- (a) the Bank has forwarded to the Commonwealth an Application for Payment of Subsidy including a certificate by a manager of a branch of the Bank in the form of Part D; and
- (b) the provisions of Sub-clause 7.1 have been satisfied.

5.5.3 The Bank agrees that any increase in the amount of a Subsidised Loan shall be secured under the Mortgage securing the original advance.

5.6 Application of Lending Criteria

The Bank agrees that it shall apply the Lending Criteria in its consideration and assessment of an application for a Subsidised Loan or an application to increase the amount of the Subsidised Loan and that the Lending Criteria shall be the sole basis for refusal in whole or in part by the Bank of any such application.

5.7 Lending Criteria

The Lending Criteria of the Bank are:

(a) Income

as a general principle, the amount of repayments to be met by the Entitled Person on a Subsidised Loan shall not exceed 25 per cent of the gross income of the Entitled Person;

(b) Commitments

known commitments of an Entitled Person will be taken into consideration in determining the capacity of an Entitled Person to meet the repayments; and

- (c) the Entitled Person will be generally required to meet a reasonable deposit/equity ratio. As a general guideline, 20 per cent of the value of the Property is considered a reasonable deposit. In the event that the Bank agrees to provide a Subsidised Loan to an Entitled Person who is unable to meet the required deposit/equity ratio, the Bank shall have the right to enter into a suitable Mortgage insurance arrangement in respect of the Subsidised Loan and require the Entitled Person to pay the premium in respect thereof.

5.8 Alteration of Lending Criteria

The parties agree that:

- (a) the Lending Criteria 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 applied by the largest Banking Group providers of Housing Loans in Australia determined in accordance with Sub-clause 5.15.3; and

SCHEDULE 1—continued

- (b) the Bank shall notify the Commonwealth at least thirty (30) days prior to affecting any such alteration to the Lending Criteria;

provided always that the Bank will treat Entitled Persons no less favourably than its other Housing Loan customers and that nothing in this Sub-clause shall affect the Bank's obligations under Sub-clause 5.9.

5.9 Factors to be excluded by the Bank

The Bank agrees that the following factors will not be taken into account when considering whether an Entitled Person has satisfied the Lending Criteria set out in Sub-clause 5.7:

- (a) the age of the Entitled Person;
- (b) the amount of money that the Entitled Person has on deposit with the bank and/or the period of time the Entitled Person has had money on deposit with the Bank;
- (c) the fact that the Entitled Person has never had money on deposit with the Bank or with any other bank, building society or other financial institution;
- (d) the fact that the Entitled Person has dealt, or is currently dealing, with another bank, building society or any other financial institution;
- (e) the sex, marital status, race, colour or religious beliefs of the Entitled Person; and
- (f) the fact that the Entitled Person seeks only a Subsidised Loan from the Bank and does not seek a Further Housing Loan.

5.10 Provision of reasons for rejection

Where the Bank has rejected an application by an Entitled Person for a Subsidised Loan and the Entitled Person requests reasons for the rejection, the bank shall within seven (7) days provide reason in writing for the rejection specifying why it considers the Lending Criteria have not been met.

5.11 Non-discrimination

The Bank agrees that it will not before, during or after repayment of a Subsidised Loan discriminate against or differentiate, other than as provided for in this Agreement, between persons who apply for Entitlement Certificates, Entitled Persons, Joint Borrowers and Subsidised Borrowers, and the Bank's other Housing Loan customers.

5.12 Security

The Bank agrees that:

- (a) all Subsidised Loans shall be secured by way of a first Mortgage over the Property;

SCHEDULE 1—continued

- (b) the form of the Mortgage shall be the standard first mortgage security agreement in use by the Bank from time to time for its other Housing Loan customers;
- (c) where provided for by law, the Mortgage will be registered; and
- (d) the Title shall be held in the sole name of the Entitled Person or, if purchased with his or her spouse, as a joint tenant with that person.

5.13 Loan agreement

5.13.1 The Bank agrees that the loan agreement relating to a Subsidised Loan shall be in the terms set out in Schedule D. The Bank may apply to the Commonwealth for approval to vary the terms of the loan agreement and the Commonwealth's approval to any such application shall not be unreasonably withheld, provided that at all times the loan agreement provides that:

- (a) the maximum rate of interest to be applied by the Bank to a Subsidised Loan shall be the Benchmark Rate;
- (b) the term of the Subsidised Loan shall be twenty five (25) years unless the Entitled Person or Subsidised Borrower seeks a different term and the Bank agrees to such different term;
- (c) the amount of the Subsidised Loan shall be a sum within the range prescribed by the Act;
- (d) the loan shall be a credit foncier loan repayable by monthly instalments which instalments shall cover both principal and interest less the payments of Subsidy made to the Bank by the Commonwealth; and
- (e) payments of instalments are due on Rest Days.

5.13.2 The Commonwealth acknowledges that it shall be a term of a Subsidised Loan made by the Bank to an Entitled Person pursuant to Sub-clause 5.4 that if:

- (a) the Commonwealth declines to pay Subsidy in respect of the Subsidised Loan;
- (b) the Commonwealth at any time cancels pursuant to the Act Subsidy in respect of the Subsidised Loan for any reason; or
- (c) Subsidy stops being payable pursuant to the Act,

SCHEDULE 1—continued

the loan shall thereafter not be a Subsidised Loan and the Bank shall thereafter not be bound by the Act or this Agreement in respect of the loan and may deal with the borrower as the Bank deals with its other Housing Loan customers. In particular, the Bank shall be entitled to charge the interest rate applicable to similar loans provided by the Bank to its other Housing Loan customers from the date Subsidy is declined or terminated.

5.13.3 Sub-clause 5.13.2 shall not apply for the reason only that Subsidy has been suspended under the Act.

5.14 Entitled Person to include “spouse” in certain cases.

For the purposes of Sub-clauses 5.3 to 5.13, inclusive, a reference to “Entitled Person” shall, where appropriate, include a reference to both the Entitled Person and spouse of the Entitled Person.

5.15 Calculation of the Benchmark Rate

5.15.1 Definitions

For the purpose of this Clause:

Banking Group:

means a bank licensed under the Banking Act 1959 as amended (or under any future Commonwealth legislation relating to the licensing of banks) or a bank constituted by or under a law of the Commonwealth or of a State. Where one bank is a wholly-owned subsidiary of another bank then both banks shall be considered to be part of the same Banking Group;

Standard Rate of Interest:

means the annual rate of interest which is applied by a Banking Group to the largest number of its Housing Loans in respect of the first forty thousand dollars (\$40,000) of such loans (or such other amount as the parties may agree), in a particular State or Territory, as determined by reference to data supplied by the Reserve Bank of Australia to the Commonwealth or, if no such data are available, as the parties may otherwise agree. The expression shall not include annual rates of interest in respect of:

SCHEDULE 1—continued

- (a) Housing Loans made prior to 1 April 1986; or
 - (b) Housing Loans in which the annual rate of interest is fixed for a period in excess of twelve (12) months by agreement between the lender and the borrower.
- 5.15.2 The Benchmark Rate shall be calculated by the Commonwealth in the following way:
- (a) the calculation shall be made as at the last Business Day of each Month;
 - (b) the largest Banking Group providers of Housing Loans in Australia shall be determined pursuant to Sub-clause 5.15.3;
 - (c) for each of the largest Banking Groups a simple arithmetic average of the Standard Rates of Interest which that Banking Group applied on the day referred to in Sub-clause 5.15.2 (a) in all States and the Australian Capital Territory and the Northern Territory in which that Banking Group conducted Housing Loan business shall be calculated;
 - (d) the figures so calculated for each Banking Group shall then be subject to a simple arithmetic average and, subject to Sub-clause 5.15.2 (e), the figure resulting shall be the Benchmark Rate to be applied from the first day of the second Month commencing after the day referred to in Sub-clause 5.15.2 (a);
 - (e) in cases where, on the date referred to in Sub-clause 5.15.2 (a) and on the basis of data supplied by the Reserve Bank of Australia to the Commonwealth, it appears that the Bank has offered publicly to provide Housing Loans in any State or Territory on terms which include an interest rate lower than that referred to in Sub-clause 5.15.2 (d), then the lower interest rate so offered by the Bank shall be taken to be the Benchmark Rate to be applied in that State or Territory from the first day of the second Month commencing after the day referred to in Sub-clause 5.15.2 (a); provided that this Sub-clause shall not refer to Housing Loans in which the annual rate of interest is fixed for a period in excess of twelve (12) months by agreement between the Bank and the borrower;

SCHEDULE 1—continued

- (f) the Commonwealth shall notify the Bank of the Benchmark Rate calculated in accordance with this Sub-clause within seven (7) days of the date referred to in Sub-clause 5.15.2 (a).
- 5.15.3 The largest Banking Group providers of Housing Loans in Australia shall be determined in the following way:
- (a) until 30 September 1992 the largest Banking Group providers of Housing Loans in Australia shall be deemed to be:
 - (i) Commonwealth Banking Corporation of Australia;
 - (ii) Westpac Banking Corporation;
 - (iii) State Bank of Victoria;
 - (iv) National Australia Bank Limited;
 - (v) Australia and New Zealand Banking Group Limited.
 - (b) On 30 September 1992 and on 30 September of each succeeding year the largest Banking Groups shall be the five (5) largest Banking Group providers of Housing Loans in Australia as determined on the basis of the total amount outstanding under Housing Loans during July 1992 and July of each succeeding year as appropriate as shown in data supplied by the Reserve Bank of Australia.
 - (c) If such data are not supplied by the Reserve Bank of Australia on 30 September 1992 or on 30 September of each succeeding year, then the five (5) largest Banking Group providers of Housing Loans shall be the five (5) largest Banking Group providers of Housing Loans last determined under this Sub-clause until the data are supplied by the Reserve Bank of Australia. If on 31 December 1992 or 31 December of a succeeding year as appropriate the data are still not available the parties shall use such data as are otherwise agreed.
 - (d) Where a Banking Group had been one of the five (5) largest Banking Group providers of Housing Loans and that Banking Group ceases to be a Banking Group within the meaning of Sub-clause 5.15.1, then the remainder of the five (5) largest Banking Groups shall be deemed to be the largest Banking Group providers of Housing Loans until another determination is made under this Sub-Sub-clause.

SCHEDULE 1—continued

- 5.15.4 The parties agree that data supplied by the Reserve Bank of Australia to the Commonwealth pursuant to this Sub-clause shall be treated by them as final and conclusive.
- 5.15.5 Where a dispute, question or difference arises as to the Benchmark Rate notified by the Commonwealth to the Bank pursuant to Sub-clause 5.15.2(f) the matter may be referred to arbitration by the Bank in accordance with Clause 24. If a determination is not made by the arbitrator or the matter otherwise resolved by the date referred to in Sub-clause 5.15.2(d), then the Benchmark Rate first notified by the Commonwealth pursuant to Sub-clause 5.15.2(f) shall be treated by the parties as final and conclusive.
- 5.15.6 For the purposes of calculations of Subsidy payments under the Act the Benchmark Rate shall be expressed as a decimal fraction, for example 16.75 per cent shall be expressed as 0.1675.
- 5.16 Changes to Title of Subsidised Loan Account during the term of a Subsidised Loan
- Where a Subsidised Borrower who:
- 5.16.1 (a) is the sole owner of the Property and wishes by a sale or transfer of part of his or her interest in the Property to own the Property together with his or her spouse as joint tenants;
- (b) together with his or her spouse as joint tenants owns the Property and wishes by a purchase or transfer of the spouse's interest to become the sole owner of the Property; or
- (c) has obtained a Subsidised Loan of less than forty thousand dollars (\$40,000.00) and wishes to increase the amount of the loan and to apply to the Commonwealth for approval of payment of Subsidy in respect of the increase,
- the Bank shall advise the Subsidised Borrower immediately that an application must be made to the Commonwealth for a Grant of Approval and the Bank shall provide the person with such an application.
- 5.16.2 Where the Bank receives a completed and signed application for a Grant of Approval from a Subsidised Borrower the Bank shall immediately forward by registered mail the application to the Commonwealth.
- 5.16.3 Where the Commonwealth issues a Grant of Approval it shall forward a copy to any branch of the Bank nominated by the Subsidised Borrower. A Grant of Approval shall include the particulars set out in Schedule B.

SCHEDULE 1—continued

5.16.4 Except where it is required by law to do so or a Subsidised Borrower has requested under the Act that Subsidy be cancelled, the Bank will not after Subsidy payments have commenced in respect of a Subsidised Loan allow a Property held as a joint tenancy to be held or converted to a tenancy in common, and shall not, unless approved by the Commonwealth, allow:

- (a) a person, other than a person named in the Entitlement Certificate, to be joined to the Title, Mortgage or Subsidised Loan Account;
- (b) the name of a person to be removed from the Title, Mortgage or Subsidised Loan Account; or
- (c) the name of a person appearing on the Title, Mortgage or Subsidised Loan Account to be changed from that appearing in the Entitlement Certificate.

5.16.5 A Subsidised Borrower may apply directly to the Commonwealth for a Grant of Approval.

6. FEES

6.1 Definition of “fees”

6.1.1 For the purposes of this Clause, “fees” shall mean any fee or disbursement charged by the Bank to a Housing Loan customer in connection with any services or other matters relating to a Housing Loan, including:

- (a) the processing and determining of applications for Housing Loans secured by a first mortgage;
- (b) the valuation of properties, loan establishment and settlement services;
- (c) the management of Housing Loans, including account keeping services;
- (d) the repayment and discharge of a Housing Loan and mortgage;
- (e) the exercise or attempted exercise of any power or remedy pursuant to a Housing Loan contract or mortgage; and
- (f) the preparation and execution of all documentation associated with the above services or matters.

6.1.2 For the purposes of this Clause, “disbursement” includes, but is not limited to, State and Commonwealth charges relating to stamping and registration of documents, legal costs, mortgage insurance premiums and charges to the Bank for advising, consulting and valuation services.

6.2 Fees to be the same as for other Housing Loan customers

6.2.1 The Bank agrees that persons who use or seek to use the Scheme shall pay no more in fees (and no other fees) in

SCHEDULE 1—continued

respect of Housing Loans provided by the Bank than are paid by its other Housing Loan customers.

- 6.2.2 In particular where an Entitled Person applies for a Subsidised Loan and at the same time applies for a Further Housing Loan from the Bank, regardless of the number of accounts which may be operated by the Bank in relation to the loans, the Bank hereby agrees that it shall charge only one set of fees. Such fees shall be calculated as though the Entitled Person has applied for a single Housing Loan of an amount equal to the aggregate amount of the Subsidised Loan and the Further Housing Loan.

7. SUBSIDY

7.1 Obligation of the Commonwealth to pay Subsidy

- 7.1.1 Subject to Sub-clause 7.1.2, the Commonwealth agrees to pay Subsidy to the Bank in accordance with the Act and this Agreement.

- 7.1.2 The obligation of the Commonwealth referred to in Sub-clause 7.1.1 is conditional on:

- (a) the satisfaction of all of the relevant provisions of the Act, including the Commonwealth's acceptance of Part D of the Application for Payment of Subsidy;
- (b) the advancing of a loan by the Bank pursuant to Sub-clause 5.4 or the advancing of an increase pursuant to Sub-clause 5.5.1 within twelve (12) months of the date of issue of the Entitlement Certificate or a Grant of Approval as the case may be.

- 7.1.3 In cases where the Commonwealth is not satisfied with the contents of Part D of the Application for Payment of Subsidy, the Commonwealth shall immediately notify the Bank and the applicant and specify the matters in respect of which the Commonwealth is not satisfied. The applicant and the Bank shall be given a reasonable opportunity to rectify the deficiencies specified.

- 7.1.4 The Bank acknowledges that the Commonwealth may, in accordance with the Act, terminate or suspend payments of Subsidy. In the event that the Commonwealth decides to terminate or suspend Subsidy payments it shall provide notice to the Bank in accordance with Sub-clause 11.2.

7.2 Obligation of Bank on receipt of Subsidy

The Bank agrees that it will receive and deal with Subsidy payments for the benefit of the Subsidised Borrowers and Joint Borrowers to whom they relate in accordance with the Act and this Agreement.

SCHEDULE 1—continued

7.3 Payment of Subsidy

- 7.3.1** The first payment of Subsidy in respect of a Subsidised Loan shall be made on the second Rest Day after the Bank has advanced a Subsidised Loan pursuant to Sub-clause 5.4. Prior to a Subsidy Payment Commencement being made, the Commonwealth shall advise the Entitled Person and the Bank of the date of commencement and the basis of calculation of Subsidy. The Commonwealth shall continue to pay Subsidy to the Bank on each Rest Day thereafter until such time as payments of Subsidy stop or are cancelled or suspended in accordance with the Act, or the Subsidised Loan is repaid in full, whichever is the earlier.
- 7.3.2** All Subsidy payments due to be paid to the Bank on a particular Rest Day shall be totalled and paid by the Commonwealth to the Bank by depositing the amount so totalled to such account as the Bank may from time to time advise.
- 7.3.3** The Commonwealth shall on the day Subsidy is paid provide the following:
- (a)** the name of each Subsidised Borrower and Joint Borrower, if any;
 - (b)** the number of each Subsidised Loan Account to which Subsidy is to be credited;
 - (c)** the amount of Subsidy to be credited to each Subsidised Loan Account; and
 - (d)** such other information as may be agreed between the parties.
- 7.3.4** On the day Subsidy is paid, the Bank shall credit Subsidy payments to the relevant Subsidised Loan Accounts as notified by the Commonwealth, provided that if the information referred to in Sub-clause 7.3.3 is delivered to the Bank after 3.00 p.m. on the day Subsidy is paid, the Bank will endeavour to credit Subsidy to the relevant Subsidised Loan Accounts on that day and if it is unable to do so, Subsidy shall be credited to Subsidised Loan Accounts on the following Business Day.
- 7.3.5** The information referred to in Sub-clause 7.3.3 shall be delivered to a lodgement point nominated by the Bank and shall be supplied on magnetic tape or in such other computerised form as the parties may agree and in accordance with agreed standards and specifications.
- 7.3.6** In cases where, on payment of Subsidy, the Bank is unable to exactly match its records relating to a Subsidised Borrower or Joint Borrower (namely, the correct name

SCHEDULE 1—continued

or names of such persons together with the Subsidised Loan Account number) with that advised by the Commonwealth, then unless the parties can resolve the discrepancy in records the Bank agrees that it will repay to the Commonwealth the Subsidy received within three (3) days of its receipt.

8. OVER-PAYMENT OF SUBSIDY

8.1 Where immediate repayment required

In the event that the Bank receives a Subsidy payment for the benefit of a Subsidised Borrower and:

- (a) the Mortgage has been discharged;
- (b) the Property or Mortgage has been transferred without the issue of a Grant of Approval; or
- (c) the Subsidised Loan has been repaid,

the Bank agrees that it will repay the amount of Subsidy received to the Commonwealth within three (3) days of its receipt, together with written advice as to the reason for the return of the Subsidy amount.

8.2 Where Over-payments are to be added to Subsidised Loan Account

Subject to Sub-clause 8.3 and 8.5, where Subsidy has not been paid in accordance with the Act and there has been an over-payment of Subsidy, the following procedures shall be followed:

- (a) the amount payable to the Commonwealth shall be the due amount determined in accordance with the provisions of the Act;
- (b) the Commonwealth will notify the Subsidised Borrower and the Bank of the over-payment of Subsidy and request that the Subsidised Borrower within thirty (30) days either,
 - (i) repay the due amount directly to the Commonwealth; or
 - (ii) consent to the due amount being paid to the Commonwealth in the manner provided in Sub-clause 8.2 (d);
- (c) the due amount shall be paid to the Commonwealth by the Bank in the manner provided in Sub-clause 8.2 (d) where:
 - (i) the Subsidised Borrower at any time so consents,
 - (ii) the Subsidised Borrower makes no reply to the Commonwealth's request under Sub-clause 8.2 (b),
 - (iii) the Commonwealth obtains a judgment of a court against the Subsidised Borrower for payment of the due amount which is not paid within thirty (30) days of the date of the judgment, or

SCHEDULE 1—continued

- (iv) seeks a review of a decision of the Commonwealth pursuant to the Act relating to relief against hardship and the decision of the Commonwealth is upheld, or the due amount reduced and the due amount is not paid to the Commonwealth within thirty (30) days of written notification to the Subsidised Borrower of the Commonwealth's decision;
 - (d) where Sub-clause 8.2 (c) is applicable, the Commonwealth shall notify the Bank in writing and the Bank shall,
 - (i) pay the due amount to the Commonwealth and add the amount of such payment to the principal sum outstanding on the Subsidised Borrower's Subsidised Loan Account, and,
 - (ii) immediately advise the Commonwealth in writing that the amount has been so added specifying the date on which it was added and the principal and interest owing to the Bank before the amount was added in respect of any advance by the Bank secured over the Property;
 - (e) the Parties acknowledge that where the Bank adds an amount to the principal sum outstanding on a Subsidised Loan Account pursuant to Sub-clause 8.2 (d), such amount shall be repayable to the Bank as if the Bank had advanced the amount to the Subsidised Borrower as a Housing Loan secured by a mortgage and that the Commonwealth is not obliged under the Act to pay Subsidy in respect of the amount.
- 8.3 Bank not required to add over-payment where Subsidised Loan Account closed.**
- 8.3.1** Pursuant to the Act, the Bank shall not be required to perform its obligations under Sub-clause 8.2 (d) where the Subsidised Loan Account is closed at the time the Bank receives notice from the Commonwealth pursuant to that Sub-clause.
 - 8.3.2** For the purposes of this clause the Subsidised Loan Account shall not be taken to be closed until all agreements made between the Bank and the Subsidised Borrower and which related to the Subsidised Loan, including increases in the amount of the Subsidised Loan, have been discharged.
- 8.4 Commonwealth to refund Amount to Bank in certain circumstances.**
- Where pursuant to Sub-clause 8.2 (d) (i) the Bank has paid an amount to the Commonwealth and added that amount to the principal outstanding on a Subsidised Loan Account and has

SCHEDULE 1—continued

provided the advice to the Commonwealth set out in Sub-clause 8.2 (d) (ii), if at any time thereafter:

- (a) the Bank, for any reason or in any circumstances, realises the Mortgage securing the loan;
- (b) the proceeds of such realisation are insufficient to meet, all or any part of, the moneys due to the Bank under the said Mortgage; and
- (c) the Bank has taken action against the borrower to recover the shortfall suffered by the Bank on realisation of the Mortgage and such action has not been successful or the Bank in the ordinary course of its business would have written off the amount of the shortfall as a bad debt,

the Commonwealth will refund to the Bank such amount of the moneys paid by the Bank to the Commonwealth pursuant to Sub-clause 8.2 (d) as is necessary to recompense the Bank for the shortfall suffered on realisation of the Mortgage; provided always that in assessing the extent of the shortfall to be recompensed to the Bank no account shall be taken of moneys owing to the Bank over and above those referred to in 8.2 (d) (ii).

8.5 Cases of fraud, mistake or concealment

Where there has been any fraud, mistake or concealment by the Bank or its servants or agents and this results in an over-payment of Subsidy, the Bank shall pay immediately the due amount to the Commonwealth. In cases of fraud or concealment, and provided the Subsidised Borrower has not been a party thereto, the Bank shall make no claim against the Subsidised Borrower in respect of the due amount

8.6 Commonwealth to notify Bank of due amount from time to time

Where:

- (a) pursuant to the Act, a due amount is payable to the Commonwealth by a person who is or was a Subsidised Borrower;
- (b) such person has been allowed to pay the due amount to the Commonwealth by instalments; and
- (c) the Bank is, or may be, required to pay pursuant to the Act the balance of the due amount after deduction of instalments, to the Commonwealth,

the Commonwealth shall upon request notify the Bank in writing of the balance of the due amount from time to time.

8.7 Meaning of “due amount”

In this Clause “due amount” has the same meaning as in the Act.

SCHEDULE 1—continued

- 8.8 Meaning of Subsidised Borrower**
In this Clause a reference to a “Subsidised Borrower” shall, where appropriate, include a reference to both a Subsidised Borrower and a Joint Borrower.
- 9. FURTHER HOUSING LOANS**
- 9.1 Ability to apply for Further Housing Loan**
Nothing in this Agreement shall operate in any way to restrict the ability of a person to apply to the Bank for such Further Housing Loan as the person may require.
- 9.2 Bank not to discriminate**
Where a person applies to the Bank for a Subsidised Loan and at the same or a subsequent time also applies for a Further Housing Loan, the Bank agrees that it will treat such applications in its ordinary and usual course of business and will treat the person no differently than it would its other Housing Loan customers. The Bank further agrees that both the Subsidised Loan and the Further Housing Loan shall be secured under the same first Mortgage.
- 10 PROMOTION AND OPERATION OF THE SCHEME**
- 10.1 Obligations of the Bank**
The Bank hereby agrees that it will:
- (a) provide a high level of banking service in respect of Subsidised Loans and other related banking services to persons who apply for Entitlement Certificates, Entitled Persons, Joint Borrowers and Subsidised Borrowers;
 - (b) subject to consultation, comply with such reasonable directions to promote the Scheme to prospective applicants as the Commonwealth may from time to time give to the Bank;
 - (c) ensure that a sufficient number of its officers and employees are conversant with the Scheme so as to ensure that the Bank will be able reasonably to assist and advise persons who are or may be entitled to receive Subsidy under the Scheme; and
 - (d) produce and print appropriate publications describing the Scheme, ensure that a sufficient number of its branches or agencies have an adequate supply of these publications, and provide reasonable numbers of the publications to the Commonwealth, on request.
- 10.2 Obligations of the Commonwealth**
The Commonwealth hereby agrees that it will:
- (a) properly administer the Scheme for the benefit of persons seeking or entitled to a Subsidised Loan from the Bank;

SCHEDULE 1—continued

- (b) produce and print appropriate publications describing the Scheme, applications for an Entitlement Certificate and Grants of Approval and provide the Bank with a reasonable quantity of such publications and applications for distribution to its branches on request; and
- (c) provide such reasonable assistance to the Bank to promote the Scheme as the Bank may from time to time request.

11. INFORMATION

11.1 Notices by the Bank

Where in the course of normal banking business, an officer of a branch of the Bank at which a Subsidised Loan Account is maintained becomes aware of or receives notice of any of the matters listed below, the Bank shall notify the Commonwealth in writing of that matter within the number of days specified in brackets:

- (a) repayment of the Subsidised Loan or discharge of the Mortgage (3 days);
- (b) transfer of the Property or Mortgage, where such transfer has not been approved by the Commonwealth by the issue of a Grant of Approval (3 days);
- (c) where the Property is held as a joint tenancy the conversion of the joint tenancy to a tenancy in common (7 days);
- (d) issue of a notice relating to the resumption of the Property by a government or statutory body or local authority (7 days);
- (e) total destruction of a dwelling on the Property (7 days);
- (f) death of a Subsidised Borrower or Joint Borrower (7 days);
- (g) receipt of a request from a Subsidised Borrower to have Subsidy cancelled (3 days);
- (h) an error by the Bank in:
 - (i) the completion of Part D of an Application for Payment of Subsidy (7 days); or
 - (ii) crediting of a Subsidy payment to a Subsidised Loan Account (1 day); and
- (i) change of name or names on the Title, Mortgage or Subsidised Loan Account where the change has not been approved by the Commonwealth by the issue of a Grant of Approval (7 days); and
- (j) receipt by the Bank of a court order or other document which by law requires the Bank to transfer the Property or Mortgage where such change has not been approved by the Commonwealth by the issue of a Grant of Approval (7 days).

SCHEDULE 1—continued

11.2 Notices by the Commonwealth

The Commonwealth will notify the Bank in writing within the number of days specified in brackets in cases where the Commonwealth becomes aware of or has notice of:

- (a) the Subsidy payable to a Subsidised Borrower ceasing within 60 days (7 days);
- (b) a request by a Subsidised Borrower for the cessation of Subsidy (7 days); and
- (c) an error in an Entitlement Certificate, Grant of Approval or a Subsidy payment (30 days).

11.3 Provision of information generally

Unless the Bank is prohibited by law from doing so, the Bank agrees that it will provide the Commonwealth with copies of any documents or any other information in the possession or under the control of the Bank relating to applications for Subsidised Loans or to Subsidised Loans as may be requested by the Commonwealth in writing. The Bank shall comply with any request by the Commonwealth within fourteen (14) days of receipt of the request or provide written reasons to the Commonwealth why it has not and advise the Commonwealth when it shall comply; provided that in all cases the Bank shall comply with the request within twenty-eight (28) days of receipt.

11.4 Assistance in preparing Annual Reports and evaluations

The Bank hereby agrees to provide reasonable assistance to the Commonwealth in connection with the preparation of Annual Reports to the Parliament regarding the operation of the Scheme and in evaluating the effectiveness of the Scheme at intervals between three (3) and five (5) years against objectives determined by the Commonwealth from time to time. The Bank further agrees that it will:

- (a) ensure that its officers and employees are available for discussion and will provide such other reasonable assistance as the Commonwealth may from time to time request to assist it in the preparation of such Annual Reports;
- (b) provide such reasonable assistance to the Commonwealth as the Commonwealth may from time to time request in the preparation of evaluations of the Scheme at intervals between three (3) and five (5) years including but not limited to:
 - (i) the provision of reports to the Commonwealth on the operation of the Scheme stating whether in the Bank's opinion the objectives of the Scheme are being met and, if not, specifying any shortcomings and also recommending appropriate changes to enable the objectives to be met; and

SCHEDULE 1—continued

- (ii) ensuring that its officers are available for discussion and to provide reasonable assistance in the preparation of evaluations.

11.5 Disclosure

The reports by the Bank referred to in Sub-clause 11.4 (b) (i) are not to be copied, used, disclosed or otherwise made available to any third party without the prior written consent of both parties.

11.6 No charge to the Commonwealth by the Bank

The Bank shall not be entitled to charge a fee for any act done by it pursuant to this Clause.

12. ACKNOWLEDGEMENT OF COMMONWEALTH ADMINISTRATIVE ARRANGEMENTS

12.1 Commonwealth to act through Departments and statutory authorities

The Bank agrees that the Commonwealth may discharge its rights and exercise its obligations under this Agreement through any Department of State of the Commonwealth or statutory authority of the Commonwealth.

12.2 Meaning of “Commonwealth” in Agreement

Any reference to the “Commonwealth” in this Agreement shall, unless the contrary intention appears, include any Department or Departments of State of the Commonwealth, or any statutory authority of the Commonwealth which is charged with the responsibility for administering the Scheme pursuant to Sub-clause 12.1.

13. DEALINGS WITH SOUTH AFRICA

13.1 The Bank hereby agrees that:

- (a) as at the date of signing this Agreement no South African person has a beneficial interest in 50 per cent or more of the issued shares of the Bank or, alternatively, no South African person has a controlling interest in the Bank;
- (b) for the duration of this Agreement no South African person shall be allowed to attain a beneficial interest in 50 per cent or more of the issued shares of the Bank or, alternatively, no South African person shall be allowed to attain a controlling interest in the Bank; and
- (c) the Commonwealth will be notified in writing if, during the Franchise Term, there is any actual or proposed change to the Bank which will lead or is likely to lead to a South African person having a beneficial interest in 50 per cent or more of the issued shares of the Bank or, alternatively, a South African person having a controlling interest in the Bank.

SCHEDULE 1—continued

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

14. STAMP DUTY

Any Stamp Duty payable on or arising out of this Agreement or its implementation shall be borne by the Bank. This provision shall not be construed as obliging the Bank to pay Stamp Duty on any loan instrument, mortgage or other security document relating to a Subsidised Loan.

15. 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.

16. APPLICABLE LAW

This Agreement shall be governed by and be construed in accordance with the law for the time being in force in the State of Victoria and the parties hereby agree to submit to the jurisdiction of the courts of the State of Victoria.

17. NOTICES

Unless the contrary intention appears in this Agreement, any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid post or data facsimile transmission to:

(a) In respect of the Commonwealth,

Secretary
Department of Defence
Russell Offices
CANBERRA ACT 2600
For Attention: First Assistant Secretary
Human Resources Division
Facsimile: (06) 266 8624

(b) In respect of the Bank,

Chief Manager
Consumer Market Development
National Australia Bank
100 Victoria Parade
East Melbourne 3002
Facsimile: (03) 665 8974

SCHEDULE 1—continued

Such notice, request or other communication shall be deemed to have been given or served:

- (a) if delivered by hand, upon delivery;
- (b) if in the form of a letter sent by pre-paid post, upon the expiration of two (2) working days after the date on which it was so sent;
- (c) if by data facsimile transmission, upon the sender's facsimile machine recording that the facsimile has been properly transmitted to the recipients's address,

provided that if such delivery or receipt is later than 4.30 p.m. 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 day in that place.

Either party may change its address for service of notices by notice in writing to the other party.

18. WAIVER

The failure by either party at any time to enforce any of the provisions of this Agreement or any amendments made thereto 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 hereof, or the rights of the other party thereof, or the rights of the other party thereafter to enforce each and every 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.

19. ENTIRE AGREEMENT

The terms and conditions in this Agreement together with any written amendments made thereto which are confirmed by the parties as amendments to this Agreement shall constitute the complete agreement between the parties hereto. It is hereby 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 or by estoppel by reason of any promise, representation, warranty or undertaking given or made by any party to the other on or prior to the execution of this Agreement, and without limiting the generality of the foregoing shall include those (if any) contained in the Request for Registration of Interest document entitled "Proposed Scheme of Home Loan Assistance for Members of the Australian Defence Force" issued by the Commonwealth and dated 18 August 1989, or contained in, or related to statistics provided by the Commonwealth to the Bank dealing with the size and composition of the Defence Force and the existence of

SCHEDULE 1—continued

any such implication or collateral or other agreement or right is hereby negated and further the obligation to perform the terms and conditions of this Agreement shall not be affected by the making of any such promise, representation, warranty or undertaking.

20. AMENDMENTS OR VARIATIONS

No variation, modification or waiver of any provision of this Agreement nor consent to any departure therefrom by any party shall in any event be of any force or effect unless the same shall be confirmed in writing, signed by all of 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.

21. ASSIGNMENT

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

22. DISPOSAL BY BANK

The Bank shall not, without the prior written consent of the Commonwealth, transfer, assign, sell, give or otherwise dispose of its interest in any Mortgage to any person, including a subsidiary, holding company, partner or joint venturer of the Bank, or any company or organisation 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) suitable arrangements are made such that Subsidised Borrowers and Joint Borrowers can continue to deal only with the Bank;
- (b) the Bank remains liable to the Commonwealth to ensure that all of the Bank's obligations under this Agreement are complied with and that the rights of Subsidised Borrowers and Joint Borrowers are not adversely affected notwithstanding that the Mortgages may be transferred by the Bank to another entity;
- (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 its intention to do so together with details as to the manner in which the Bank is to comply with the provisions of this Clause.

23. FURTHER ASSURANCES

Each party to this Agreement shall do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the other party effectively to carry out and give effect to the terms and intentions of this Agreement whether before or after the date of execution.

SCHEDULE 1—continued

24. ARBITRATION

24.1 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, obligations 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.

24.2 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 referred to in Sub-clause 24.1, 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 operate to refer such dispute, question or difference to arbitration. Such dispute, question or difference shall then be determined, subject to the provisions of this Agreement, by an arbitrator selected by agreement in writing by the parties within fourteen (14) days of the giving of the aforementioned further notice or, in the absence of such agreement, by an arbitrator appointed in accordance with the provisions of the law relating to arbitration in force in the State of Victoria.

24.3 Arbitration relating to Franchise Payments

For the purposes of a dispute, question or difference referred to in Sub-clause 4.6, the time periods referred to in Sub-clause 24.2 shall be seven (7) days and the arbitrator shall be appointed by the President of the Australian Institute of Chartered Accountants.

24.4 Arbitration Relating To Benchmark Rate

For the purposes of a dispute, question or difference as to the Benchmark Rate notified by the Commonwealth to the Bank pursuant to Sub-clause 5.15.2 (f), the following provisions shall apply:

- (a) the Bank shall immediately serve on the Commonwealth a notice of such dispute, question or difference and the parties shall meet or confer within two (2) days of receipt of the notice in an attempt to settle such dispute, question or difference;
- (b) in the event that such dispute, question or difference is not settled within three (3) days from the date of service of the notice referred to in Sub-clause 24.4 (a), the Bank may submit the dispute, question or difference to arbitration by

SCHEDULE 1—continued

-serving a further notice on the Commonwealth stating that it requires the dispute, question or difference to be referred to arbitration and the giving of such further notice shall operate to refer such dispute, question or difference to arbitration; and

- (c) such dispute, question or difference shall then be determined, subject to the provisions of this Agreement, by an arbitrator appointed by the President of the Australian Institute of Chartered Accountants being an arbitrator who has agreed in writing before his appointment to make a determination within twenty-one (21) days of the date referred to in Sub-clause 5.15.2 (a).

24.5 Provisions relating to all arbitrations

The following provisions shall apply to all arbitrations:

- (a) a reference to arbitration under this Clause shall be deemed to be a reference to arbitration within the meaning of the law of the State of Victoria;
- (b) the fees and expenses of the arbitrator shall be borne equally by the Bank and the Commonwealth;
- (c) the parties may be represented or assisted in any arbitration proceedings by persons of their choice; and
- (d) any sum payable pursuant to a determination of an arbitrator shall be paid within seven (7) days of the making of the determination.

25. CONFIDENTIALITY

25.1 Acknowledgement by the Bank of confidential material

The Bank acknowledges that any information or documents supplied to it by the Commonwealth, its employees, servants, officers or agents:

- (a) in respect of applicants for Entitlement Certificates, Entitled Persons, Subsidised Borrowers and Joint Borrowers under the Scheme; or
- (b) relating to the Defence Force which is indicated as being confidential when supplied,

is to be received by the Bank in confidence and, except where the Bank is required by law to do so, shall not be copied, used, disclosed or otherwise made available to any third person without the prior written consent of the Commonwealth.

25.2 Duty not to disclose

The Bank agrees not to copy, use, disclose or otherwise make available other than for the sole purpose of the Bank's administration of the Scheme any information or document relating to persons who are or were Entitled Persons, Subsidised Borrowers or Joint Borrowers in circumstances in which

SCHEDULE 1—continued

disclosure is not authorised by the normal Banker/Customer relationship or by the Act.

26. WARRANTIES

26.1 Warranties by the Commonwealth

The Commonwealth warrants that it has full power and authority to enter into, execute, deliver and complete the transactions contemplated by this Agreement.

26.2 Warranties by the Bank

The Bank warrants, undertakes and represents to the Commonwealth and it is a condition of this Agreement that:

- (a) the execution and delivery of this Agreement has been duly and validly authorised by all necessary corporate action on behalf of the Bank;
- (b) the Bank has full corporate power and lawful authority to execute this Agreement and to consummate and 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 by appropriate legal remedy and does not conflict with, or constitute, or result in, a breach of or default of any provision of the Bank's Memorandum and Articles of Association or any material term or provision of any agreement or any deed or any writ, order or injunction, judgment, law, rule or regulation to which the Bank is a party or is subject to or by which the Bank is bound;
- (c) no agreement or commitment has been entered into or incurred by the Bank which involves or is likely to involve obligations or liabilities which by reason of their magnitude or nature ought reasonably to be made known to the Commonwealth;
- (d) no statutory notices have been served on the Bank which might in any way impair, prevent or interfere with the Bank's performance of its obligations hereunder or pursuant to the Act; and
- (e) it has all of the necessary approvals, licences (including statutory licences) and accreditation, consents, permission, 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 approvals, licences, permissions or consents.

27. INDEMNITIES

27.1 Obligations of the Bank

The Bank shall indemnify and keep indemnified the Commonwealth, its officers, employees and agents from and against all and any reasonable losses, costs (including legal costs)

SCHEDULE 1—continued

and liabilities, refunds, expenses and other out-goings incurred by the Commonwealth in connection with any claim made by a third party against the Commonwealth in relation to a Subsidised Loan 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.

27.2 Obligations of the Commonwealth

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

28. RELATIONSHIP OF THE PARTIES

This Agreement does not constitute either party as a joint venturer, partner, agent, employee or representative of the other party and any act or omission of either party shall not bind or obligate the other party except as is expressly set forth in this Agreement.

29. DEFAULT PROVISIONS

29.1 Persistent failure by the Bank to provide Subsidised Loans.

Where it appears to the Commonwealth that there has been a persistent failure by the Bank to provide Subsidised Loans in accordance with this Agreement the following provisions shall apply:

29.1.1 the Commonwealth shall serve upon the Bank a notice in writing giving particulars of the persistent failure and requiring the Bank to rectify the failure;

29.1.2 within twenty-eight (28) days of the date of service of such a notice on the Bank either party may request a meeting in which case the parties shall forthwith meet in order that agreement can be reached on whether there has been a persistent failure and, if so, the appropriate steps and procedures to be taken or adopted by the Bank in order to rectify the failure;

29.1.3 where three (3) months has elapsed from the date of service of such a notice on the Bank and the parties have not met or are unable to reach agreement pursuant to Sub-clause 29.1.2 then, if the Commonwealth considers

SCHEDULE 1—continued

that the Bank has not rectified the persistent failure, the Commonwealth may require the Bank to show cause to the Commonwealth why the Commonwealth should not terminate the Agreement, and in the event that the Bank fails to do so, the Commonwealth may terminate the Agreement.

29.2 Persistent failure by Bank to comply with any other term of the Agreement.

Where it appears to the Commonwealth that there has been a persistent failure by the Bank to comply with any other term of this Agreement the following provisions shall apply:

29.2.1 the Commonwealth shall serve upon the Bank a notice in writing specifying the nature of the persistent failure and giving particulars thereof and requiring the Bank to rectify the failure;

29.2.2 where following such notice the Commonwealth considers that the Bank has not rectified the persistent failure, the Commonwealth may refer the matter to arbitration in accordance with Clause 24. In the event that it is determined that there has been a persistent failure by the Bank, the Commonwealth may require the Bank to show cause to the Commonwealth why the Commonwealth should not terminate the Agreement and in the event that the Bank fails to do so the Commonwealth may terminate the Agreement.

29.3 Meaning of “rectify the failure”

The expression “rectify the failure” in this Clause shall include, where appropriate, taking steps or adopting procedures to ensure that a similar breach does not occur again in the future.

29.4 Immediate Termination

Where:

- (a)** an order is made or a resolution is passed for the winding up, or the dissolution without winding up, of the Bank (except for the purposes of reconstruction or amalgamation with the consent of the Commonwealth);
- (b)** the Bank becomes insolvent or is unable to pay its debts within the meaning of Section 364 (2) of the Companies Code in the State in which the Bank is incorporated;
- (c)** the Bank enters into an arrangement, reconstruction or composition with its creditors or with any of them whereby the Bank affects an assignment of all or substantially all of its property for the benefit of its creditors;
- (d)** a receiver is appointed to the Bank;

SCHEDULE 1—continued

- (e) pursuant to the provisions of the Companies Code of the State in which the Bank is incorporated or the corresponding legislation of any other State or Territory the Bank is placed under official management;
- (f) 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 under this Agreement;
- (g) the Bank assigns its rights or obligations under this Agreement in whole or in part without the consent of the other party;
- (h) pursuant to the Banking Act 1959 as amended the Reserve Bank of Australia appoints an officer to investigate the affairs of the Bank or the Reserve Bank of Australia assumes control of and carries on the business of the Bank; or
- (i) the Bank loses its approval to carry on banking business in Australia,

then the Commonwealth shall be entitled by notice in writing to immediately terminate this Agreement.

29.5 Effects of termination

29.5.1 Upon the termination of this Agreement for any reason the exclusive rights granted to the Bank in Clause 3 shall be terminated and the Commonwealth may grant those rights to another person of the Commonwealth's sole choosing.

29.5.2 In the event that the Commonwealth terminates the Agreement under Sub-clauses 29.1, 29.2 or 29.4 the Bank shall not, pursuant to Sub-clause 4.7 have any claim to a refund of part or all of the payment of the forty-two million dollars (\$42 million) made pursuant to Sub-clause 4.1 (a).

29.5.3 Upon the termination of this Agreement, the Bank shall be obliged to complete all outstanding applications for Housing Loans already submitted by Entitled Persons and Entitled Persons and their spouses, where appropriate, as though the agreement had not been terminated.

29.5.4 All covenants and agreements by either party which by their terms or by reasonable implication are to be performed in whole or in part after the termination of this Agreement shall survive such termination including the duties arising pursuant to Clause 25.

29.5.5 Except as may otherwise be provided for in this Sub-clause, the termination of this Agreement for any reason:

SCHEDULE 1—continued

- (a) shall not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other party which may have accrued hereunder including without limitation any such debt, obligation or liability which was the cause of termination or arose out of such cause; and
 - (b) shall be without prejudice to any right or remedy which shall have accrued or which may accrue thereafter in favour of either party.
- 29.6 Interest payable on moneys over-due
 - 29.6.1 Unless otherwise provided, if either party defaults in the payment of any moneys due to the other party under this Agreement the party in default shall, without prejudice to any other rights of the other party, pay on demand interest on the moneys due. Such interest shall be paid at a rate per annum equal to the Benchmark Rate as at the date of default plus 5 per cent and shall be calculated from the date the moneys are due until they are paid.
 - 29.6.2 The parties acknowledge that this Sub-clause shall not apply to:
 - (a) payments of Subsidy by the Commonwealth; or
 - (b) any refund made pursuant to Sub-clause 4.7 of the \$42 million referred to in Sub-clause 4.1 (a) until any sum is due under Sub-clause 24.5 (d).
- 30. **AUDIT**
 - 30.1 **Report by external auditors of Bank**

The Bank agrees to provide to the Commonwealth within two (2) months of the Commencement Date and prior to the end of each Calendar Year in which Subsidy is paid to the Bank 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 Loans can be relied upon and whether the Bank's accounts and records concerning Subsidised Loans have been properly and accurately maintained.
 - 30.2 **Qualified Reports**

If the external auditors' opinion is qualified in any respect the reasons for such qualification shall be specified in the report and the Bank agrees to take immediate action to remedy the matters specified and to obtain a further report from its external auditors within twenty-eight (28) days stating that, in their opinion, the reasons for the qualification no longer apply.
 - 30.3 **Discussion of audit procedures with external auditors**

If at any time the Commonwealth considers it to be desirable the Bank will arrange with its external auditors for the

SCHEDULE 1—continued

Commonwealth to discuss with the external auditors the audit procedures they have applied.

30.4 No charge to the Commonwealth by the Bank

The Bank shall not be entitled to charge a fee for any information or service provided to the Commonwealth pursuant to this clause.

31. ENABLING LEGISLATION

31.1.1 Enabling legislation being passed by Parliament

This Agreement is binding on the parties but, except for this Clause, is subject to and conditional upon legislation 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 on behalf of the parties; or
- (ii) are taken to have been agreed to by the Bank pursuant to Sub-clause 31.4.

31.1.2 The draft Bill referred to in Sub-clause 31.1.1 to be initialled by the parties shall not include Schedule 1 thereto.

31.2 Amendments to draft Bill

In the event that the legislation passed by Parliament should contain any amendments from the draft Bill referred to in Sub-clause 31.1, the Commonwealth shall within two (2) days of the passage of the legislation give notice to the Bank of the amendments together with such information relating to those amendments as it wishes to provide.

31.3 Effect of Amendments

If the 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 or the draft Bill; or
- (d) alter any of the obligations of the Commonwealth set out in the Agreement or the draft Bill or affect the capacity of the Commonwealth to perform its obligations under this Agreement or the draft Bill, and

in the opinion of the Bank, this adversely affects the position of the Bank under the Scheme, the Bank shall notify the Commonwealth within seven (7) days of receipt of the notice under Sub-clause 31.2 or such further period as may be agreed upon by the parties.

SCHEDULE 1—continued

- 31.4 No Notice by Bank**
In the event that the Bank does not give notice under Sub-clause 31.3, it shall be taken to have agreed to such amendments for the purposes of Sub-clause 31.1.
- 31.5 Draft Bill to be submitted to Parliament**
The Commonwealth agrees that the draft Bill to be submitted to the Parliament shall be the draft Bill referred to in Sub-clause 31.1 with only such amendments thereto as may be agreed in writing on behalf of the parties.
- 31.6 Procedure where notice given by the Bank**
If a notice is served by the Bank in accordance with Sub-clause 31.3, then the parties will, as soon as possible after receipt of the notice, meet or communicate to discuss the effect of the amendments and to reach agreement on whether this Agreement shall proceed. If, after twenty one (21) days of service of the notice under Sub-clause 31.3, agreement has not been reached by the parties, then the Agreement shall terminate.
- 31.7 Effect of termination**
In the event that the Agreement is terminated or has no force or effect arising from Clause 31.6, 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.
- 31.8 Agreement approved by enabling legislation**
The parties hereby agree that a copy of this Agreement shall be annexed to and approved by the enabling legislation.
- 31.9 Commencement Date after 31 December 1991**
In the event that the Commencement Date is a date after 31 December 1991 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.
- 31.10 Passage of enabling legislation after 31 December 1990**
In the event that the enabling legislation is passed after 31 December 1990, references to the Act in this Agreement shall be read as references to the Defence Force (Home Loans Assistance) Act 1991.

SCHEDULE 1—continued

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 **GORDON NEIL BILNEY**, Minister for Defence Science and Personnel, in the presence of:

JONATHAN HUTSON

GORDON BILNEY

SIGNED on behalf of **NATIONAL AUSTRALIA BANK LIMITED** by its Attorney **JOHN FREDERICK ASTBURY**, under Power of Attorney dated 22nd February 1990 (who states that he holds the office in the Bank indicated under his signature) in the presence of:

R. J. MILLER

JOHN F. ASTBURY
Chief General Manager
Relationship Banking (North)

SCHEDULE 1—continued

SCHEDULE A

Column 1	Column 2	Column 3	Column 4
From Commencement Date to 31 Dec 1991	1400	\$985	15 January 1992 by 11.00 A.M.
1992 Calendar Year	2800	\$985	15 January 1993 by 11.00 A.M.
1993 Calendar Year	2800	\$985	15 January 1994 by 11.00 A.M.
1994 Calendar Year	2800	\$985	15 January 1995 by 11.00 A.M.
1995 Calendar Year	2800	\$985	15 January 1996 by 11.00 A.M.
1996 Calendar Year	2800	\$985	15 January 1997 by 11.00 A.M.
1997 Calendar Year	2800	\$1760	15 January 1998 by 11.00 A.M.
1998 Calendar Year	2800	\$1760	15 January 1999 by 11.00 A.M.
1999 Calendar Year	2800	\$1760	15 January 2000 by 11.00 A.M.
2000 Calendar Year	2800	\$1760	15 January 2001 by 11.00 A.M.
2001 Calendar Year	2800	\$1760	15 January 2002 by 11.00 A.M.
2002 Calendar Year	2800	\$2700	15 January 2003 by 11.00 A.M.
2003 Calendar Year	2800	\$2700	15 January 2004 by 11.00 A.M.
2004 Calendar Year	2800	\$2700	15 January 2005 by 11.00 A.M.
2005 Calendar Year	2800	\$2700	15 January 2006 by 11.00 A.M.
1 January 2006 to 31 January 2007	2800	\$2700	15 January 2007 by 11.00 A.M.

SCHEDULE 1—continued

SCHEDULE B

PARTICULARS TO BE INCLUDED IN DOCUMENTS REFERRED TO IN THIS AGREEMENT

ENTITLEMENT CERTIFICATE

An Entitlement Certificate will include:

- name of the Entitled Person who is to become the Subsidised Borrower
- the Service Number of the Entitled Person
- name of the Entitled Person's spouse who may be joined on the Title as a joint tenant
- a unique identifying number relating to the Certificate
- statement that the Secretary (or delegate) is satisfied that the service by the Entitled Person (or deceased spouse) is sufficient to enable a loan to the person to attract Subsidy and that the person has an entitlement
- statement of the Subsidy period or that the Subsidy period is continuing to accrue if the Entitled Person is still a service member
- advice to the Entitled Person that the Bank has an exclusive right to participate as the lender under the Scheme
- details of any properties that must be disposed of before Subsidy can commence
- the date of the Certificate noting that Certificates are only valid for 12 months
- if provided by the Entitled Person the name of the branch of the Bank with which the Entitled Person wishes to deal

APPLICATION FOR SUBSIDY

The Application for Subsidy will consist of FOUR PARTS containing the following particulars:

Part A

This part will be completed by the Entitled Person and will include particulars drawn from the Entitlement Certificate or Grant of Approval relating to a Loan Increase ("Grant of Approval—Loan Increase") such as:

- the name of the Entitled Person
- the Service Number of the Entitled Person
- the name of a spouse to be joined on Title (if any)
- the number of the Entitlement Certificate or (Grant of Approval—Loan Increase)
- the date of the Certificate or (Grant of Approval—Loan Increase)
- whether this application relates to a new loan or a loan increase

SCHEDULE 1—continued

Part B

This part will relate to the Property that is to be the security for the Subsidised Loan and shall include a declaration by the person that Parts B and A have been accurately completed. It shall include the following particulars:

- the address of the Property to which the loan or loan increase relates
- a declaration that the person or spouse has not acquired any other houses other than those specified in the Entitlement Certificate (or Grant of Approval—Loan Increase) and that those properties specified in the Entitlement Certificate (or Grant of Approval—Loan Increase) have been disposed of. The Entitled Person will be required to provide documentary evidence of sale to the Bank
- an acknowledgement of and consent to the recovery arrangements
- an statement that the funds advanced under the Subsidised Loan will be used for the purposes specified in the Act
- a statement that the Entitled Person and family will occupy or are occupying the house to which the loan relates

Part C

Part C shall be a signed statement by the Secretary or delegate that they are:

- satisfied that the house mentioned in Part B is suitable for the use of the Entitled Person and family (if any) in terms of the provisions of the Act
- believe that there is no impediment to the occupation of the house by the Entitled Person or family (if applicable)
- if applicable a statement that the person signing the Part is a delegate of the Secretary under the Act

Part D

Part D shall be in the form specified in Schedule C

Instructions

Suitable instructions on the completion of the Application for Payment of Subsidy form and the nature of supporting documents required will be made available with the form to assist Entitled Persons.

GRANT OF APPROVAL—LOAN INCREASES

A Grant of Approval—Loan Increases will include the following particulars:

- name of the Subsidised Borrower
- name of a spouse joined on Title (if any)
- a unique identifying number relating to the Grant of Approval
- date of the approval (noting that the Grant of Approval will only be valid for 12 months)

SCHEDULE 1—continued

- the branch of the Bank where the Subsidised Loan Account is held
- the Subsidised Loan Account number
- the maximum and minimum amounts by which the Subsidised Loan may be increased and attract Subsidy on that increase
- the address of the Property securing the Subsidised Loan

GRANT OF APPROVAL—TRANSFERS

A Grant of Approval relating to Transfers will include the following details:

- name of the Subsidised Borrower who **MUST** remain on Title if Subsidy is to continue
 - name of the Subsidised Borrower's spouse who may be joined on the Title as a joint tenant or separated from the Title as the case may be
 - a unique indentifying number relating to this Grant of Approval
 - date of the Grant of Approval
 - the branch of the Bank where the Subsidised Loan Account is held
 - the Subsidised Loan Account number
-

SCHEDULE 1—continued

SCHEDULE C

PART D—CERTIFICATE BY BANK MANAGER

I,, manager of the
branch of the National Australia Bank certify that:

- (1) the security offered for the Subsidised Loan (“the loan”) is the property named in Part B and the Subsidised Loan is secured by a first mortgage over this property;
- (2) the persons specified in Part A (“the applicants”) are the sole proprietors, or joint tenants, of the property specified in Part B;
- (3)(a) the Applicants have informed the Bank that the funds advanced under the Subsidised Loan are to be used to do one or more of the following things:
 - (i) to buy land and build the house to which the loan relates on the land;
 - (ii) to build the house on land already owned by the person;
 - (iii) to buy the house together with the land on which it is built;
 - (iv) if the house was partly built and already owned by the person—to complete the house;
 - (v) if the house was complete and already owned by the person—to enlarge renovate or repair the house or to construct any permanent improvements on the land on which the house is built; or
 - (vi) to discharge another loan used by the person for a purpose mentioned in sub-paragraphs (i) (ii) (iii) (iv) or (v).

OR

- (b) where the Applicants have obtained a Grant of Approval relating to a Loan Increase, the Applicants have informed the Bank that the amount of the increase has been used by them to do one or more of the following things:
 - (i) to enlarge, renovate or repair the house in respect of which the loan was made, or to construct any permanent improvements on the land on which the house is built; or
 - (ii) to discharge another loan used by the person of the kind mentioned in sub-paragraph 3 (a) (i), (ii), (iii), (iv) or (v) above.
- (4) the Applicants have informed me that the house is sufficiently complete to permit the Applicants to be owner-occupiers and they have informed me that they are doing so;

SCHEDULE 1—continued

- (5) the loan or Loan Increase was approved on
- (6) the final advance on the Subsidised Loan or the advance of the Loan increase was made on
- (7) the BSB/loan account number for the Subsidised Loan is
- (8) the Subsidised Loan or loan increase amounts to \$40000/ \$..... (delete \$40000 and insert amount **ONLY** if total subsidised home loan borrowings are **BELOW** \$40000, otherwise delete space);
- (9) I have attached documentary evidence provided by the borrowers indicating that the property(ies) they were required to dispose of in order to obtain the subsidy have been disposed of and other documents in support of the application.

Date

Signed

Name

Branch

Address

Telephone Number ()

SCHEDULE 1—continued

SCHEDULE D

LOAN AGREEMENT

TO: National Australia Bank Limited (the “Bank”).

The Applicant named in Item 1 of the Schedule hereby applies to the Bank for the loan as set out in Item 2 of the Schedule upon the following terms and conditions:—

1. Except to the extent that such interpretation may be excluded by or be repugnant to the context when herein used:—
 - (i) “Applicant” shall mean every person who applies for the loan and shall include the legal personal representatives and assigns of each of them.
 - (ii) “Balance of the loan” means the amount of the loan lent by the Bank and outstanding from time to time, and shall include, interest accrued to the Bank hereunder, fees, costs, charges or expenses when debited to the loan account pursuant to Clauses 2, 3, 6, 8 and 10 hereof and any amount debited to the loan account pursuant to Clause 15 (a) hereof.
 - (iii) “Scheme rate” means the benchmark rate of interest fixed by the Commonwealth in accordance with the Scheme from time to time.
 - (iv) “Commonwealth” means the Commonwealth of Australia and shall include any Department or Departments of State of the Commonwealth or statutory authority of the Commonwealth with responsibility for administering the Scheme.
 - (v) “Current interest rate” means the interest rate set out in Item 8 of the Schedule or such other rate as the Bank may hereafter fix from time to time.
 - (vi) “Entitlement certificate” means the entitlement certificate issued by the Commonwealth to a person who is entitled thereto under the Scheme and who is an Applicant in respect of the loan hereby applied for.
 - (vii) “Interest day” means the last working day in each calendar month in each year or such date as the Bank may adopt for the purpose of debiting interest payments as set out in Item 4 of the Schedule.
 - (viii) “Reference rate” means the nominal rate of interest selected by the Bank set out in Item 3 of the Schedule (if any) upon which the monthly instalments set out in Item 3 of the Schedule are assessed, or such other rate as the Bank may hereafter fix from time to time.

SCHEDULE 1—continued

- (ix) “Scheme” means the Australian Defence Force Home Loan Assistance Scheme established by the Defence Force (Home Loans Assistance) Act 1990 and by the agreement made between the Bank and the Commonwealth on 5th November 1990, a copy of which is set out in Schedule 1 to the said Act, as they both are in force from time to time.
 - (x) “Securities” means the securities set out in Item 6 of the Schedule, and any other securities which may be held by the Bank hereafter in respect of all or any of the Applicant’s liabilities to the Bank.
 - (xi) “Subsidy” means periodic subsidy payments to the Bank by the Commonwealth pursuant to the Scheme for the benefit of the Applicant in respect of the loan hereby applied for.
 - (xii) Words herein used importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders.
2. Subject to Clause 3 hereof, interest shall accrue to the Bank for so long as the balance of the loan remains unpaid and shall be calculated at the Scheme rate applicable from time to time on the daily balance of the loan. Such interest shall be debited to the loan account on each interest day.
3. (i) The Applicant agrees that, during such period/s as the Bank is not in receipt of subsidy, interest accruing to the Bank pursuant to Clause 2 hereof shall be calculated at the current interest rate and the Bank may review the instalments payable pursuant to Clause 4 hereof in the manner provided for in sub-clauses 6 (ii) or 6 (iii) hereof.
- (ii) Paragraph (i) hereof shall not apply during such periods as the Bank is not in receipt of subsidy by reason only that subsidy has been suspended pursuant to the Scheme.
4. The Applicant shall pay to the Bank the instalments set out in Item 3 of the Schedule or the instalments as varied pursuant Clause 6 hereof on the dates set out in Item 3 of the Schedule until the loan shall have been repaid and all interest and other money owing to the Bank hereunder shall have been paid, provided however, that the instalments payable by the Applicant pursuant to this clause shall be reduced by such amount as is necessary to reflect the amount of subsidy, if any, paid in respect of the loan.
5. Each instalment referred to in Clause 4 shall be applied first in or towards payment of interest and the balance (if any) shall reduce the balance of the loan.

SCHEDULE 1—continued

6. (i) The following provision shall apply during such period/s as the Bank is in receipt of subsidy:—
Upon the anniversary of the final drawdown of the loan in each year, or upon the fixing of a new Scheme rate, the Bank may review the instalments payable pursuant to Clause 4 hereof and the amount of each instalment payable thereafter may be varied by the Bank to ensure that the balance of the loan is repaid by instalments of equal amounts within the term of the loan set out in Item 2 of the Schedule or within such other period as may be agreed between the Bank and the Applicant. In the event that the Bank should so vary the amount of instalments, the Bank shall give one months notice to the Applicant of such variation.
- (ii) If no reference rate is set out in Item 3 of the Schedule, and the Bank is not in receipt of subsidy, then the following provision applies:—
Upon the fixing of a new current interest rate by the Bank, or debiting an annual insurance premium as set out in Item 7 of the Schedule, the amount of each instalment payable thereafter may be varied by the Bank notwithstanding that such variation may increase or decrease the term of the loan set out in Item 2 of the Schedule. In the event that the Bank should so vary the amount of instalments, the Bank shall give one months notice to the Applicant of such variation.
- (iii) If a reference rate is set out in Item 3 of the Schedule, and the Bank is not in receipt of subsidy, then the following provision applies:—
Once during each year until the loan is repaid in full, the Bank will review the instalments payable pursuant to Clause 4 hereof. If the current interest rate at the date of the review exceeds the reference rate then fixed by the Bank such instalment will be increased by a rate equal to the difference between the current interest rate and such reference rate. The instalments may also be increased to provide for the debiting to the loan account of annual premium/s for insurance/s set out in Item 7 of the Schedule. The Bank shall give the Applicant one months notice of any variation to the instalment.
7. The Applicant shall have the right, at any time, to repay the whole or any part of the balance of the loan, provided however, that any such repayment shall not reduce the amount of each instalment payable thereafter except by prior agreement with the Bank.

SCHEDULE 1—continued

8.
 - (i) The Applicant shall pay to the Bank on demand an application fee as set out in Item 5 of the Schedule.
 - (ii) The Applicant shall pay a service fee calculated in accordance with the Bank's scale current from time to time. Such service fee shall be debited to the loan account on the days adopted for this purpose from time to time by the Bank. The initial service fee is set out in Item 5 of the Schedule provided that the service fee may be varied by the Bank without notice to the Applicant.
 - (iii) If the loan is not drawn before the expiration of three months from the date of approval of the application by the Bank, the Applicant shall pay a commitment fee as set out in Item 5 of the Schedule, being a percentage per annum of the amount of the loan undrawn, calculated on a daily basis from the date of approval until the loan is drawn, or in the case of a progressive loan, the first drawdown of the loan, provided that the Bank at its discretion may require the Applicant to pay the commitment fee on the undrawn instalments of such progressive loan until the loan is fully drawn. The commitment fee shall be paid upon drawdown of the loan or upon the final drawdown of the loan in case of a progressive loan.
9. Notwithstanding Clause 8 (iii) hereof or the fact that a commitment fee may have been charged by the Bank if the Applicant does not avail of the loan or any part thereof within twelve months of the date of issue of the entitlement certificate (or, if no Entitlement Certificate is issued, within twelve (12) months of the date of approval of the loan) the Bank may thereafter at any time elect that it shall no longer be under any obligation to make the loan hereby applied for provided that the Bank shall give to the Applicant not less than one months notice of its intention to exercise such election and the Applicant shall have the right to draw the loan (subject to the terms and conditions) prior to the expiration of the period mentioned in such notice; provided always that if the Bank does elect not to make the loan it shall not affect the Applicant's right to apply for further loans under the Scheme or otherwise.
10. The Applicant shall pay, or reimburse the Bank on demand, or at its discretion the Bank may debit the Applicant's account, for all costs, charges and expenses of every description which the Bank may according to its usual practice incur in connection with:—
 - (a) this application, the loan, any instrument executed by the Applicant pursuant to these terms and conditions or any of

SCHEDULE 1—continued

the securities or any other document given or which may be given in relation to the loan, and

- (b) the exercise or attempted exercise of any power or remedy pursuant to these terms and conditions, any of the securities or any other document or otherwise in respect of the loan, including, but not limited to, all charges for legal advice or assistance as between solicitor and client, stamp duty and search and registration fees. The Bank may debit all such costs, charges and expenses to the loan account so that the amounts thereof shall be included in the balance of the loan from time to time or may debit the same to the account nominated on the Home-Loan Application for debiting of instalments.
11. Sub-clause 6.1 and sub-clause 6.2 of the agreement made between the Bank and the Commonwealth on 5th November 1990, a copy of which is set out in Schedule 1 of the Defence Force (Home Loans Assistance) Act 1990, are incorporated by reference herein for the purposes of Clause 8 and Clause 10 hereof.
12. The balance of the loan together with interest and all fees and other moneys owing by the Applicant to the Bank shall be secured by the securities. The Applicant shall not be entitled to drawdown the loan or any part thereof until the Bank is satisfied that each security is properly executed and, where appropriate, is capable of registration.
13. The Applicant shall set forth such information in a Home-Loan Application as the Bank may require.
14. Notwithstanding anything to the contrary expressed or implied herein or in any other document whatsoever whether connected with the loan or with any other transaction and whether executed heretofore or hereafter the Applicant agrees with the Bank to pay the balance of the loan together with interest and all fees and other moneys owing by the Applicant to the Bank on the date upon which demand therefor in writing is made on the Applicant by the Bank after the occurrence of any one or more of the following events:—
- (a) default is made in the payment of any moneys on the day upon which they become due and payable pursuant to the provisions hereof,
- (b) default (other than the default mentioned in the preceding sub-paragraph (a)) is made in the performance or observance of any of the provisions hereof,
- (c) the Applicant commits a breach of any covenant or agreement contained in the said securities,
- (d) the Applicant commits a breach of or defaults under the terms of any other agreement or arrangement between the Applicant and the Bank,

SCHEDULE 1—continued

- (e) any mortgagee or encumbrancer of the land comprised in the security exercises or attempts to exercise any power by virtue of any default under the mortgage or encumbrance,
 - (f) the Applicant without the written consent of the Bank (which may attach such terms or conditions to the giving of consent as it thinks fit) further mortgages, charges or otherwise further encumbers the land subject to the securities, or does or suffers to be done anything whereby any charge or liability becomes or might become imposed upon the land subject to the securities of any part or parts thereof, whether in priority to the securities or not or attempts so to do,
 - (g) the Applicant without the written consent of the Bank (which may attach such terms or conditions to the giving of consent as it thinks fit) transfers, sells or leases or attempts to transfer, sell, lease or in any way parts with possession of the land subject to the securities or any part or parts thereof or attempts so to do, or alters, demolishes or removes any building thereon,
 - (h) the Applicant without the written consent of the Bank (which may attach such terms or conditions to the giving of consent as it thinks fit) subdivides the land subject to the securities or any part or parts thereof or attempts so to do, or calls for an apportionment of the loan pursuant to the provisions of any statute, rule of law or equity,
 - (i) any guarantor of the loan becomes bankrupt or assigns his estate for the benefit of his creditors or enters into a composition or arrangement with his creditors or in the case of a company goes into liquidation either voluntarily or compulsorily,
 - (j) the Applicant becomes bankrupt or assigns his estate for the benefit of his creditors or enters into a composition or arrangement with his creditors or in the case of a company goes into liquidation either voluntarily or compulsorily,
 - (k) any of the information supplied by the Applicant appearing in the Home-Loan Application is found to be false or, in the opinion of the Bank, is misleading, or
 - (l) any of the information supplied by the Applicant in support of any application to the Commonwealth under the Scheme (including, but not limited to, information supplied in an application for an entitlement certificate or application for payment of subsidy) is found to be false.
15. The Applicant agrees and acknowledges that during such period as the Bank is in receipt of subsidy in respect of the loan the Bank shall be bound to act in accordance with the Scheme and in particular the Applicant acknowledges and agrees that:

SCHEDULE 1—continued

- (a) (i) where an amount is incorrectly paid to the Bank by the Commonwealth by way of subsidy, the Bank will, in accordance with the Scheme, pay to the Commonwealth an amount equal to the amount incorrectly paid (together with any interest thereon due under the Scheme) and any such payment will be debited to the loan account so that the amount thereof shall be included in the balance of the loan from time to time and shall be secured by the securities;
- (ii) where the Bank pays an amount to the Commonwealth under sub-paragraph (i) hereof and such amount (or any part thereof) is reimbursed or refunded to the Bank by the Commonwealth pursuant to the Scheme, the Applicant will be indebted to the Commonwealth for such amount; and
- (iii) if the Applicant is indebted to the Commonwealth under the Scheme for any amount incorrectly paid to the Bank by the Commonwealth by way of subsidy and the Bank realises any securities over the property specified in Item 6 of the Schedule, then the Bank will from the proceeds of such realisation pay to the Commonwealth such amount as the Bank is required to pay under the Scheme in respect of the Applicant's indebtedness;
- (b) the Bank will provide the Commonwealth with copies of any documents or any other information in the possession or under the control of the Bank relating to the loan or application for loan or to the Scheme as may from time to time be requested by the Commonwealth pursuant to the Scheme or which the Bank is otherwise required to provide to the Commonwealth pursuant to the Scheme;
- (c) the Bank shall not be liable or responsible to the Applicant for any loss, damage or cost suffered or incurred by the Applicant (whether directly or indirectly) as a result of, or arising from, the operation of the Scheme except where such loss, damage or cost is attributable to failure by the Bank to act in accordance with the Scheme;
- (d) the Bank will not allow:
 - (i) the name of the Applicant appearing on the loan account or on the securities to be changed from that appearing in the entitlement certificate; or
 - (ii) a person to be joined to or separated from the loan account or securities,unless the Bank agrees to such change and the Applicant obtains approval from the Commonwealth for such change;

SCHEDULE 1—continued

- (e) the Bank will not allow a property specified in Item 6 of the Schedule to be held on, or converted to, a tenancy in common.
16. The Applicant acknowledges that the Commonwealth has sole responsibility for considering and approving any applications which the Applicant is required to make to the Commonwealth pursuant to the Scheme (including, but not limited to, applications for entitlement certificate and payment of subsidy) and for determining whether subsidy is payable or whether subsidy shall be cancelled or suspended.
 17. The Bank agrees to be bound by and act in accordance with the Scheme. The generality of this clause shall not be affected by any other provisions herein.
 18. When two or more Applicants are parties hereto the agreements on their part herein contained or implied shall bind them and any two or more of them jointly and each of them severally.

SCHEDULE 1—continued

SCHEDULE

Item:

1. Applicant:
 2. Loan: \$
Term: years
 3. Instalments
Initial Instalment: \$
Due: Monthly/Fortnightly*—commencing that period from final drawdown or such other date as advised by the Bank.
Reference Rate: % per annum
 4. Loan Interest Day
Last business day of each—Month** (**Delete and specify relevant period if other than Month)
 5. Fees
Application Fee: \$
Initial Service Fee: \$ per half year
Commitment fee: % per annum
 6. Securities
(To be) registered First/Second* Mortgage over property situated at—
 7. Insurance
Please effect a:
 - * Home Safe Policy with National and General Insurance Co. Ltd.
 - * Mortgage Safe Policy with National and General Insurance Co. Ltd.
 - * Mortgage Safe Policy with National Australia Life Ltd.and debit to the loan account the annual premium/s as advised by the Insurer/s.
- * Delete whichever is inapplicable.
8. Current Interest Rate
% per annum
-

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

The *Defence Service Homes Act 1918* is amended as set out below.

Subsection 4 (1):

Insert the following definition:

“‘**Home Loans Assistance Act**’ means the *Defence Force (Home Loans Assistance) Act 1990*.”.

After section 4A:

Insert the following section:

Election to surrender eligible status

“4BA. (1) An eligible person who:

(a) is a member of the Defence Force:

(i) whose first service in the Defence Force began on or before 14 May 1985; or

(ii) whose first service in the Defence Force began after that day but who is covered by paragraph (ga) of the definition of “Australian Soldier” in subsection 4 (1); and

(b) is not, and has not at any time been, a borrower; and

(c) does not hold a certificate of entitlement that is in force in relation to subsidy on an initial advance;

may elect to surrender his or her status as an eligible person under this Act.

“(2) An election must be:

(a) in writing, signed by the person making it; and

(b) given to the Secretary within the prescribed period.

“(3) An election is irrevocable and takes effect on the day on which it is given to the Secretary.

“(4) When an election takes effect, the person making it stops being an eligible person for the purposes of this Act.

“(5) The Secretary must cause a copy of each election to be given to the Secretary to the Department of Defence.

“(6) In this section:

‘**prescribed period**’ means the period of 6 months starting on the day on which this section commences.”.

Section 38:

Add at the end “and of houses, land, building materials and improvements of the kind mentioned in section 38CA”.

SCHEDULE 2—continued

Subsection 38A (2):

Omit “section 38C”, substitute “this Part”.

Subsection 38C (3):

Omit the subsection.

After section 38C:

Insert the following sections:

Insurance of certain other houses etc.

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

- (a) a house in respect of which an entitled person has sought a subsidised loan; or
- (b) building materials on the site of a house mentioned in paragraph (a), being materials used in the building of, or otherwise in relation to, the house; or
- (c) any permanent improvement of a structural kind that has been made to a house mentioned in paragraph (a), or that has been constructed on the land on which such a 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 house mentioned in paragraph (1) (a) is built, or on which a house mentioned in paragraph (1) (b) is being, or is to be, built.

“(3) In this section:

‘house’, ‘entitled person’, and ‘subsidised loan’ have the same respective meanings as in the Home Loans Assistance Act.

Powers of Commonwealth under this Part

“38CB. The Commonwealth may do all things necessary or convenient to be done for the purpose of undertaking insurance under this Part and, without limiting the generality of its powers under this section, may enter into an agreement of a kind known as a concessions agreement with a person who is, or is likely to be, the mortgagee of property insured with the Commonwealth.”.

Paragraph 38E (1) (a):

After “undertaken insurance” insert “under section 38C”.

After section 38E:

Insert the following section:

SCHEDULE 2—continued

Termination of insurance undertaken under section 38CA

“38EA. (1) This section applies where:

- (a) the Commonwealth has undertaken insurance under section 38CA in relation to a house; and
- (b) the entitled person dies before obtaining a subsidised loan in relation to the house or any of the following things happen;
 - (i) the Bank refuses to make a subsidised loan to the person in relation to the house;
 - (ii) the entitlement certificate issued to the person is cancelled;
 - (iii) subsidy does not become payable under section 20 of the Home Loans Assistance Act on a loan made in relation to the house;
 - (iv) subsidy stops being payable on such a loan under paragraph 29 (d) or (e) of that Act.

“(2) Where this section applies:

- (a) the insurance undertaken in relation to the house does not cease to have effect on the death of the entitled person or the happening of anything mentioned 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 must give reasonable notice in writing to each person having an interest in the 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 an entitled person and the person is survived by a widow or widower, the Secretary must not give a notice under paragraph (2) (b) in relation to the house unless satisfied that a subsidised loan will not be, or is unlikely to be, made to the widow or widower in respect of that house.

“(5) In this section:

‘house’, ‘entitlement certificate’, ‘entitled person’, ‘subsidised loan’ and ‘the Bank’ have the same respective meanings as in the Home Loans Assistance Act.”

Section 38F:

Omit “section 38C”, substitute “this Part”.

Defence Force (Home Loans Assistance) No. 14, 1991

*[Minister's second reading speech made in—
House of Representatives on 8 November 1990
Senate on 15 November 1990]*