



Defence Home Ownership Assistance Scheme Amendment Act 2022

No. 61, 2022

**An Act to amend the *Defence Home Ownership
Assistance Scheme Act 2008*, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Defence Home Ownership Assistance Scheme Amendment Act 2022

No. 61, 2022

An Act to amend the *Defence Home Ownership Assistance Scheme Act 2008*, and for related purposes

[Assented to 29 November 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Defence Home Ownership Assistance Scheme Amendment Act 2022*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2023.	1 January 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Defence Home Ownership Assistance Scheme Act 2008

1 Paragraph 8(2)(a)

Omit “4 years”, substitute “2 years”.

2 Paragraph 8(2)(b)

Omit “8 years”, substitute “4 years”.

3 Paragraph 8(2)(c)

Omit “4 years”, substitute “2 years”.

4 Paragraph 10(2)(a)

Omit “4 years”, substitute “2 years”.

5 Paragraph 10(2)(b)

Omit “8 years”, substitute “4 years”.

6 Subsection 17(1)

Omit “(1) Subject to this section, the”, substitute “The”.

7 Subsections 17(2) and (3)

Repeal the subsections.

8 Subsection 18(1)

Omit “(1) Subject to this section, the”, substitute “The”.

9 Subsections 18(2) and (3)

Repeal the subsections.

10 Section 36

Before “Subsidy”, insert “(1)”.

11 At the end of section 36

Add:

- (2) The Secretary may, by writing, declare that an event mentioned in item 1 of the table in subsection (1) is taken not to have occurred in relation to a subsidised borrower if the Secretary is satisfied that all outstanding amounts due under the subsidised loan were paid as a result of a genuine error, mistake or accident.
- (3) A declaration made under subsection (2) is not a legislative instrument.

12 Subsection 51(2) (table)

Repeal the table, substitute:

Loan limits						
Item	Subsidised borrower	Effective service for less than 4 years	Effective service for 4 years or more, and less than 8 years	Effective service for 8 years or more, and less than 12 years	Effective service for 12 years or more, and less than 20 years	Effective service for 20 years or more
1	A member of the Permanent Forces who is eligible as a serving member (see section 8) or rejoining member (see section 11)	40% of the average house price	60% of the average house price	80% of the average house price	80% of the average house price	80% of the average house price

Loan limits						
Item	Subsidised borrower	Effective service for less than 4 years	Effective service for 4 years or more, and less than 8 years	Effective service for 8 years or more, and less than 12 years	Effective service for 12 years or more, and less than 20 years	Effective service for 20 years or more
2	A member of the Reserves who is eligible as a serving member (see section 8) or rejoining member (see section 11)	Zero	40% of the average house price	60% of the average house price	80% of the average house price	80% of the average house price
3	A person who is eligible as an incapacitated member (see section 9), or as a rejoining incapacitated member (see section 10)	40% of the average house price	60% of the average house price	80% of the average house price	80% of the average house price	80% of the average house price
4	A person who is eligible as a separated member (see section 12)	40% of the average house price	40% of the average house price	40% of the average house price	40% of the average house price	80% of the average house price
5	A person who is eligible as an old scheme member	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000

13 Section 71 (after table item 6)

Insert:

6A To refuse to make a declaration that Subsection 36(2)

an event mentioned in item 1 of the table in subsection 36(1) is taken not to have occurred

14 After section 84

Insert:

84A Payments of amounts purportedly by way of subsidy

If, apart from this section, the Commonwealth does not have power under this Act to pay an amount (the *relevant amount*) purportedly by way of subsidy, then:

- (a) the Commonwealth has the power to pay the relevant amount; and
- (b) the Commonwealth has the power to pay any amount representing taxes that would, if the payment of the relevant amount was a payment of subsidy under this Act, be payable in respect of the relevant amount; and
- (c) for the purposes of paragraph 84(a), the payment of the relevant amount is taken to be a payment of subsidy under this Act; and
- (d) for the purposes of paragraph 84(b), any amount paid under paragraph (b) of this section is taken to be a payment of taxes payable in respect of a payment of subsidy under this Act; and
- (e) if the relevant amount is not an overpaid amount and was paid into an account maintained by a person in the name of another person (an *account holder*):
 - (i) the relevant amount is a debt due to the Commonwealth; and
 - (ii) if there is only one account holder for the account—the account holder is liable for the debt; and
 - (iii) if there is more than one account holder for the account—each account holder is jointly and severally liable for the debt; and
 - (iv) the relevant amount may be recovered by action in a court of competent jurisdiction.

Note: Division 6 of Part 4 provides for the recovery of overpaid amounts.

84B Reports about payments of amounts purportedly by way of subsidy

- (1) The Secretary must cause a report of the following information to be published, in such manner as the Secretary thinks fit, in relation to each reporting period:
 - (a) the number of payments that the Secretary was aware of that were made under section 84A during the reporting period;
 - (b) the total amount of payments referred to in paragraph (a);
 - (c) the number of payments made under section 84A that the Secretary became aware of during the reporting period that were made during an earlier reporting period;
 - (d) the total amount of payments referred to in paragraph (c);
 - (e) for each payment referred to in paragraph (c)—the reporting period in which the payment was made.
- (2) A **reporting period** is:
 - (a) a financial year; or
 - (b) if a shorter recurring period is determined under paragraph (5)(a)—that period.
- (3) However, a report is not required if:
 - (a) the number mentioned in paragraph (1)(a) is zero; and
 - (b) the number mentioned in paragraph (1)(c) is zero.

When report must be published

- (4) The report must be published before the end of the following period:
 - (a) 4 months after the end of the reporting period;
 - (b) if a lesser number of months has been determined for the reporting period under paragraph (5)(b)—that number of months after the end of the reporting period.

Determination

- (5) The Minister may, by legislative instrument, determine:
 - (a) a period for the purposes of paragraph (2)(b); or
 - (b) a number of months for a reporting period for the purposes of paragraph (4)(b).

Part 2—Application and transitional provisions

15 Application—qualifying service periods

The amendments of sections 8 and 10 of the *Defence Home Ownership Assistance Scheme Act 2008* made by this Schedule apply for the purposes of determining:

- (a) whether a person is eligible at a time that is on or after the commencement of this item; and
- (b) the number of months of effective service the person has completed since becoming eligible, for the purposes of working out the person's accrued subsidy period at a time that is on or after that commencement;

whether the person completed the relevant qualifying service period before, on or after that commencement.

16 Transitional—previous applications for subsidy certificates

For the purposes of paragraph 17(c) of the *Defence Home Ownership Assistance Scheme Act 2008* (as in force on and after the commencement of this item), disregard a previous application for a subsidy certificate if:

- (a) the application was made and refused before that commencement; and
- (b) at the time of the refusal, the applicant was not a member of the Defence Force; and
- (c) had the amendments of sections 8, 10 and 17 of that Act made by this Schedule been in force at the time of the refusal, the Secretary would have been required to give a subsidy certificate to the applicant.

17 Application—decisions to give subsidy certificates

- (1) The repeal of subsections 17(2) and (3) of the *Defence Home Ownership Assistance Scheme Act 2008* by this Schedule applies on and after the commencement of this item in relation to an applicant who is not a member of the Defence Force, whether the applicant stopped being a member of the Defence Force before, on or after that commencement.

- (2) The repeal of subsections 18(2) and (3) of the *Defence Home Ownership Assistance Scheme Act 2008* by this Schedule applies on and after the commencement of this item in relation to an applicant who is the surviving partner of a deceased partner, whether the deceased partner:
- (a) stopped being a member of the Defence Force; or
 - (b) died;
- before, on or after that commencement.

18 Application—when subsidy stops being payable

Subsection 36(2) of the *Defence Home Ownership Assistance Scheme Act 2008* (as inserted by this Schedule) applies in relation to an event mentioned in item 1 of the table in subsection 36(1) of that Act that occurs on or after the commencement of this item.

19 Application—loan limits

Subsection 51(2) of the *Defence Home Ownership Assistance Scheme Act 2008* (as amended by this Schedule) applies for the purposes of determining an amount of monthly subsidy, if the applicable monthly authorisation period for the payment of the amount, for the purposes of subsection 57(2) of that Act, begins on or after the commencement of this item.

20 Application—reports about payments

Section 84B of the *Defence Home Ownership Assistance Scheme Act 2008* (as inserted by this Schedule) applies in relation to a payment made under section 84A of that Act during a reporting period that ends on or after the commencement of this item, whether the period begins before, on or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 27 October 2022
Senate on 27 November 2022]*

(112/22)

10 *Defence Home Ownership Assistance Scheme Amendment Act 2022* No. 61, 2022