

# EXPLANATORY STATEMENT

## Defence Service Homes (Hardship) Guidelines 2018

(Instrument 2018 No. M13)

### EMPOWERING PROVISIONS

Subsections 20(4), 21(3) and 23(6) of the *Defence Service Homes Act 1918* (the Act).

### PURPOSE

The attached Guidelines (2018 No. M13) re-make the Hardship Guidelines, No.3 of 1991 (the current Guidelines). The current Guidelines will “sunset” (expire) on 1 October 2018 unless re-made.

The Department of Veterans’ Affairs (DVA) reviewed the current Guidelines to determine whether they can be allowed to sunset. It was the first review of the current Guidelines since coming into force in 1991 and DVA concluded that they are still required. The current Guidelines are being re-made in broadly the same terms and updated in line with current drafting practices to improve readability.

The major changes to the attached Guidelines are as follows:

- simplifying the criteria for financial hardship and serious financial hardship to reflect changes in policies, processes and procedures since 1991
- deleting from the hardship factors a comparison between assets and annual pension amounts
- allowing other factors for assessing hardship to be taken into account, including but not limited to a person’s health, employment situation, assets (other than their principal home) and financial commitments not relating to their principal home.

The changes are beneficial in nature in terms of their impact on clients.

The purpose of the attached Guidelines is to set out criteria that the Secretary of DVA (the Secretary) is to have regard to when deciding whether a person is suffering financial hardship or serious financial hardship for the purposes of advances for essential home repairs or certain property outgoings, or instalment relief.

The *Defence Service Homes Act 1918* provides a home ownership assistance scheme for members of the Australian Defence Force (ADF). The scheme started 100 years ago and its purpose was to make provision for homes for Australian soldiers and their dependants. The home ownership assistance scheme is limited to those persons who first enlisted in the ADF before 15 May 1985, or who served in Namibia. There are now approximately 5000 Defence Service Home loans with Westpac Banking Corporation which has an exclusive right to provide advances and benefits to ADF members who satisfy the eligibility conditions of the Act. Other schemes are available to current ADF members.

The home ownership assistance scheme remains open for new applications from eligible veterans.

Subsidised housing loans up to \$25,000 and home support loans up to \$10,000 are available. Loans are available to buy, build, enlarge, complete, modify or repair a house or unit and to refinance a mortgage over a house or unit. Loans are also available in certain circumstances for retirement village accommodation and granny flats.

The Act provides that the Minister for Veterans' Affairs may approve guidelines under subsections 20(4), 21(3) and 23(6) of the Act. Subsections 20(3), 21(2) and 23(5) of the Act require the Secretary to have regard to any guidelines approved by the Minister when deciding whether a person is suffering financial hardship or serious financial hardship.

The Secretary has power under the Act to confirm eligibility for loan assistance from Westpac Banking Corporation by issuing certificates of entitlement for:

- widows or widowers for advances for building repairs or payment of property rates, taxes or charges where there is financial hardship – see section 20;
- veterans for advances for essential building repairs where there is serious financial hardship – see section 21;
- veterans for instalment relief under their loans where there is financial hardship – see section 23.

The intention is to provide support that keeps veterans and their widows or widowers in their homes.

## **CONSULTATION**

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

Consultation was undertaken with the scheme's credit provider, Westpac Banking Corporation, by way of phone calls and email correspondence.

Further consultation was not considered necessary as the proposal simplifies and remakes the existing law, is beneficial in nature in terms of its impact on clients and does not have regulatory impacts on businesses, community organisations or individuals.

In these circumstances it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None.

## **REGULATORY IMPACT**

None.

## **HUMAN RIGHTS STATEMENT**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The attached Guidelines set out criteria the Secretary is to have regard to when deciding whether a person is suffering financial hardship or serious financial hardship for the purposes of advances for essential home repairs or certain property outgoings, or instalment relief.

### **Human rights implications**

The attached Guidelines engage the Right to an Adequate Standard of Living under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

#### *Right to an Adequate Standard of Living*

Article 11(1) of ICESCR states “The States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right....”.

#### *Overview*

The provision of support by way of advances for essential home repairs and property outgoings and instalment relief where there is financial hardship or serious financial hardship will impact positively on living standards of scheme members and their families.

#### *Conclusion*

The attached Guidelines engage with and promote the right to an Adequate Standard of Living and are considered to be “human rights compatible”.

Darren Chester  
Minister for Veterans’ Affairs  
Rule-Maker

## **FURTHER EXPLANATION OF PROVISIONS**

See: [Attachment A](#)

## **FURTHER EXPLANATION OF PROVISIONS**

### Section 1

This section provides that the name of the instrument is the *Defence Service Homes (Hardship) Guidelines 2018*.

### Section 2

This section provides that the Guidelines commence on 1 October 2018.

### Section 3

This section sets out the primary legislation that authorises the making of the Guidelines, namely, subsections 20(4), 21(3) and 23(6) of the *Defence Service Homes Act 1918*.

### Section 4

This is the interpretation section. It defines the terms that are used in the Guidelines. They include:

‘commitments on the home’ means all of the following:

- mortgage instalments;
- homeowner’s insurance;
- property rates, taxes, charges or other outgoings;
- body corporate or retirement village management and other fees;
- the instalments of a loan raised to pay for essential repairs;
- if the Secretary is satisfied that another financial commitment relating to a home is extraordinarily high and it is justified to include that other financial commitment as a commitment on the home – that other financial commitment.

‘income’ means all of the following:

- salary or wages;
- any other income derived from employment, business or professional activities;
- any income derived from savings, property rentals or other investments;
- a pension or other payment made under a veterans’ affairs law;
- a pension or other payment made under the *Social Security Act 1991*;
- a workers compensation payment or similar payment;
- a superannuation payment or similar payment;
- if the Secretary is satisfied that another amount is income and it is justified to include that other amount as income – that other amount;

but does not include:

- an allowance or payment for a dependent child; or
- a contribution from a philanthropic organisation; or
- board paid by an immediate family member living in the principal home.

The definition of ‘income’ has been expanded to ensure that the information relating to income currently sought from applicants for support is authorised by the attached Guidelines.

The Secretary is given a new discretion to include an amount as income where the Secretary is satisfied that the amount is income and it is justified to do so. A discretion to include an amount as ‘commitments on the home’ has been retained with drafting improvements.

The use of complex definitions has been avoided having regard to the document being a guideline. For example, the attached Guidelines apply to a person who is partnered and a person who is not partnered, but ‘partnered’ is not defined. Most applicants seeking assistance under the defence service home scheme because of financial hardship or serious financial hardship will be known to DVA, and their partner status is unlikely to be an issue. People who are ‘partnered’ include people who are married or in de facto relationships, both heterosexual and same sex couples, and a person recognised by Aboriginal or Torres Strait Island custom as a husband or wife.

### Section 5

This section provides that the Secretary, when deciding whether a person is suffering financial hardship for the purposes of section 20 or 23 of the Act, is to have regard to:

- the hardship factors set out in section 7; and
- whether the weekly commitments on the home for the person’s principal home is more than 30% of the person’s gross weekly income.

If a person is partnered, regard must be had to whether the weekly commitments on the home for the person’s and his or her partner’s principal home is more than 30% of their combined gross weekly income.

### Section 6

This section provides that the Secretary, when deciding whether a person is suffering serious financial hardship for the purposes of section 21 of the Act, is to have regard to:

- the hardship factors set out in section 7; and
- whether the weekly commitments on the home for the person’s principal home exceeds the person’s gross weekly income.

If a person is partnered, regard must be had to whether the weekly commitments on the home for the person’s and his or her partner’s principal home exceed their combined gross weekly income.

### Section 7

This section sets out the hardship factors which are:

- whether the gross weekly income of a person is less than the average weekly earnings for an adult in full time employment in the State or Territory in Australia in which the person’s principal home is located. If a person is partnered, regard must be had to the combined gross weekly income of the person and his or her partner;
- whether there are other avenues through which the amount of the commitments on the home could be reduced, such as negotiating with the lender for a reduction in instalments by extending the repayment term or by other means;
- whether any attempts to obtain alternative financing have been successful;
- any other factors that the Secretary considers relevant, including but not limited to a person’s health, employment situation, assets (other than their principal home) and financial commitments not relating to their principal home.