

DEFENCE SERVICE HOMES ACT 1974

No. 125 of 1974

An Act to amend the *Defence Service Homes Act 1918-1973*.

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

Short title
and citation.

1. (1) This Act may be cited as the *Defence Service Homes Act 1974*.¹

(2) The *Defence Service Homes Act 1918-1973*² is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Defence Service Homes Act 1918-1974*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Interpret-
ation.

3. Section 4 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the definition of “Advance”, the following definition:—

“ ‘Amount of advance’ means—

(a) in relation to a contract of sale—the amount by which the purchase money under the contract of sale exceeds the deposit payable under that contract; or

(b) in relation to a contract of advance—the amount of the advance under that contract;”;

(b) by omitting from the definition of “Eligible person” in sub-section (1) the words “and, in the case of a male person, satisfies the Director that he is married or is about to marry, or has dependants for whom it is necessary for him to maintain a home,”; and

(c) by omitting from sub-section (1) the definition of “Holding” and substituting the following definition:—

“ ‘Holding’, in relation to an applicant or borrower, means—

(a) land of which he is the beneficial owner in fee simple;

(b) land of which he is the lessee under a Crown lease in perpetuity from a State;

- (c) land of which he is the lessee under a lease granted for a term of not less than 99 years from a State or from a local governing body;
- (d) land in a Territory of which he is the lessee under a lease from Australia or from the Administration of the Territory, being—
 - (i) a lease in perpetuity;
 - (ii) a lease granted for a term of not less than 99 years; or
 - (iii) in the case of Norfolk Island—a lease granted for a term of not less than 28 years;
- (e) a suburban holding held by him under the Crown Lands Consolidation Act, 1913 of New South Wales or under that Act as amended at any time or under an Act enacted in substitution for that Act, being a suburban holding an application for which has been confirmed in accordance with the law of that State; or
- (f) a unit defined in a units plan registered in accordance with a law of the Australian Capital Territory relating to unit titles, being a unit of which he is the lessee under a lease from Australia;”.

4. After section 5 of the Principal Act the following section is inserted:—

“6. (1) The Minister may, by writing under his hand, delegate to any person, either generally or otherwise as provided by the instrument of delegation, all or any of his powers or functions under this Act, except this power of delegation. Delegation
by Minister.

“(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

“(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.”.

5. Section 18A of the Principal Act is amended—

- (a) by inserting in sub-section (3), after the word “allotted”, the words “, together with interest on that cost at the prescribed rate,”; and
- (b) by inserting in sub-section (3), after the word “cost” (second occurring), the words “and pay that interest”; and
- (c) by inserting after sub-section (3) the following sub-sections:—

“(3A) For the purposes of sub-section (3)—

Arrangement
for sewerage,
water, gas
and
electricity
services.

- (a) where the allotment of cost to the dwelling-house occurred before 18 September 1974—the prescribed rate is 3.75 per centum per annum; and
- (b) where paragraph (a) is not applicable—the prescribed rate is—
 - (i) where the amount of advance is equal to, or greater than, \$12,000—7.25 per centum per annum or, if, when the cost is allotted to the dwelling-house, another rate is prescribed for the purposes of section 30, that other rate;
 - (ii) where the amount of advance is less than \$12,000 but the sum of the amount of advance and the amount of the cost allotted to the dwelling-house is in excess of \$12,000—3.75 per centum per annum, in respect of so much of the cost so allotted as is equal to the difference between the amount of advance and \$12,000, and, in respect of the remainder of that cost, 7.25 per centum per annum or if, when the cost is so allotted, another rate is prescribed for the purposes of section 30, that other rate; or
 - (iii) in any other case—3.75 per centum per annum.

“(3B) A reference in sub-section (3A) to the amount of advance shall be read as including any amount of cost previously allotted under this section to the dwelling-house the subject of the contract of sale or the contract of advance, as the case may be.”.

Sale of
dwelling
houses.

6. Section 19 of the Principal Act is amended by omitting from sub-section (4) the words “Twelve thousand dollars” (wherever occurring) and substituting the symbol and figures “\$15,000”.

Maximum
advances

7. Section 21 of the Principal Act is amended by omitting the words “Twelve thousand dollars” (wherever occurring) and substituting the symbol and figures “\$15,000”.

Discretion of
Director as
to making of
advances,
&c.

8. Section 28 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) Where a person would, if the Director were to enter into a contract of sale or advance with him, be eligible for relief under section 29AB with respect to that contract, the Director shall have regard to that circumstance in deciding whether the person has a reasonable prospect of carrying out the terms of that contract.”.

9. Section 29 of the Principal Act is amended by omitting from sub-section (2) the words “the same rate as is charged upon the purchase money or advance” and substituting the figures and words “3.75 per centum per annum”.

Payment of purchase money and repayment of advance.

10. Section 29AA of the Principal Act is amended by omitting from sub-section (6) the words “the same rate as was payable under the contract of sale or mortgage or other security in respect of the land or land and dwelling house when the authorization was given” and substituting the figures and words “3.75 per centum per annum”.

Relief for widows, &c.

11. After section 29AA of the Principal Act the following section is inserted:—

“29AB. (1) A purchaser or borrower is eligible for relief under this section in respect of instalments payable under a contract of sale or advance under this Act if the amount of those instalments includes an amount of interest calculated at a rate exceeding 3.75 per centum per annum.

Relief for persons paying higher rate of interest.

“(2) Where a purchaser or borrower who is eligible for relief under this section in respect of instalments payable under a contract of sale or advance satisfies the Minister that it would cause hardship to the purchaser or borrower if the purchaser or borrower were to pay the amount of the instalments in full, the Minister may, from time to time, reduce the amount of those instalments.

“(3) The reduction under sub-section (2) in the amount of an instalment does not relieve a purchaser or borrower from liability to pay the full amount of the purchase money, or to repay the full amount of the advance, together with interest on the outstanding balance of that amount.”.

12. Section 30 of the Principal Act is repealed and the following section substituted:—

“30. (1) Subject to this section, the rate of interest to be charged to a purchaser or borrower in respect of any purchase money or advance is 3.75 per centum per annum.

Rates of interest chargeable on purchases or advances.

“(2) Subject to the succeeding provisions of this section, where the Director enters into a contract of sale or advance with a purchaser or borrower under which the amount of advance is in excess of \$12,000, the rate of interest to be charged to the purchaser or borrower in respect of so much of the amount of advance as exceeds \$12,000 is the prescribed rate.

“(3) For the purposes of sub-section (2), where the contract of sale or advance is entered into by the Director with 2 or more persons jointly by virtue of paragraph (a) of sub-section (1A) of section 19 or sub-section (2) of section 20, a reference in sub-section (2) of this section to

\$12,000 shall be read as a reference to an amount equal to the product of the number of those persons and \$12,000.

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

- (a) the Director has entered, or enters, into a further contract of sale or advance referred to in paragraph (b) of section 39AB; and
- (b) by virtue of entering into that contract of sale or advance, an amount (in this sub-section referred to as ‘the appropriated amount’) becomes payable out of the Consolidated Revenue Fund in accordance with that section,

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

- (c) where the amount of advance is greater than the appropriated amount—that part of the amount of advance that is equal to the appropriated amount; or
- (d) in any other case—the whole of the amount of advance,

is the rate of interest that, at the time when the balance of the moneys outstanding under the earlier contract of sale or advance referred to in paragraph (a) of section 39AB was paid to the Director, was payable under that earlier contract in respect of that balance, and, in the case referred to in paragraph (c) of this sub-section, the rate of interest to be charged to the purchaser or borrower in respect of the remainder of the amount of advance is the prescribed rate.

“(5) Where, at the time when the balance referred to in sub-section (4) (in this sub-section referred to as ‘the balance’) was paid to the Director, one rate of interest (in this sub-section referred to as ‘the first rate of interest’) was payable in respect of a part of the balance (in this sub-section referred to as ‘the first part of the balance’) and another rate of interest (in this sub-section referred to as ‘the second rate of interest’) was payable on the remaining part of the balance, the rate of interest to be charged, in respect of the amount that is expressed by sub-section (4) to be chargeable at the rate of interest that, at that time, was payable in respect of the balance, is—

- (a) in respect of that part of that amount that bears the same proportion to the whole of that amount as the first part of the balance bears to the whole of the balance—a rate equal to the first rate of interest; and
- (b) in respect of the remaining part of that amount—a rate equal to the second rate of interest.

“(6) Where the Director, in pursuance of an application received by him on or after 18 September 1974, has granted, or grants, additional assistance to a person who is a purchaser or borrower with respect to a contract of sale or advance under this Act for the purpose of meeting the cost

of enlarging or completing or discharging a mortgage, charge or encumbrance on, the dwelling-house the subject of that contract of sale or advance, the rate of interest to be charged to that person in respect of the amount of that additional assistance is the prescribed rate.

“(7) For the purposes of this section, the prescribed rate, in relation to a contract of sale or advance or the grant of additional assistance, is—

- (a) 7.25 per centum per annum; or
- (b) if, at the time when the contract of sale or advance is entered into or the additional assistance is granted, another rate is prescribed for the purposes of this section, that other rate.”.

13. (1) Section 30B of the Principal Act is amended by omitting paragraph (d) of sub-section (7) and substituting the following paragraph:—

Storage of goods found in dwelling-houses.

“(d) if the amount so payable is not paid to the Director within 1 month, interest on that amount or on the unpaid balance of that amount at 7.25 per centum per annum or if, when the amount becomes payable, another rate is prescribed for the purposes of section 30, that other rate.”.

(2) Notwithstanding the amendment made by sub-section (1), paragraph 30B (7) (d) of the Principal Act continues to apply in relation to amounts that became payable before the commencement of this section.

14. (1) Section 31 of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) the words “the same annual rate as that which is payable on the purchase money or advance, as the case may be” and substituting the words “7.25 per centum per annum or if, at the time that the repairs are effected, another rate is prescribed for the purposes of section 30, that other rate”.

Property to be kept in repair until payment in full.

(2) Notwithstanding the amendment made by sub-section (1), paragraph 31 (2) (a) of the Principal Act continues to apply in relation to expenses with respect to repairs effected before the commencement of this section.

15. Section 36 of the Principal Act is amended by omitting from paragraph (a) of sub-section (1C) the words “the same annual rate as that which is payable on the purchase money or advance, as the case may be” and substituting the words “7.25 per centum per annum or if, at the time that the repairs are effected, another rate is prescribed for the purposes of section 30, that other rate”.

Action on instalments being overdue.

16. After section 39A the following section is inserted:—

“39AB. Where—

- (a) a purchaser or borrower has, at any time (whether before or after the commencement of this section), paid to the Director

Appropriation for further assistance.

the balance of the moneys outstanding under a contract of sale or advance under this Act, being moneys that, at the time of payment, were not due and payable; and

- (b) the Director, by virtue of an approval given by the Minister under section 19B or 20A on or after 18 September 1974, has entered, or enters, into a further contract of sale or advance with the person who was the purchaser or borrower referred to in paragraph (a),

there is payable out of the Consolidated Revenue Fund, which is appropriated accordingly, for the service of the year in which the Director enters into the further contract of sale or advance, as further provision for defence service homes, an amount equal to—

- (c) the amount of the balance referred to in paragraph (a); or
- (d) the amount of advance under that further contract of sale or advance,

whichever is the lesser amount.”.

Payment of
rates, &c.,
payable by
purchaser or
borrower.

17. (1) Section 48AB of the Principal Act is amended by omitting paragraph (b) of sub-section (2) and substituting the following paragraph:—

“(b) if the amount so payable is not paid to the Director within 1 month, interest on that amount or on the unpaid balance of that amount at 7.25 per centum per annum or if, when that amount became payable, another rate is prescribed for the purposes of section 30, that other rate.”.

(2) Notwithstanding the amendment made by sub-section (1), paragraph 48AB (2) (b) of the Principal Act continues to apply in relation to amounts that became payable before the commencement of this section.

Regulations.

18. (1) Section 51 of the Principal Act is amended by adding at the end thereof the words “and, in particular, making provision for, and in relation to, the manner in which an amount, or a part of an amount, paid to the Director by or on behalf of a purchaser or borrower is to be applied for the purpose of satisfying any liability of the purchaser or borrower under the contract of sale or advance or otherwise under this Act”.

(2) The amendment made by sub-section (1) does not affect regulations made under the *War Service Homes Act 1918* or under that Act as amended at any time before the commencement of this section, and any such regulation shall be deemed to have been as validly made as if that amendment had been in force when that regulation was made.

NOTES

1. Act No. 125, 1974; assented to 6 December 1974.
2. Act No. 43, 1918, as amended by No. 28, 1919; No. 35, 1920; No. 18, 1923; No. 26, 1925; No. 47, 1926; No. 17, 1927; No. 13, 1929; Nos. 6 and 68, 1932; No. 63, 1934; No. 54, 1935; No. 25, 1937; No. 1, 1941; No. 8, 1946; Nos. 1, 38 and 71, 1947; No. 67, 1948; No. 24, 1949; No. 74, 1951; No. 69, 1954; No. 69, 1955; No. 100, 1956; No. 73, 1961; Nos. 2 and 93, 1962; No. 65, 1966; No. 93, 1966 (as amended by No. 3, 1967); No. 99, 1968; No. 120, 1971; No. 31, 1973; and No. 216, 1973 (as amended by No. 20, 1974).