**DEFENCE SERVICE HOMES AMENDMENT ACT 1978**

**No. 137 of 1978**

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

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

**Short title, &c.**

**1.** (1) This Act may be cited as the *Defence* *Service Homes Amendment Act* 1978.

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

**Commencement**

**2.** (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 11 and 15 shall come into operation on a date to be fixed by Proclamation.

**3.** (1) Section 4 of the Principal Act is amended—

(a) by omitting “deceased unmarried person so specified” from the definition of “Female dependant” in sub-section (1) and substituting “deceased person so specified who was not legally married at the time of death”;

(b) by adding at the end of sub-section (1) the following definition:

“‘Widow’, in relation to an eligible person who died after the commencement of section 3 of the *Defence Service Homes Amendment Act* 1978, includes a woman who lived with the eligible person as his wife on a permanent and *bona fide* domestic basis, although not legally married to him, for not less than 3 years immediately before his death.”;

(c) by inserting after sub-section (2) the following sub-sections:

“(2a) For the purposes of paragraph (a) of the definition of

‘Australian Soldier’ in sub-section (1), a person who is or was—

(a) a member of the Citizen Military Forces;

(b) a member of the Women’s Royal Australian Naval Service, the Australian Women’s Army Service or the Women’s Auxiliary Australian Air Force;

(c) a member of the Australian Army Medical Women’s Service but not a member of the Australian Imperial Force; or

(d) a member of the Voluntary Aid Detachment,

shall not, by reason only of being or having been such a member, be taken to have been enlisted or appointed for active service outside Australia or on a ship of war.

“(2b) For the purposes of paragraph (c) of the definition of ‘Australian Soldier’ in sub-section (1), a person shall not be taken to have served in the Naval, Military or Air Forces of any part of the King’s Dominions, other than the Commonwealth, unless he served in such Forces—

(a) in an operational area outside the country or place of his enlistment or appointment for service; or

(b) as a combatant in an active combat unit.

“(2c) Subject to sub-section (2d), an Australian soldier who, by reason of his misconduct or misbehaviour—

(a) was discharged from, or otherwise ceased to be a member of, the Naval, Military or Air Forces of Australia; and

(b) is included in a class of members specified in the Schedule to the *War Gratuity Act* 1945,

shall not be treated as an eligible person for the purposes of this Act, but this sub-section shall not prevent a female dependant of such an Australian soldier being an eligible person.

“(2d) Where the relevant misconduct or misbehaviour of an Australian soldier referred to in sub-section (2c) consisted only of his absence without leave, the Corporation may treat him as an eligible person for the purposes of this Act if the Corporation, having regard to the quality of his service outside Australia, considers it appropriate to do so.”; and

(d) by inserting after sub-section (3) the following sub-sections:

“(3a) A reference in this Act to the wife of a man shall, in relation to any time when a woman is living with him as his wife on a permanent and *bona fide* domestic basis, although not legally married to him, be read as including a reference to that woman if she has so lived with him for not less than 3 years immediately before that time.

“(3b) A reference in this Act to the husband of a woman shall, in relation to any time when a man is living with her as her husband on a permanent and *bona fide* domestic basis, although not legally married to her, be read as including a reference to that man if he has so lived with her for not less than 3 years immediately before that time.

“(3c) Where the Corporation is of the opinion that a person would, but for a temporary absence or an absence resulting from illness or infirmity, have been living with another person at any time on a permanent and *bona fide* domestic basis, the first mentioned person shall, for the purposes of this Act, be deemed to have been living with the other person on a permanent and *bona fide* domestic basis at that time.”.

(2) Any person who, by virtue of sub-section 4(2a), (2b) or (2c) of the Principal Act as amended by this Act, is not an eligible person for the purposes of the Principal Act as so amended shall be deemed not to have been at any time before the commencement of this Act an eligible person for the purposes of the *War Service Homes Act* 1918 or that Act as amended and in force from time to time.

**Regular Serviceman**

**4.** Section 4aaa of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to this section, a person is a regular serviceman for the purposes of this Act if—

(a) he has served on continuous full-time service as a member of the Defence Force, not being service that ended before 7 December 1972, and, during that service, has—

(i) in the case of service that commenced before 17 August 1977—completed, whether before or after 7 December 1972, 3 years’ effective full-time service as such a member; or

(ii) in the case of service that commenced on or after 17 August 1977—completed a period of 6 years’ effective full-time service as such a member, being a period at the expiration of which he continued to render full-time service as such a member otherwise than by reason only of a delay in discharging him or otherwise terminating that service, including a delay for the purpose of the treatment or observation of an illness or injury;

(b) he was engaged to serve as a member of the Defence Force for a period of continuous full-time service of—

(i) in the case of a person so engaged before 17 August 1977—not less than 3 years; or

(ii) in the case of a person so engaged on or after 17 August 1977—not less than 6 years,

but that service ended, on or after 7 December 1972, by reason of his death or his discharge on the ground of invalidity or physical or mental incapacity to perform duties; or

(c) he was an officer appointed for continuous full-time service in the Defence Force (other than an officer appointed before 17 August 1977 whose appointment was for a period of continuous full-time service of less than 3 years or an officer appointed on or after 17 August 1977 whose appointment was for a period of continuous full-time service of less than 6 years), but that service ended, on or after 7 December 1972, by reason of his death or the termination of his appointment on the ground of invalidity or physical or mental incapacity to perform duties.”; and

(d) by inserting after sub-section (2) the following sub-sections:

“(2a) For the purposes of paragraph (b) of sub-section (1), where a person re-engages to serve as a member of the Defence Force, other than as an officer, for a period of continuous full-time service, he shall be taken to have been engaged on his enlistment to serve until the expiration of the period for which he re-engages.

“(2b) For the purposes of paragraph (c) of sub-section (1), where an officer commences a period of continuous full-time service immediately after the expiration of a previous period of such service by him, whether as an officer or otherwise, he shall be taken to have been appointed on the commencement of that previous period to serve until the expiration of the later period.”.

**Sale of dwelling houses**

**5.** Section 19 of the Principal Act is amended by omitting from paragraph (1a) (b) “is married” and substituting “has a wife”.

**6.** After section 27 of the Principal Act the following sections are inserted in Part V:

**Fees in respect of application**

“27a. (1) There is payable to the Corporation in respect of an application made for an advance such fee as is payable in respect of the application in accordance with a determination made by the Corporation under sub-section (2).

“(2) The Corporation may determine the fees that are payable in respect of applications for an advance or a class of applications for an advance and may determine different fees for different kinds of advances.

“(3) Any fee payable to the Corporation in respect of an application under sub-section (1) is in addition to any fee, charge or cost relating to applications for advances that is payable under the regulations, including any such fee, charge or cost payable for or in respect of the work or services of officers of the Corporation.

“(4) Where an application for an advance is withdrawn or is unsuccessful, the Corporation may refund the whole or a part of the fee paid under sub-section (1) in respect of the application.

“(5) The Corporation shall exercise its powers under this section in accordance with the directions, if any, of the Minister.

“(6) In this section, ‘application for an advance’ includes an application by a person to the Corporation for the sale to the person of a dwelling-house under section 19.

**Order in which advances are made**

“27b. (1) For the purposes of this Part, the Corporation may, subject to the directions, if any, of the Minister, make, and vary, arrangements for determining the order in which advances are to be made to applicants.

“(2) Without limiting sub-section (1), arrangements for the purposes of that sub-section may—

(a) provide for the division of applicants into classes and for different minimum periods between the making of an application for an advance and the making of the advance to apply to different classes; or

(b) provide that priority is to be given to applicants where particular circumstances apply or to applicants in a particular class.”.

**Payment of purchase money and repayment of advance**

**7.** (1) Section 29 of the Principal Act is amended—

(a) by inserting after sub-section (1b) the following sub-section:

“(1c) The provision made in accordance with sub-section (1) in any contract or mortgage for payment of interest in respect of any purchase money or advance shall be read as a reference to compound interest calculated monthly.”;

(b) by omitting from sub-section (2) “with compound interest calculated yearly at 3.75 per centum per annum” and substituting “and shall, whether deposited before or after the commencement of the *Defence Service Homes Amendment Act* 1978, be deemed to have been deposited subject to the condition that, upon the monthly calculation of interest in respect of the relevant purchase money or advance, the amount of the interest so calculated shall be reduced by an amount equal to one-twelfth of—

(a) 3.75 per centum; or

(b) in the case of interest calculated as at a date earlier than 6 December 1974—a percentage the same as the yearly rate of interest charged upon the purchase money or advance,

of the deposits accumulated to the credit of the purchaser or borrower at the time as at which the interest is calculated.”;

(c) by omitting sub-section (3) and substituting the following sub-section:

“(3) Deposits accumulated to the credit of a purchaser or borrower under this section shall be available for payment of any instalments, or arrears of instalments, due to the Corporation by the purchaser or borrower or for reimbursing the Corporation for any insurance premiums paid by it on behalf of the purchaser or borrower, and shall be made available for that purpose by the payment of an amount equal to the amount to be made available to the credit of the Defence Service Homes Trust Account.”;

(d) by omitting from paragraphs (a) and (c) of sub-section (3a), paragraph (a) of sub-section (3b) and sub-sections (3c) and (4) “and interest”; and

(e) by adding at the end thereof the following sub-section:

“(5) A sum to be applied in accordance with sub-section (4) shall be applied by the payment of an amount equal to that sum to the credit of the Defence Service Homes Trust Account.”.

(2) Any contract or mortgage entered into before the commencement of this section, being a contract or mortgage to which section 29 of the Principal Act as in force at any time before the commencement of this section applies or applied, has effect, and shall be deemed to have had effect, as if any reference in a provision made in the contract or mortgage for payment of interest in respect of any purchase money or advance were read, and at all times had been read, as a reference to compound interest calculated monthly.

**Call-up of moneys on false statement concerning ownership of other dwelling-house**

**8.** Section 32a of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) In sub-section (1), ‘spouse’, in relation to a man or woman making a declaration referred to in that sub-section at any time after the commencement of this sub-section, includes—

(a) in the case of a man—a woman living with him as his wife on a permanent and *bona fide* domestic basis, although not legally married to him, who has so lived with him for not less than 3 years immediately before that time; and

(b) in the case of a woman—a man living with her as her husband on a permanent and *bona fide* domestic basis, although not legally married to her, who has so lived with her for not less than 3 years immediately before that time.”.

**Action on instalments being overdue**

**9.** Section 36 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3a) Where—

(a) the persons appearing to the Minister to be entitled to receive the balance of the proceeds derived from a sale of land, or of land and a dwelling-house, made in pursuance of this Part are, or include two or more persons who are, joint tenants of the land or of the land and dwelling-house; and

(b) the Minister is of the opinion that, by reason of the whereabouts of one or some only of the joint tenants being known or for any other reason, a payment should be made under this sub-section to one or some of the joint tenants,

such part of the balance as the Minister considers proper, or, if the joint tenants are entitled to part only of the balance, such part of that part of the balance as the Minister considers proper, may be paid to such one, or to such two or more, of the joint tenants as the Minister considers proper.”.

**Re-transfer to corporation where beneficiaries marry**

**10.** Section 36a of the Principal Act is amended by inserting in sub-section (1) “legally” before “marries”.

**11.** Section 38 of the Principal Act is repealed and the following section substituted:

**Insurance of dwelling-house, &c.**

“38. (1) Subject to sub-section (2), the Corporation is empowered to undertake insurance of, or in relation to—

(a) any dwelling-house in which the Corporation has an interest;

(b) any dwelling-house that has been, at any time, whether before or after the commencement of this section, but has ceased to be, the subject of a contract of sale or mortgage entered into in pursuance of this Act, being a dwelling-house owned by—

(i) a person who was a borrower or purchaser under this Act in respect of that dwelling-house;

(ii) the widow of any such person; or

(iii) the personal representative of any such person or widow;

(c) any dwelling-house situated on land in which the Corporation has had an interest, at any time, whether before or after the commencement of this sub-section, being a dwelling-house owned by—

(i) a person who was a borrower or purchaser under this Act in respect of another dwelling-house on that land;

(ii) the widow of any such person; or

(iii) the personal representative of any such person or widow; or

(d) building materials on the site of, and for use in the erection of, or otherwise in relation to, any dwelling-house in which the Corporation has or will have an interest.

“(2) For the purposes of this section, the Corporation shall, with the approval of the Minister, prepare a written document, to be known as the Statement of Conditions, setting out—

(a) the risks against which the Corporation will undertake insurance;

(b) the persons who may insure, or have their interests insured with, the Corporation; and

(c) other terms and conditions relating to insurance undertaken by the Corporation that the Corporation considers it is necessary or convenient to determine,

and the Corporation shall not undertake insurance otherwise than in accordance with the Statement of Conditions or the Statement of Conditions as varied in accordance with sub-section (3).

“(3) The Corporation may, with the approval of the Minister, vary the Statement of Conditions by instrument in writing prepared by it but shall not vary the Statement of Conditions so as to take away the right of a person to receive a payment to which he had become entitled before the variation.

“(4) The Corporation shall furnish copies of the original Statement of Conditions and of each variation of the Statement of Conditions to the Minister for laying before each House of the Parliament within 15 sitting days of that House after he has received those copies.

“(5) The Governor-General may make regulations, not inconsistent with this section, prescribing all matters necessary or convenient to be prescribed for the purposes of the Corporation undertaking insurance and, in particular, without limiting the foregoing, may make regulations—

(a) requiring persons purchasing a dwelling-house, or obtaining an advance in respect of a dwelling-house, from the Corporation to insure that dwelling-house with the Corporation;

(b) authorizing the Corporation to insure with the Corporation dwelling-houses in which it has an interest or deeming such dwelling-houses to be so insured;

(c) authorizing the Corporation to pay insurance premiums on behalf of itself or another person; and

(d) preserving, or preserving with variation, the effectiveness of insurance lawfully undertaken by the Corporation before the commencement of this section.”.

**Payments out of Defence Service Homes Trust Account**

**12.** Section 39b of the Principal Act is amended by inserting after paragraph (a) of sub-section (2) the following paragraphs:

“(aa) amounts equal to fees paid to the Corporation under subsection (1) of section 27a and not refunded;

“(ab) amounts equal to fees, charges or costs payable under the regulations credited to that Trust Account, whether before or after the commencement of this paragraph, and not paid or payable to another person by the Corporation or not refunded;”.

**Appropriation of moneys for the purposes of this Act**

**13.** Section 39c of the Principal Act is amended by inserting before paragraph (a) the following paragraph:

“(aa) payments to the credit of the Defence Service Homes Trust Account under sub-section (3) or (5) of section 29;”.

**Defence Service Homes Insurance Trust Account**

**14.** Section 40 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (3) “and”; and

(b) by adding at the end of sub-section (3) the following word and paragraph:

“and (c) a payment by it that it is not legally required to make but that is of a kind that would be made by a person carrying on the business of insurance in accordance with sound commercial principles.”.

**Adjustment on destruction of or damage to property**

**15.** Section 41 of the Principal Act is repealed.

**16.** Section 42c of the Principal Act is repealed and the following section substituted:

**Proper accounts to be kept**

“42c. The Corporation shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation.”.

**Transitional**

**17.** Notwithstanding the provisions of the Principal Act as amended by this Act, there shall be paid into the Consolidated Revenue Fund out of the Defence Service Homes Trust Account an amount equal to the amount determined by the Minister to be, on the day on which he makes the determination, the amount standing to the credit of the Trust Account by reason of the payment by the Commonwealth to the Corporation before 1 July 1977 of moneys for the purposes of the administration of the Principal Act and not expended for that purpose or by reason of the receipt by the Corporation, or the crediting to the Trust Account, of interest on moneys held by the Corporation immediately before 1 July 1977.