



First Home Owners Amendment Act 1985

No. 23 of 1985

An Act to amend the *First Home Owners Act 1983*, and for related purposes

[Assented to 20 May 1985]

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

Short title, &c.

1. (1) This Act may be cited as the *First Home Owners Amendment Act 1985*.

(2) The *First Home Owners Act 1983*¹ 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 3, 4, 5, 7, 8, 9 and 14 shall be deemed to have come into operation on 17 April 1985.

Interpretation

3. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “prescribed date” and substituting the following definitions:

“‘prescribed Act’ means the *Homes Savings Grant Act 1964*, the *Homes Savings Grant Act 1976* or the *Home Deposit Assistance Act 1982*;

‘prescribed date’, in relation to a sole applicant who has, or joint applicants one of whom has, or 2 or more of whom together have—

(a) entered into a contract of a kind referred to in paragraph 14 (1) (a) or (b); or

(b) commenced the construction of a dwelling as referred to in paragraph 14 (1) (c) (whether or not the construction has been completed),

means—

(c) where paragraph (a) applies—the date of the contract or, if a date has been determined under sub-section 14 (7), that date; or

(d) where paragraph (b) applies—the date on which the construction commenced;” and

(b) by omitting from sub-section (1) the definition of “rural property” and substituting the following definition:

“‘rural property’ means land used wholly or substantially for carrying on the business of primary production;”.

Purchase or ownership of land or dwelling

4. Section 9 of the Principal Act is amended—

(a) by omitting from paragraph (2) (b) “2 or more buildings” and substituting “2 or more dwellings separately”;

(b) by adding at the end of sub-paragraph (2) (b) (ii) “, where the Secretary is satisfied, having regard to such matters as the Secretary considers relevant, that the value of the holder’s interest in the shares is not less than the value of the holder’s interest in the dwelling”;

(c) by omitting from sub-paragraph (2) (b) (iii) “, where the owner of that share is, or is to be, entitled to a right of occupancy in respect of the dwelling”; and

(d) by omitting sub-sections (3), (4) and (5).

Persons who, subject to section 15, may apply

5. Section 14 of the Principal Act is amended—

(a) by omitting from sub-section (1) “then” and substituting “and the Secretary is satisfied that the home acquirer is or will be, or the home acquirers are or will be, as the case may be, entitled to an exclusive right of occupancy of the dwelling, then”;

- (b) by omitting from sub-paragraph (2) (b) (ii) “another dwelling” and substituting “a dwelling”;
- (c) by omitting sub-section (3) and substituting the following sub-section:

“(3) In paragraph (2) (a), the reference to a grant under a prescribed Act or to payment of assistance under this Act does not include a reference to a grant or a payment of assistance, as the case may be, that should not have been made or that otherwise became recoverable by the Commonwealth.”;
- (d) by inserting in sub-section (5) “, or was not intended to be, as the case may be,” after “dwelling was not”;
- (e) by omitting sub-sections (6) and (7) and substituting the following sub-section:

“(7) For the purposes of this Act, the Secretary may, subject to sub-section (8), treat a person or persons as having entered into a contract on a date determined by the Secretary, being a date—

 - (a) not earlier than 2 months after the date of the contract; and
 - (b) not later than the day before—
 - (i) where paragraph (1) (a) applies—the day on which the vendor completes performance of the contract; or
 - (ii) where paragraph (1) (b) applies—the day on which construction of the dwelling is completed.”; and
- (f) by omitting sub-section (9) and substituting the following sub-section:

“(9) In this section, ‘person’ means a natural person.”.

Financial assistance

6. Section 16 of the Principal Act is amended by adding at the end the following sub-section:

“(2) Payments under sub-section (1) may be made at such times, and in such manner, as the Secretary thinks fit, having regard to the amount of money from time to time available for the purpose.”.

Amount of taxable income

7. Section 21 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) if no such certificate has been issued—as determined by the Secretary.”.

Relevant year of income in certain cases

8. Section 22 of the Principal Act is amended—

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

“(a) the applicant is an eligible person in respect of the preceding year of income;”;

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

“(3) Where the Secretary is not satisfied that an applicant is an eligible person in respect of the preceding year of income, but is satisfied that the applicant is an eligible person in respect of the current year of income, the Secretary shall direct that the relevant year of income in relation to the applicant is the current year of income.

“(3A) Where, in respect of each of the following years, namely, the preceding year of income and the current year of income, the Secretary is not satisfied that an applicant is an eligible person, but the Secretary is satisfied that the applicant is an eligible person in respect of the succeeding year of income—the Secretary shall direct that the relevant year of income in relation to the applicant is the succeeding year of income.

“(3B) Where, in respect of each of the following years, namely, the preceding year of income, the current year of income and the succeeding year of income, the Secretary is not satisfied that an applicant is an eligible person—

- (a) if the estimated amount, or the actual amount, of the taxable income of the applicant for the current year of income or the succeeding year of income is less than the amount of his or her taxable income for the preceding year of income—the Secretary shall direct that the relevant year of income in relation to the applicant is the current year of income or the succeeding year of income, whichever of those years is the year for which the applicant’s taxable income is the greater amount; or
 - (b) in any other case—the Secretary shall direct that the relevant year of income in relation to the applicant is the preceding year of income, the current year of income or the succeeding year of income, whichever of those years is the year for which the applicant’s taxable income is the greatest amount.”;
- (c) by omitting from sub-section (4) “sub-section (3)” and substituting “sub-section (3), (3A) or (3B)”;
- (d) by omitting sub-section (5) and substituting the following sub-section:
- “(5) In this section, ‘eligible person’, in relation to a year of income, means a person who is domiciled in Australia throughout that year of income.”.

Payment of assistance

9. Section 23 of the Principal Act is amended by inserting after sub-section (4) the following sub-sections:

“(4A) Where—

- (a) but for this sub-section, an amount of assistance would be payable to a sole applicant or to joint applicants (in this sub-section referred to as the ‘relevant person’ or ‘relevant persons’, as the case may be);

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- (b) an amount (in this section referred to as a 'prescribed amount') has been paid by the Commonwealth to the relevant person, or to any of the relevant persons, as the case may be, being an amount of—
 - (i) a grant made under a prescribed Act; or
 - (ii) assistance paid under this Act in relation to a previous application; and
- (c) the prescribed amount should not have been paid, or otherwise become recoverable by the Commonwealth,

the amount of assistance shall be reduced by so much of the previous amount as has not been repaid to or recovered by the Commonwealth or set-off under a previous application of this sub-section.

“(4B) Notwithstanding anything in a prescribed Act or in this Act, so much of a prescribed amount as has been set-off under sub-section (4A) ceases to be recoverable by the Commonwealth.”.

10. Section 34 of the Principal Act is repealed and the following section is substituted:

Money out of which assistance is payable

“34. (1) Subject to sub-section (2), assistance payable after the commencement of this section and before 1 July 1985 is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

“(2) Assistance payable under sub-section (1) shall not exceed, in the aggregate, an amount that, together with the total amount of assistance paid on and after 1 July 1984 and before the commencement of this section, is equal to \$290,000,000.

“(3) Assistance payable after 30 June 1985 is payable out of money appropriated by the Parliament for the purpose.”.

Misleading statements, &c.

11. Section 38 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) An offence against sub-section (2) is punishable on summary conviction.”.

12. Section 40 of the Principal Act is repealed and the following section is substituted:

Evidence

“40. (1) The Secretary may by instrument in writing—

- (a) create offices for the purposes of this section; and
- (b) appoint persons to those offices.

“(2) All courts shall take judicial notice of the signature of any person—

- (a) who holds or has held the office of Secretary; or

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(b) who holds or has held an office under sub-section (1), and of the fact that that person holds or has held that office, if the signature purports to be attached or appended to an official document, and any such document purporting to be so signed is *prima facie* evidence in all courts of the facts and statements contained in the document.

“(3) A certificate in writing signed by a person who holds or has held an office referred to in sub-section (2) certifying—

(a) that assistance of a specified amount was paid to a specified person or to specified persons on a specified date; or

(b) that a specified amount is the amount of assistance paid to a specified person or to specified persons in consequence of a specified act, failure or omission,

is *prima facie* evidence in all courts of the matters certified.”.

Amendments related to sexist language

13. The Principal Act is amended as set out in the Schedule.

Application of amendments

14. The amendments of the Principal Act made by sections 3, 4, 5, 7, 8 and 9 of this Act apply in relation to an application in respect of which the prescribed date is a date later than 16 April 1985.

SCHEDULE

Section 13

AMENDMENTS RELATED TO SEXIST LANGUAGE

Section 5—

After “his” (wherever occurring), insert “or her”.

Sub-section 6 (2)—

Omit “he”, substitute “the Secretary”.

Sub-section 14 (4)—

(a) Omit “satisfy himself”, substitute “be satisfied”.

(b) Omit “he”, substitute “the Secretary”.

Sub-section 14 (8)—

Omit “he”, substitute “the Secretary”.

Sub-section 15 (3)—

After “he”, insert “or she”.

Paragraph 20 (2) (a)—

Omit “his”, substitute “the applicant’s”.

Paragraph 20 (2) (b)—

(a) After “his” (first occurring), insert “or her”.

(b) Omit “his” (second occurring), substitute “the applicant’s”.

Sub-section 20 (3)—

(a) Omit “he”, substitute “the applicant”.

(b) After “his” (first occurring), insert “or her”.

(c) Omit “his” (second occurring), substitute “the applicant’s”.

Sub-section 20 (5)—

(a) Omit “him”, substitute “the applicant”.

(b) Omit “his”, substitute “the applicant’s”.

Paragraph 22 (1) (b)—

Omit “his”, substitute “the applicant’s”.

Sub-section 24 (1)—

(a) Omit “writing signed by him”, substitute “instrument in writing”.

(b) After “his”, insert “or her”.

Sub-section 27 (1)—

After “he”, insert “or she”.

Sub-section 27 (4)—

(a) After “he”, insert “or she”.

(b) Omit “his”, substitute “the”.

Sub-section 28 (1)—

Omit “he” (wherever occurring), substitute “the person”.

SCHEDULE—continued

Sub-section 28 (2)—

Omit “he is”.

Sub-section 29 (1)—

- (a) Omit “him”, substitute “the first-mentioned person”.
- (b) Omit “his” (wherever occurring).

Paragraph 29 (2) (a)—

Omit “his” (wherever occurring).

Sub-section 30 (1)—

- (a) Omit “he”, substitute “the Secretary”.
- (b) Omit “to him”.

Paragraph 30 (2) (b)—

Omit “his”, substitute “the person’s”.

Sub-section 31 (3)—

Omit “he” (wherever occurring), substitute “the person”.

Paragraph 33 (1) (b)—

- (a) Omit “he” (first occurring), substitute “the Secretary”.
- (b) After “his”, insert “or her”.
- (c) After “he” (second occurring), insert “or she”.

Sub-section 33 (1)—

After “he” (last occurring), insert “or she”.

Sub-section 36 (1)—

- (a) After “his” (wherever occurring), insert “or her”.
- (b) After “he” (wherever occurring), insert “or she”.

Sub-section 37 (3)—

After “his”, insert “or her”.

Sub-section 38 (1)—

Omit “his”, substitute “the person’s”.

Sub-section 38 (2)—

Omit “his”, substitute “the person’s”.

Sub-section 38 (3)—

- (a) Omit “him”, substitute “the person”.
- (b) Omit “he”, substitute “the person”.

NOTE

1. No. 46, 1983.

[*Minister's second reading speech made in—
House of Representatives on 16 April 1985
Senate on 7 May 1985*]