



# **Defence Home Ownership Assistance Scheme Act 2008**

**No. 27, 2008**

**An Act to establish a scheme to provide financial assistance to members of the Defence Force, and certain other persons, for the purchase, maintenance and development of their homes, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Defence Home Ownership Assistance Scheme Act 2008**

**No. 27, 2008**

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**An Act to establish a scheme to provide financial assistance to members of the Defence Force, and certain other persons, for the purchase, maintenance and development of their homes, and for related purposes**

*[Assented to 23 June 2008]*

**The Parliament of Australia enacts:**

## Part 1 Preliminary

### Section 1

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Defence Home Ownership Assistance Scheme Act 2008*.

### 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
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 June 2008
2. Sections 3 to 85	The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 July 2008.	1 July 2008 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Definitions

In this Act:



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Section 3

***accrued subsidy period*** has the meaning given by section 47.

***agreement*** includes:

- (a) a deed; and
- (b) a memorandum of understanding between Commonwealth agencies.

***approved form*** has the meaning given by section 77.

***Australia*** includes the external Territories.

***authorisation day*** has the meaning given by section 57.

***authorised Commonwealth contractor*** has the meaning given by section 81.

***average house price*** has the meaning given by section 52.

***average monthly interest*** has the meaning given by section 50.

***building work***, in relation to land (or in relation to a loan that relates to an interest in land), has the meaning given by paragraph 30(1)(b).

***commencing day*** means the day on which this section commences.

***Commonwealth agency*** means an Agency within the meaning of the *Financial Management and Accountability Act 1997*.

***compensable condition*** means a condition, disease, illness or injury suffered by a person in respect of which compensation is, or has been, payable under any of the following:

- (a) the *Safety, Rehabilitation and Compensation Act 1988*;
- (b) the *Veterans' Entitlements Act 1986*;
- (c) the *Military Rehabilitation and Compensation Act 2004*;
- (d) a law of the Commonwealth prescribed by the regulations.

***debtor*** has the meaning given by section 66.

***deceased partner*** has the meaning given by section 4.

Note: ***Partner*** is defined in this section. For the definition of ***surviving partner***, see section 4.

### Section 3

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***declared loan provider*** has the meaning given by section 78.

***due amount*** has the meaning given by section 67.

***effective service***, in relation to a person who is, or has been, a member of the Defence Force, means service in the Defence Force by the person in accordance with the regulations.

***eligible*** has the meaning given by section 7.

***entitlement period*** has the meaning given by section 28.

***first authorisation day***, for subsidy that is payable during an entitlement period, means the first authorisation day after subsidy becomes payable for the entitlement period.

Note: For the definition of ***authorisation day***, see section 57. The authorisation day is at the end of a ***monthly authorisation period*** (as defined in section 57). Subsidy becomes payable from the beginning of the first monthly authorisation period during which section 28 starts to apply.

***foreign service member*** means a member of the Defence Force who, before he or she became a member of the Defence Force, had been a member of the armed forces of a foreign country.

***house*** means a single dwelling, including a unit that is a single dwelling, but does not include:

- (a) a dwelling, or unit, that is unfit for anyone to live in or that is the subject of a condemnation order; or
- (b) a dwelling, or unit, that is to be compulsorily acquired by:
  - (i) the Commonwealth, a State or a Territory; or
  - (ii) an authority (including a local governing body) established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
- (c) a caravan, houseboat or another kind of mobile dwelling; or
- (d) a flat that is not a unit.

Note: ***Unit*** is also defined in this section.

***internal review decision*** has the meaning given by section 75.

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Section 3

***intestacy law*** means a law of, or in force in, a State or Territory that provides for the devolution of the estate of a person who dies intestate.

***loan capital*** has the meaning given by section 51.

***loan provider*** means a body corporate which makes (or which is to make) loans to persons in relation to which this Act applies (or is to apply).

***loan provider agreement***, in relation to a loan provider, means the agreement entered into by the Commonwealth with the loan provider (whether before, on or after the commencing day) for the purposes of the payment of subsidy for the benefit of subsidised borrowers, as varied from time to time.

***median interest rate*** has the meaning given by section 53.

***monthly authorisation period*** has the meaning given by section 57.

***monthly repayment*** has the meaning given by section 50.

***monthly subsidy*** has the meaning given by section 49.

***overpaid amount*** has the meaning given by section 66.

***partner***: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are different sexes or the same sex) and ordinarily live with each other on a permanent and bona fide domestic basis.

Note: For the definitions of ***surviving partner*** and ***deceased partner***, see section 4.

***Permanent Forces*** means the Permanent Navy, the Regular Army or the Permanent Air Force.

***Reserves*** means the Naval Reserve, the Army Reserve or the Air Force Reserve.

***reviewable decision*** has the meaning given by section 71.

***Secretary*** means the Secretary of the Department.

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### Section 3

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**service credit** has the meaning given by section 46.

**service year** means a year prescribed by regulations made for the purposes of the definition of **effective service** in this section.

**subsidised borrower** means a person to whom subsidy is (or is to be) payable under Part 4.

**subsidised loan** means a loan in relation to which subsidy is (or is to be) payable under Part 4.

**subsidised loan account**, in relation to a subsidised borrower who is a party to a subsidised loan with a loan provider, means the loan account maintained by the loan provider in the name of the borrower (or in the names of the borrower and another person or persons) in connection with the subsidised loan.

**subsidy** means:

- (a) subsidy payable under this Act; or
- (b) in paragraph (c) of step 2 of the method statement in subsection 46(1) (working out service credits)—subsidy payable under the *Defence Force (Home Loans Assistance) Act 1990* or the *Defence Service Homes Act 1918*.

**subsidy certificate** means a certificate given under Part 3.

**surviving partner** has the meaning given by section 4.

Note: **Partner** is defined in this section. For the definition of **deceased partner**, see section 4.

**unit** means a unit held under a strata title system (or a similar system) established under a law of a State or Territory (however the unit is described for the purpose of that law), together with:

- (a) any accompanying common property; and
- (b) any permanent improvement (for example, a garage or storeroom) associated with the unit.

Note: A **house** (as defined in this section) may be a unit.

**warlike service** means service in the Defence Force of a kind determined as warlike service for the purposes of the *Veterans'*

## Section 4

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*Entitlements Act 1986*, whether the determination is made, or the service performed, before, on or after the commencing day.

Note: See section 5C of the *Veterans' Entitlements Act 1986*.

**4 Meaning of *deceased partner* and *surviving partner****Scope*

- (1) This section applies if 1 partner in a relationship dies.

*Definitions*

- (2) In this Act:

***deceased partner*** means the partner who died.

***surviving partner*** means the partner of the deceased partner.

Note: For the definition of ***partner***, see section 3.

**5 When a person is a member of the Reserves***Membership of the Reserves*

- (1) For the purposes of this Act, a person who has been engaged (by enlistment or appointment) as a member of the Reserves at a particular time (the ***engagement time***) is to be treated as a member of the Reserves until:
- (a) the engagement ends; or
  - (b) during a service year:
    - (i) the engagement does not end; but
    - (ii) the person does not perform effective service as a member of the Reserves.

*Effect of failure to perform effective service*

- (2) If a person's membership of the Reserves ends under paragraph (1)(b) in relation to a service year, this Act applies to the person, and is taken to have applied to the person, as if he or she had:

## Section 6

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- (a) in the case of a person who was a member of the Reserves at the end of the previous service year—stopped being a member of the Reserves immediately after the end of the previous service year; or
- (b) in any other case—not been engaged as a member of the Reserves at the engagement time.

**Note:** This section may have the following effects:

- (a) the time at which a person is taken to stop being a member of the Reserves (or of the Defence Force) may be affected;
- (b) there may be a retrospective loss of entitlements in relation to subsidy certificates, the payment of subsidy, service credits and accrued subsidy periods and loan limits;
- (c) in particular, an authorisation of the payment of subsidy on the basis of a person's membership of the Reserves may be revoked retrospectively (see section 44);
- (d) if a subsidised borrower who is taken not to have been a member of the Reserves because of the operation of subsection (2) would have been otherwise entitled to subsidy, the authorisation of the payment of subsidy to the person may be varied retrospectively (see section 45).

**Example:** A person is engaged as a member of the Reserves. The person is given a subsidy certificate under Part 3 on the basis of eligibility as a serving member of the Reserves. The person starts to receive amounts of monthly subsidy accordingly.

However, at the end of the service year, the person has not performed effective service as a member of the Reserves.

Because of subsection (2), this Act applies as if the person was not entitled to be given the subsidy certificate (because he or she was not eligible as a member of the Reserves).

As a result, the original authorisation of the payment of subsidy may be revoked or varied (see sections 44 and 45). Amounts of subsidy to which the person is not entitled (because of the revocation or variation) are recoverable as overpayments under Division 6 of Part 4.

## 6 External Territories

This Act extends to every external Territory.

## Part 2—Eligibility

### 7 Eligibility—who is *eligible*?

A person is *eligible* if the person is eligible as any of the following:

- (a) a serving member (see section 8);
- (b) an incapacitated member (see section 9);
- (c) a rejoining incapacitated member (see section 10);
- (d) a rejoining member (see section 11);
- (e) a separated member (see section 12);
- (f) an old scheme member (see section 13).

### 8 Eligibility—serving members

- (1) A person is eligible as a serving member at a particular time (the *eligibility time*) if, at that time, the person:
  - (a) is a member of the Defence Force; and
  - (b) has completed (whether before, on or after the commencing day) the relevant qualifying service period under subsection (2).
- (2) The qualifying service period for a serving member is:
  - (a) if the member is, at the eligibility time, a member of the Permanent Forces—4 years of effective service; and
  - (b) if the member is, at the eligibility time, a member of the Reserves—8 years of effective service; and
  - (c) if the member is, at the eligibility time, a foreign service member—4 years of effective service.

Note: For the definition of *effective service*, see section 3.

### 9 Eligibility—incapacitated members

A person is eligible as an incapacitated member at a particular time if the person:

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## Section 10

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- (a) on or after 1 July 2008, stopped being a member of the Defence Force because of a compensable condition; and
- (b) has not again become a member of the Defence Force.

### 10 Eligibility—rejoining incapacitated members

- (1) A person is eligible as a rejoining incapacitated member at a particular time (the *eligibility time*) if the person:
  - (a) before, on or after the commencing day, stopped being a member of the Defence Force because of a compensable condition; and
  - (b) on or after 1 July 2008, again became a member of the Defence Force within 5 years after he or she stopped being a member; and
  - (c) at the eligibility time:
    - (i) is a member of the Defence Force; and
    - (ii) has completed (whether before, on or after the commencing day) the relevant qualifying service period under subsection (2).
- (2) The qualifying service period for a rejoining incapacitated member is:
  - (a) if the member is, at the eligibility time, a member of the Permanent Forces—4 years of effective service; and
  - (b) if the member is, at the eligibility time, a member of the Reserves—8 years of effective service.

Note: For the definition of *effective service*, see section 3.

### 11 Eligibility—rejoining members

A person is eligible as a rejoining member at a particular time (the *eligibility time*) if the person:

- (a) before, on or after the commencing day, stopped being a member of the Defence Force; and
- (b) was eligible immediately before he or she stopped being a member; and



Section 12

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- (c) on or after 1 July 2008, again became a member of the Defence Force within 5 years after the day on which the person stopped being a member; and
- (d) is a member of the Defence Force at the eligibility time.

**12 Eligibility—separated members**

A person is eligible as a separated member at a particular time if the person:

- (a) on or after 1 July 2008, stopped being a member of the Defence Force; and
- (b) was eligible immediately before he or she stopped being a member; and
- (c) has not again become a member of the Defence Force.

**13 Eligibility—old scheme members**

A person is eligible as an old scheme member if the person meets the requirements prescribed by the regulations.

**Part 3** Subsidy certificates

**Division 1** Application for subsidy certificate

Section 14

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**Part 3—Subsidy certificates**

**Division 1—Application for subsidy certificate**

**14 Application for subsidy certificate**

- (1) A person may apply to the Secretary for a subsidy certificate.
- (2) An application must be in the approved form.

Note 1: Section 77 deals with approved forms.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

**15 Further information about application**

- (1) The Secretary may, by writing, request an applicant for a subsidy certificate to give to the Secretary, within the period stated in the request, further stated information in relation to the application.
- (2) The Secretary may refuse to consider the application until the applicant gives the Secretary the information in accordance with the request.

Note 1: Part 5 provides for the administrative review of a decision to refuse to consider an application for a subsidy certificate.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

## **Division 2—Decision to give subsidy certificate**

### **16 Decision to give subsidy certificate—general**

#### *Scope*

- (1) This section applies if a person applies for a subsidy certificate in accordance with section 14.

#### *Decision to give, or to refuse to give, subsidy certificate*

- (2) The Secretary must give a subsidy certificate to the applicant if section 17, 18, 19 or 20 applies.
- (3) The Secretary:
- (a) must refuse to give a subsidy certificate to the applicant if subsection (2) does not apply; and
  - (b) despite subsection (2), may refuse to give a subsidy certificate to the applicant under that subsection if, in relation to a previous entitlement period:
    - (i) the applicant failed to comply with section 42 (which deals with the disclosure of changes of circumstances); or
    - (ii) the Secretary has revoked an authorisation of the payment of subsidy to the applicant under section 44.

Note: Part 5 provides for the administrative review of a decision to refuse to give a subsidy certificate to an applicant.

### **17 Decision to give subsidy certificate—eligible applicants**

- (1) Subject to this section, the Secretary must give a subsidy certificate to the applicant if the Secretary is satisfied that the applicant:
- (a) is eligible; and
  - (b) does not hold a subsidy certificate that is in force; and
  - (c) if the applicant is not a member of the Defence Force—has not previously applied for a subsidy certificate since he or she stopped being a member of the Defence Force.

**Part 3** Subsidy certificates

**Division 2** Decision to give subsidy certificate

**Section 18**

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*Time of application for subsidy certificate—incapacitated members*

- (2) If the applicant is eligible as an incapacitated member, the Secretary may give a subsidy certificate to the applicant under subsection (1) only if:
- (a) the application for a subsidy certificate is made within 2 years after the applicant stopped being a member of the Defence Force because of his or her compensable condition; or
  - (b) the Secretary is satisfied that the applicant's compensable condition caused or contributed to the applicant's failure to apply for a subsidy certificate within that 2 years.

*Time of application for subsidy certificate—separated members*

- (3) If the applicant is eligible as a separated member, the Secretary may give a subsidy certificate to the applicant under subsection (1) only if the application for a subsidy certificate is made within 2 years after the applicant stopped being a member of the Defence Force.

**18 Decision to give subsidy certificate—surviving partners**

- (1) Subject to this section, the Secretary must give a subsidy certificate to the applicant if the Secretary is satisfied that:
- (a) the applicant is the surviving partner of a deceased partner; and
  - (b) the deceased partner was eligible immediately before his or her death; and
  - (c) the applicant has not previously been given a subsidy certificate under this section in relation to the deceased partner.

Note: Entitlement to subsidy may be transferred from a deceased partner to a surviving partner in certain circumstances, without the requirement for the surviving partner to obtain a new subsidy certificate (see sections 60 and 61).

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*Time of application for subsidy certificate—generally*

- (2) The Secretary may give a subsidy certificate to the applicant under subsection (1) only if the application for a subsidy certificate is made within 2 years after:
- (a) if the deceased partner was not a member of the Defence Force at the time of his or her death—the day the deceased partner stopped being a member; or
  - (b) in any other case—the death of the deceased partner.

*Time of application for subsidy certificate—extension*

- (3) Despite subsection (2), the Secretary may give a subsidy certificate to the applicant under subsection (1) if:
- (a) the deceased partner, at the time of his or her death:
    - (i) was not a member of the Defence Force; and
    - (ii) held a subsidy certificate that was in force; and
  - (b) the application for the subsidy certificate is not made within the period mentioned in paragraph (2)(a); and
  - (c) the Secretary is satisfied that it was reasonable for the application not to have been made within that period; and
  - (d) the application is made within 1 year after the death of the deceased partner.

**19 Decision to give subsidy certificate—loan discharged due to destruction or compulsory sale of house**

The Secretary must give a subsidy certificate to the applicant if the Secretary is satisfied that:

- (a) a subsidised loan to the applicant is discharged because property that secured the loan is:
  - (i) destroyed; or
  - (ii) compulsorily acquired under a law of the Commonwealth, a State or a Territory; or
  - (iii) sold or transferred under an order of a court, other than an order made under the *Bankruptcy Act 1966* or in proceedings for the recovery of a debt; and

**Part 3** Subsidy certificates

**Division 2** Decision to give subsidy certificate

**Section 20**

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- (b) the applicant was a subsidised borrower in respect of the subsidised loan immediately before the loan was discharged; and
- (c) the application is made within 12 months after the subsidised loan is discharged.

**20 Decision to give subsidy certificate—loan discharged due to compensable condition**

The Secretary must give a subsidy certificate to the applicant if the Secretary is satisfied that:

- (a) on or after 1 July 2008, the applicant stopped being a member of the Defence Force because of a compensable condition; and
- (b) a subsidised loan to the applicant is discharged because property that secured the loan is sold or transferred; and
- (c) the Secretary is satisfied that the sale or transfer was reasonably necessary because of the applicant's compensable condition; and
- (d) the applicant was a subsidised borrower in respect of the subsidised loan immediately before the loan was discharged; and
- (e) the application is made within 12 months after the subsidised loan is discharged.

**21 Form of subsidy certificate**

- (1) A subsidy certificate must be in the approved form.
- (2) A failure to comply with this section does not affect the validity of the certificate.

Note: Section 77 deals with approved forms.

## **Division 3—Effect of subsidy certificate**

### **22 Period subsidy certificate in force**

A subsidy certificate:

- (a) comes into force on the day stated in the certificate; and
- (b) stops being in force at the earliest of the following times:
  - (i) if subsidy becomes payable to the person who holds the certificate—immediately after the end of the first authorisation day for the subsidy;
  - (ii) if the certificate is cancelled under section 25—at the time of cancellation;
  - (iii) in any other case—12 months after the certificate was given.

### **23 Subsidy certificate not a legislative instrument**

A subsidy certificate is not a legislative instrument.

**Part 3** Subsidy certificates

**Division 4** Variation and cancellation of subsidy certificates

Section 24

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**Division 4—Variation and cancellation of subsidy certificates**

**24 Variation of subsidy certificate**

*Secretary may vary certificate*

- (1) If a subsidy certificate contains an error or omission, the Secretary may, by written notice to the person who holds the certificate, vary the certificate by revoking the certificate and substituting another.

Note: Part 5 provides for the administrative review of a decision to vary a subsidy certificate.

*Effect of variation*

- (2) If the Secretary varies a subsidy certificate (by revoking it and substituting another), the certificate as substituted:
  - (a) has effect as if it had been the original certificate; and
  - (b) comes into force (or is taken to have come into force) on the day stated in the original certificate.

**25 Cancellation of subsidy certificate**

The Secretary may, by written notice given to a person who holds a subsidy certificate, cancel the certificate if the Secretary is satisfied that:

- (a) the certificate was given as a result of a false or misleading statement made by the person; or
- (b) at the time the decision to give the certificate was made, the person was not entitled to be given the certificate.

Note: Part 5 provides for the administrative review of a decision to cancel a subsidy certificate.



## **Part 4—Subsidy**

### **Division 1—Entitlement to subsidy**

#### **Subdivision A—General**

#### **26 Entitlement—form of subsidy**

Subsidy may be payable to a person in the form of either or both of the following:

- (a) monthly subsidy worked out under section 49;
- (b) a subsidy lump sum worked out under section 54.

**Note:** A subsidy lump sum is only payable to a member of the Defence Force in relation to the first home bought during the person's membership of the Defence Force (see section 34).

#### **27 Entitlement—authorisation by Secretary**

##### *Authorisation of initial payment*

- (1) The Secretary must authorise the payment of subsidy to a person if subsidy becomes payable to the person under subsection 28(1).

**Note:** An authorisation under this subsection may be revoked under section 44. In certain circumstances related to membership of the Reserves, the authorisation may be varied under section 45.

- (2) The Secretary:
- (a) must refuse to authorise the payment of subsidy to a person under subsection (1) if subsidy has not become payable to the person under subsection 28(1); and
  - (b) despite subsection (1), may refuse to authorise the payment of subsidy to a person under that subsection if, in relation to a previous entitlement period:
    - (i) the person failed to comply with section 42 (which deals with the disclosure of changes of circumstances); or
    - (ii) the Secretary has revoked an authorisation of the payment of subsidy to the person under section 44.

## Part 4 Subsidy

### Division 1 Entitlement to subsidy

#### Section 28

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Note: Part 5 provides for the administrative review of a decision to refuse to authorise the payment of subsidy.

##### *Authorisation of continuing monthly payments*

- (3) The Secretary must (on a monthly basis) authorise the continued payment of monthly subsidy to a person while subsidy continues to be payable to the person under subsection 28(3).

Note: Monthly subsidy is paid to the subsidised borrower's loan provider on a monthly basis (by a payment into the borrower's subsidised loan account for the borrower's benefit) under Division 4.

- (4) The Secretary must refuse to authorise the continued payment of monthly subsidy to a person if subsidy stops being payable to the person under section 36.

Note: Part 5 provides for the administrative review of a decision to refuse to authorise the continued payment of monthly subsidy.

## 28 Entitlement—criteria

##### *When subsidy becomes payable*

- (1) Subsidy becomes payable to a subsidised borrower in relation to a loan to the borrower if:
- (a) the loan is made by a declared loan provider; and
  - (b) the loan is secured by a mortgage over an interest (including a leasehold interest) in land; and
  - (c) the conditions under Subdivision B are met.
- (2) Subsidy becomes payable to a subsidised borrower with effect from the beginning of the monthly authorisation period during which subsection (1) starts to apply in relation to the borrower.

##### *When subsidy continues to be payable*

- (3) After subsidy becomes payable to a subsidised borrower, monthly subsidy continues to be payable to him or her during a continuous period (an **entitlement period**) until it stops being payable under section 36, subject to section 44 (revocation of authorisation of payment of subsidy).

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- Note 1: If subsidy is payable to a person, the person is a *subsidised borrower* (see section 3).
- Note 2: If payment of subsidy is suspended under section 61 because of a subsidised borrower's death, the suspension does not break the continuity of the entitlement period.
- Note 3: If the Secretary revokes an authorisation under section 44 in relation to an entitlement period, subsidy is taken never to have been payable during the period.

*Multiple loans and subsidised borrowers who are partners etc.*

- (4) Nothing in this Part prevents subsidy from being payable:
- (a) in relation to more than one loan during different entitlement periods; or
  - (b) in relation to more than one house, or interest in land, during different entitlement periods; or
  - (c) to 2 subsidised borrowers (each in their own right) in relation to the same loan, or different loans, while the subsidised borrowers are partners.

## **Subdivision B—When subsidy becomes payable**

### **29 When subsidy becomes payable—eligibility and service credits**

The following conditions must be met:

- (a) a subsidy certificate held by the subsidised borrower must be in force;
- (b) the subsidised borrower must have a service credit under section 46.

Note: Immediately after the first authorisation day for the subsidy, the subsidy certificate stops being in force (see section 22). If subsidy stops being payable (under section 36), the subsidised borrower can only again become entitled to subsidy under this Division if he or she is given a new subsidy certificate.

### **30 When subsidy becomes payable—use of subsidised loan**

- (1) The Secretary must be satisfied that the subsidised loan is used, or is to be used, to do one of the following:
- (a) to buy the interest in land, if there is a house on the land;

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- (b) to buy the interest in land and undertake work (***building work***) on the land consisting of any of the following:
    - (i) the construction or the completion of a house, other than a unit, on the land;
    - (ii) the enlargement, renovation or repair of a house on the land;
    - (iii) the construction of any other permanent improvement on the land, if the improvement is used primarily for private or domestic purposes in association with the house;
  - (c) if the subsidised borrower already has an interest in the land—to undertake building work on the land;
  - (d) to discharge another loan used by the subsidised borrower for a purpose mentioned in paragraph (a), (b) or (c).
- (2) If a house mentioned in subsection (1) is a unit, paragraphs (1)(b) and (c) do not cover building work in relation to any accompanying common property.

Note: For the definitions of ***house*** and ***unit***, see section 3.

**31 When subsidy becomes payable—ownership and location of land**

The following conditions must be met:

- (a) the subsidised borrower, or the subsidised borrower and his or her partner together, must hold a 50% or greater interest in the land:
  - (i) no matter whether the interest is held individually, as joint tenants or as tenants in common; and
  - (ii) no matter whether the interest is legal or equitable;
- (b) no part of the interest in land must be held as a trustee or as a beneficiary of a trust;
- (c) the land must be in Australia.

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**32 When subsidy becomes payable—occupation of house as a home (non-building loan)**

*Scope*

- (1) This section applies if the subsidised loan is:
- (a) for the purpose covered by paragraph 30(1)(a) (to buy a house and land), or to discharge another loan for that purpose; and
  - (b) not for the purpose of building work, or to discharge another loan for that purpose.

*Subsidy condition*

- (2) The Secretary must be satisfied that the subsidised borrower, or a dependant of the subsidised borrower, occupies a house on the land as a home.

Note 1: This condition need only be satisfied for the first year after the first authorisation day for the subsidy (see section 39).

Note 2: In the case of a loan for the purpose of building work, a similar occupation condition applies to the continuation of entitlement to subsidy after the completion of the building work (see section 40).

**33 When subsidy becomes payable—use of land**

- (1) The Secretary must be satisfied that the land is not used primarily for the purpose of carrying on a business, trade or profession.
- (2) If the subsidised loan relates to a unit, subsection (1) does not apply to any accompanying common property, or any other unit, held under the same strata title (or similar) system.

**34 When subsidy becomes payable—subsidy lump sum**

- (1) In addition to the other conditions in this Subdivision, all of the following conditions must be met for a subsidy lump sum to be payable to the subsidised borrower at a particular time:
- (a) the subsidised borrower must give the Secretary a request, in the approved form, for the payment of a subsidy lump sum;

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- (b) the subsidised borrower must be a member of the Defence Force;
- (c) the Secretary must be satisfied that there is a reasonable expectation that the subsidised borrower will:
  - (i) continue to be a member of the Defence Force for 1 year after the first authorisation day for the subsidy; and
  - (ii) comply with all the relevant conditions mentioned in sections 37 to 41;
- (d) the request must state a number of months (not exceeding 48) of service credit to be accessed for the purpose of section 54 (which deals with the amount of the subsidy lump sum);
- (e) the subsidised borrower must have at least the number of months standing to his or her service credit that is stated in the request;
- (f) the subsidised borrower, or the subsidised borrower and his or her partner together, must not have, at any time while the subsidised borrower has been a member of the Defence Force:
  - (i) bought an interest in land in Australia, resulting in the borrower (or his or her partner together) holding a 50% or greater interest in the land; and
  - (ii) occupied a house on the land as a home at or after the time the interest was bought.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents (for example, in a request under paragraph (1)(a)).

- (2) Paragraph (1)(f) applies in relation to an interest in land:
  - (a) no matter whether the interest is held individually, as joint tenants or as tenants in common; and
  - (b) no matter whether the interest is legal or equitable.

*Subsidised borrower is surviving partner*

- (3) In the application of this section to a person who is a subsidised borrower by virtue of being a surviving partner of a deceased partner:

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- (a) the number of months standing to the subsidised borrower's service credit is the number of months applying by the operation of sections 63 and 64; but
- (b) for a subsidy lump sum to be payable to the subsidised borrower, the borrower must otherwise meet the conditions mentioned in subsection (1) in his or her own right.

Note: A surviving partner may be entitled to subsidy by the operation of section 63.

## Subdivision C—When subsidy stops being payable

### 35 When subsidy stops being payable—scope

This Subdivision applies if, in relation to a particular entitlement period, the Secretary has (under section 27) authorised the payment of subsidy to a subsidised borrower in relation to a subsidised loan, secured by a mortgage over an interest in land.

### 36 When subsidy stops being payable—general

Subsidy stops being payable to the subsidised borrower, in relation to the entitlement period:

- (a) if an event mentioned in an item in the following table occurs; and
- (b) with effect from the start of the monthly authorisation period in which the critical time provided for that item occurs.

When subsidy stops being payable		
Item	Event	Critical time
1	All outstanding amounts due under the subsidised loan are paid	As soon as the outstanding amounts are paid
2	The subsidised borrower no longer has a service credit	As soon as the subsidised borrower no longer has a service credit
3	Subsidy becomes payable to the subsidised borrower in relation to another loan (unless subsidy is payable in relation to one of the	When subsidy becomes payable in relation to the other loan

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When subsidy stops being payable		
Item	Event	Critical time
	loans by the operation of Division 5 (subsidy for surviving partners))	
4	The Secretary is satisfied that the condition under section 37 (relating to the completion of building work) is not met	2 years after the first authorisation day for the subsidy
5	A condition mentioned in section 38 (relating to the ownership of land) is not met	As soon as the condition is not met
6	The Secretary is satisfied that the condition under section 39 or 40 (relating to occupation of the house) is not met	As soon as the condition is not met
7	The Secretary is satisfied that the condition under section 41 (relating to the use of the land) is not met	As soon as the condition is not met
8	The Secretary is satisfied that the condition under section 42 (relating to the disclosure of changes of circumstances) is not met in relation to an event	At the earlier of the following times: (a) the time the subsidised borrower becomes aware of the event; (b) the constructive knowledge time mentioned in subsection 42(3)
9	Subsidy stops being payable in accordance with a notice given by the Secretary under section 43, at the request of the subsidised borrower	On the later of the following days: (a) the day requested by the subsidised borrower; (b) a day (if any) stated by the Secretary in the notice
10	Authorisation for the payment of subsidy to the subsidised borrower is revoked in accordance with a notice given by the Secretary under subsection 44(2)	When subsidy first became payable
11	The subsidised borrower dies, unless subsidy is, or becomes, payable to the borrower's surviving partner under section 60 or 61	When the subsidised borrower dies



Section 37

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Note: The Commonwealth may recover, as overpayments, any subsidy paid to a subsidised borrower after subsidy has stopped (or is taken to have stopped) being payable to him or her (see Division 6).

**37 When subsidy stops being payable—completion of building work**

*Scope*

- (1) This section applies if the subsidised loan is for the purpose of building work, or to discharge another loan for such a purpose.

*Subsidy condition*

- (2) The building work must be completed within 2 years after the first authorisation day for the subsidy.

**38 When subsidy stops being payable—ownership of land**

The following conditions must continue to be met:

- (a) the subsidised borrower, or the subsidised borrower and his or her partner together, must hold a 50% or greater interest in the land:
- (i) no matter whether the interest is held individually, as joint tenants or as tenants in common; and
  - (ii) no matter whether the interest is legal or equitable;
- (b) no part of the interest in the land must be held as a trustee or as a beneficiary of a trust.

**39 When subsidy stops being payable—occupation of house as a home (non-building loan)**

*Scope*

- (1) This section applies if the subsidised loan is:
- (a) for the purpose covered by paragraph 30(1)(a) (to buy a house and land), or to discharge another loan for that purpose; and
  - (b) not for the purpose of building work, or to discharge another loan for such a purpose.

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*Subsidy condition*

- (2) At any time during the period covered by subsection (3), the subsidised borrower, or a partner or dependant of the subsidised borrower, must occupy a house on the land as a home.
- (3) This subsection covers the period:
  - (a) starting on the first authorisation day for the subsidy; and
  - (b) ending:
    - (i) 1 year after that day; or
    - (ii) if the Secretary is satisfied that there are service requirements, or exceptional circumstances, justifying a shorter period of occupation—at an earlier time approved by the Secretary in writing.

**40 When subsidy stops being payable—occupation of house as a home (building loan)**

*Scope*

- (1) This section applies if the subsidised loan is for the purpose of building work, or to discharge another loan for such a purpose.

*Subsidy condition*

- (2) At any time during the period covered by subsection (3), the subsidised borrower, or a partner or dependant of the subsidised borrower, must occupy a house on the land as a home.
- (3) This subsection covers the period:
  - (a) starting on the day the building work is completed; and
  - (b) ending:
    - (i) 1 year after that day; or
    - (ii) if the Secretary is satisfied that there are service requirements, or exceptional circumstances, justifying a shorter period of occupation—at an earlier time approved by the Secretary in writing.

**Note:** The building work must be completed within 2 years after the first authorisation day for the subsidy (see section 37).

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**41 When subsidy stops being payable—use of land**

- (1) The land must not be used primarily for the purpose of carrying on a business, trade or profession.
- (2) If the subsidised loan relates to a unit, subsection (1) does not apply to any accompanying common property, or any other unit, held under the same strata title (or similar) system.

**42 When subsidy stops being payable—disclosure of changes of circumstances**

*Scope*

- (1) This section applies if any of the following events occurs:
  - (a) a reasonably significant change to the agreement for the subsidised loan between the subsidised borrower and the loan provider who made the loan to the subsidised borrower, or to the conditions of the mortgage;
  - (b) a change that affects the way in which the subsidised borrower's service credit is worked out;
  - (c) a reasonably significant change to a house or permanent improvement mentioned in section 30 (including the destruction of the house or improvement), or any other reasonably significant change affecting the land;
  - (d) in a case in which the subsidised loan is for the purpose of building work, or to discharge another loan for such a purpose—the building work is completed;
  - (e) a change in the nature or extent of the interest held in the land by the subsidised borrower or his or her partner;
  - (f) in a case in which the subsidised borrower holds an interest in the land with his or her partner together (as mentioned in paragraph 38(a))—the subsidised borrower and the partner stop being partners;
  - (g) during the period covered by subsection 39(3) or 40(3)—the subsidised borrower, or a partner or dependant of the subsidised borrower, stops occupying a house on the land;

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- (h) the land starts to be used, to a reasonably significant extent, for the purpose of carrying on a business, trade or profession.
- (2) If the subsidised loan relates to a unit, paragraph (1)(h) does not apply to any accompanying common property, or any other unit, held under the same strata title (or similar) system.

#### *Subsidy condition*

- (3) The subsidised borrower must give notice of the event to the Secretary, in the approved form, within a reasonable time after the time (the ***constructive knowledge time***) the Secretary is satisfied that it is reasonable for the subsidised borrower to have become aware of the event.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (4) Without limiting subsection (3), a subsidised borrower fails to comply with the subsection even if, at the constructive knowledge time, the borrower was not aware of the event.

Note: A failure to comply with this condition is grounds for the Secretary to refuse to give a subsidy certificate on a future occasion, and to refuse authorisation for the payment of subsidy in relation to a future entitlement period (see sections 16 and 27).

### **43 When subsidy stops being payable—on request by the subsidised borrower**

- (1) The subsidised borrower may, in the approved form, request the Secretary to stop the payment of subsidy.
- (2) On receipt of a request under subsection (1), the Secretary must stop the payment of subsidy, by written notice given to the subsidised borrower.
- (3) The Secretary may, in the notice, state a day for the payment of subsidy to be stopped that is later than the day requested by the subsidised borrower.

Note: Part 5 provides for the administrative review of a decision by the Secretary to state a day in a notice under this subsection.

- (4) The Secretary must give a copy of the notice to the loan provider who made the subsidised loan to the subsidised borrower.

## **Subdivision D—Revocation and variation**

### **44 Revocation of authorisation for the payment of subsidy**

#### *Scope*

- (1) This section applies if:
- (a) the Secretary authorises the payment of subsidy to a subsidised borrower under section 27 in relation to a subsidised loan, on the basis of a subsidy certificate; and
  - (b) as a result, subsidy has been paid to the subsidised borrower during an entitlement period.

**Note:** If the payment of subsidy is authorised because the subsidised borrower is a surviving partner of a deceased partner, the subsidy certificate concerned may be a subsidy certificate given to the deceased partner or to the surviving partner.

#### *Revocation of authorisation*

- (2) The Secretary may, by written notice to the subsidised borrower, revoke the authorisation of the payment of subsidy to the subsidised borrower in relation to the entitlement period if the Secretary is satisfied that:
- (a) the subsidy certificate ought not to have been given; or
  - (b) the subsidy certificate was only given because of a false or misleading statement by the subsidised borrower (or anyone else); or
  - (c) payment of subsidy at any time during the entitlement period was only made (or continued) because of a false or misleading statement by the subsidised borrower (or anyone else).

**Note:** Part 5 provides for the administrative review of the Secretary's decision to revoke the authorisation.

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**Section 44**

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- (3) The Secretary may give a notice under subsection (2) during the entitlement period, or at any time after the end of the entitlement period.

*Effect of revocation*

- (4) If an authorisation is revoked under this section, subsidy is taken not to have become payable to the subsidised borrower during the entitlement period.

Note: The Commonwealth may recover, as overpayments, any subsidy paid to a subsidised borrower during the entitlement period if subsidy is taken not to have become payable to the borrower (see Division 6).

*Notice to loan provider*

- (5) The Secretary must give a copy of a notice under subsection (2) to the loan provider who made the loan to the subsidised borrower.

*If the subsidised borrower has died*

- (6) If the subsidised borrower has died, the Secretary may revoke the authorisation of the payment of subsidy to the subsidised borrower by giving a notice under subsection (2) to the borrower's legal personal representative.

*If the subsidised borrower is a surviving partner*

- (7) In the application of this section to a surviving partner (of a deceased partner) who is a subsidised borrower because of section 60 or 61:
- (a) a reference in paragraph (2)(c) to the payment of subsidy includes a reference to the payment of subsidy to the deceased partner during the entitlement period; and
  - (b) subsection (4) does not apply to the deceased partner's entitlement to subsidy.

Note 1: Revocation of an authorisation is grounds for the Secretary to refuse to give a subsidy certificate on a future occasion, and to refuse authorisation for the payment of subsidy in relation to a future entitlement period (see sections 16 and 27).

Note 2: If section 45 (variation of authorisation of payment of subsidy—when a person is not a member of the Reserves) applies, the authorisation of

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the payment of subsidy cannot be revoked under this section because of the operation of subsection 5(2) (which relates to when a member stops being a member of the Reserves) (see subsection 45(5)).

## **45 Variation of authorisation of payment of subsidy—when a person is not a member of the Reserves**

### *Scope*

- (1) This section applies in relation to a subsidised borrower if the Secretary is satisfied that, immediately after the end of a service year:
- (a) the Secretary, under section 27, has authorised the payment of subsidy to the subsidised borrower during an entitlement period beginning at or after the start of the service year on the basis of the borrower's eligibility as a member of the Reserves; and
  - (b) subsection 5(2) applies to the subsidised borrower's membership of the Reserves in relation to the service year; and
  - (c) by the operation of that subsection, the Secretary would (apart from this section) have the power to revoke the authorisation of the payment of subsidy to the subsidised borrower under section 44; and
  - (d) during the entitlement period, the Secretary could have given a subsidy certificate to the subsidised borrower, and subsidy on the basis of that certificate would have been payable to the borrower, otherwise than on the basis of the borrower's eligibility as a member of the Reserves.

Example 1: Paragraph (d) may apply because of the operation of subsection 5(2). Subsidy might have otherwise been payable to the subsidised borrower on the basis of the borrower's eligibility as a separated member (as the result of the person's being taken to have stopped being a member of the Reserves).

Example 2: Paragraph (d) may also apply despite the operation of subsection 5(2). If the subsidised borrower's partner is a member of the Defence Force, and the partner dies, subsidy might in any case have been payable to the borrower as the surviving partner of the deceased partner.

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**Section 45**

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*Variation of authorisation*

- (2) The Secretary may, by written notice to the subsidised borrower, vary the authorisation of the payment of subsidy to the borrower in relation to the entitlement period.

Note: Part 5 provides for the administrative review of the Secretary's decision to vary the authorisation.

- (3) The Secretary may give a notice under subsection (2) during the entitlement period, or at any time after the end of the entitlement period.

*Effect of variation*

- (4) If an authorisation is varied under this section:
- (a) subsidy is payable, and is taken to have become payable, to the subsidised borrower on the basis of the borrower's eligibility (otherwise than as a member of the Reserves) as mentioned in paragraph (1)(d); and
  - (b) subsidy is taken to have become (and continued) to be so payable (subject otherwise to this Act) with effect from the earliest time that subsidy would have been payable to the subsidised borrower as mentioned in paragraph (1)(d).

Note: If the amount of subsidy paid to the subsidised borrower during the entitlement period on the basis of the borrower's membership of the Reserves exceeds the amount of subsidy payable to the borrower as a result of the operation of this subsection, the Commonwealth may recover the amount of the excess as an overpayment (see Division 6).

*Application of section 44*

- (5) If this section applies in relation to the authorisation of the payment of subsidy to a subsidised borrower, the authorisation cannot be revoked under section 44 only because of the operation of subsection 5(2).

*Notice to loan provider*

- (6) The Secretary must give a copy of a notice under subsection (2) to the loan provider who made the loan to the subsidised borrower.



*If the subsidised borrower has died*

- (7) If the subsidised borrower has died, the Secretary may vary the authorisation of the payment of subsidy to the subsidised borrower by giving a notice under subsection (2) to the borrower's legal personal representative.

## Division 2—Service credits

### 46 Working out service credits

- (1) Whether a person has a *service credit* at a particular time (the *subsidy time*) for the purposes of an entitlement period, and the length of time standing to the person's service credit, is worked out as follows.

*Method statement*

- Step 1. Work out the person's accrued subsidy period under section 47, in completed months, as at the subsidy time.
- Step 2. Add together the following:
- (a) if a subsidy lump sum has become payable to the person—the number of months of service credit accessed for the subsidy lump sum (see section 54);
  - (b) in any case—the number of months in respect of which monthly subsidy has been payable in relation to the person under this Act, as at the subsidy time;
  - (c) in any case—the number of months in respect of which subsidy has been payable in relation to the person under the *Defence Force (Home Loans Assistance) Act 1990* and the *Defence Service Homes Act 1918*, as at the subsidy time.
- Step 3. If the step 1 result exceeds the step 2 result, the person has a *service credit* at the subsidy time.
- Step 4. The number of months (if any) by which the step 1 result exceeds the step 2 result is the number of months standing to the person's service credit.

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- (2) Step 2 of the method statement in subsection (1):
- (a) includes months during a previous entitlement period or periods; and
  - (b) includes a reference to a subsidy lump sum that became payable to a person during a previous entitlement period; and
  - (c) includes months during which subsidy was paid (under this or another Act) whether or not the months are continuous.

#### 47 Service credits—working out accrued subsidy periods

- (1) A person's ***accrued subsidy period***, at a particular time, is the period that applies to the person in accordance with the following table.

<b>Accrued subsidy period</b>			
<b>Item</b>	<b>If the person is eligible at the time ...</b>	<b>the person's accrued subsidy period at the time is ...</b>	<b>up to a maximum period of ...</b>
1	As a serving member (see section 8)	The number of months of effective service the person has completed since becoming eligible as a serving member	240 months (20 years)
2	As an incapacitated member (see section 9)	The greater of the following: (a) the number of months of effective service the person had completed when he or she stopped being a member of the Defence Force; (b) 96 months (8 years)	240 months (20 years)
3	As a rejoining incapacitated member (see section 10), or a rejoining member (see section 11), who again becomes a member of the Defence Force by: (a) becoming a member of the Reserves	The period worked out by adding: (a) the number of months standing to the person's service credit immediately before he or she stopped being a member of the Defence Force; and (b) the number of months of	240 months (20 years)

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<b>Accrued subsidy period</b>			
<b>Item</b>	<b>If the person is eligible at the time ...</b>	<b>the person's accrued subsidy period at the time is ...</b>	<b>up to a maximum period of ...</b>
	within 2 years after stopping being a member of the Defence Force; or (b) becoming a member of the Permanent Forces within 5 years after stopping being a member of the Defence Force	effective service the person has completed since again becoming a member of the Defence Force	
4	As a rejoining incapacitated member (see section 10), or a rejoining member (see section 11), who: (a) again becomes a member of the Defence Force by becoming a member of the Reserves no earlier than 2 years, and no later than 5 years, after stopping being a member of the Defence Force; but (b) does not become a member of the Permanent Forces within 5 years after stopping being a member of the Defence Force	The number of months of effective service the person has completed since again becoming a member of the Defence Force	240 months (20 years)
5	As a separated member (see section 12)	The number of months standing to the person's service credit as	240 months (20 years)

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<b>Accrued subsidy period</b>			
<b>Item</b>	<b>If the person is eligible at the time ...</b>	<b>the person's accrued subsidy period at the time is ...</b>	<b>up to a maximum period of ...</b>
		at the time when the person stopped being a member of the Defence Force	
6	In any of the capacities listed in items 1 to 5, if the person has performed warlike service	The period worked out by adding: (a) the person's accrued subsidy period under the other item; and (b) the person's additional months of subsidy under section 48	300 months (25 years)
7	As an old scheme member (see section 13)	The number of months in the person's entitlement period under section 23 or 24 of the <i>Defence Force (Home Loans Assistance) Act 1990</i> as at 30 June 2008  Note: This entitlement period has an inbuilt maximum period.	

Note: Section 7 deals with when someone is *eligible*. A person may be eligible in different capacities at different times (see sections 8 to 13). A person's eligibility as recorded on his or her subsidy certificate may not reflect the person's current eligibility.

*Effective service covered*

- (2) This section covers effective service in the Defence Force whether that service takes place before, on or after the commencing day, unless the context otherwise requires.

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**48 Service credits—additional allowance for warlike service**

*Scope*

- (1) This section applies to a person who has performed warlike service.

*Additional months of subsidy*

- (2) For the purpose of item 6 of the table in subsection 47(1), the person's additional months of subsidy are worked out in accordance with the following table.

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<b>Additional months of subsidy—warlike service</b>		
<b>Item</b>	<b>Period, or total of periods, during which the person performed warlike service</b>	<b>Additional months of subsidy</b>
1	3 months or less	24 (2 years)
2	More than 3 months and 6 months or less	36 (3 years)
3	More than 6 months and 9 months or less	48 (4 years)
4	More than 9 months	60 (5 years)

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Example 1: A person who has performed a total of 4 days warlike service is entitled to 24 additional months (2 years) of subsidy.

Example 2: A person who has performed a total of 3 months and 6 days warlike service is entitled to 36 additional months (3 years) of subsidy.

Example 3: A person who has performed a total of 9 months and one day warlike service is entitled to 60 additional months (5 years) of subsidy.

*Repatriation from warlike service due to wounds, injury or illness*

- (3) If the person is repatriated from warlike service because of wounds, injury or illness, subsection (2) applies as if the person had continued to perform warlike service until the end of the period the Secretary considers the person could reasonably have expected (at the time of repatriation) to have continued to have undertaken warlike service, but for the repatriation.

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- (4) In making a decision under subsection (3), the Secretary must have regard to the following:
- (a) information given to the person about the expected length of warlike service;
  - (b) information given to the commander of the person's unit about the expected length of the warlike service;
  - (c) any other relevant matter.

Note: Part 5 provides for the administrative review of a decision to determine the end of a period of warlike service under subsection (3).

## Division 3—Amount of subsidy

### Subdivision A—Monthly subsidy

#### 49 Working out monthly subsidy

If subsidy is payable to a subsidised borrower in relation to a subsidised loan during an entitlement period, the amount of subsidy (the subsidised borrower's *monthly subsidy*) for each month during the period is worked out in accordance with the following formula:

$$\text{Monthly subsidy} = 37.5\% \times \text{Average monthly interest}$$

Note: The average monthly interest is worked out under section 50.

#### 50 Monthly subsidy—average monthly interest

- (1) *Average monthly interest* is the amount worked out in accordance with the following formula:

$$\text{Average monthly interest} = \frac{(\text{Monthly repayment} \times 300) - \text{Loan capital}}{300}$$

Note: The loan capital is worked out under section 51.

- (2) The *monthly repayment*, for the formula in subsection (1), is the amount worked out in accordance with the formula:

$$\text{Monthly repayment} = \text{Loan capital} \times \left( \frac{\text{Median interest rate}}{1 - (1 + \text{Median interest rate})^{-300}} \right)$$

Note 1: The loan capital is worked out under section 51.

Note 2: The median interest rate is worked out under section 53.



## 51 Monthly subsidy—loan capital

### *Loan capital*

- (1) The ***loan capital*** in respect of which subsidy is payable in relation to a subsidised loan during an entitlement period is the lesser of the following amounts:
- (a) the capital amount owing on the subsidised loan on the first authorisation day for that period;
  - (b) the amount of the loan limit for the subsidised loan under this section, as applicable from time to time during the entitlement period.

### *Loan limit—general rule*

- (2) The loan limit at a particular time (the ***loan limit time***) for a subsidised loan to a subsidised borrower who meets a description in an item in the following table at the loan limit time is as set out in the item according to the years of effective service completed (whether before or after the commencing day) by the borrower as at the loan limit time.

<b>Loan limits</b>						
<b>Item</b>	<b>Subsidised borrower</b>	<b>Effective service for less than 8 years</b>	<b>Effective service for 8 years or more, and less than 12 years</b>	<b>Effective service for 12 years or more, and less than 16 years</b>	<b>Effective service for 16 years or more, and less than 20 years</b>	<b>Effective service for 20 years or more</b>
1	A member of the Permanent Forces who is eligible as a serving member (see section 8) or rejoining	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

**Part 4** Subsidy

**Division 3** Amount of subsidy

**Section 51**

<b>Loan limits</b>						
<b>Item</b>	<b>Subsidised borrower</b>	<b>Effective service for less than 8 years</b>	<b>Effective service for 8 years or more, and less than 12 years</b>	<b>Effective service for 12 years or more, and less than 16 years</b>	<b>Effective service for 16 years or more, and less than 20 years</b>	<b>Effective service for 20 years or more</b>
	member (see section 11)					
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
Note: For the applicable average house price, see subsection (3).						

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*Loan limit—applicable average house price*

- (3) The average house price in relation to a loan limit for a subsidised loan during an entitlement period is the average house price applicable on the first authorisation day for that period.

Note: The average house price is determined under section 52.

*Loan limit—partners who are subsidised borrowers in relation to a single subsidised loan*

- (4) If 2 subsidised borrowers who are partners are parties to a single subsidised loan, the amount of the loan limit for the loan is the sum of the amounts of the loan limits that would apply in relation to each of the subsidised borrowers if he or she were the sole party to the loan.
- (5) The amount of the loan limit for a subsidised loan is not affected if:
- (a) it is covered by subsection (4) at a particular time; and
  - (b) either party to the subsidised loan dies after that time.

Note: Entitlement to subsidy may be transferred from a deceased partner to a surviving partner in certain circumstances, without the requirement for the surviving partner to obtain a new subsidy certificate (see sections 60 and 61).

## **52 Monthly subsidy—average house price**

- (1) The Minister may, by legislative instrument, determine an average house price for the purposes of this Act in relation to a financial year.
- (2) The Minister must, in making a determination under subsection (1), take into account national weighted average house price data published by the Australian Bureau of Statistics (in whatever form the data is published from time to time).
- (3) In this Act:

***average house price***, in relation to a financial year, means the average house price determined under this section.

**Part 4 Subsidy**

**Division 3 Amount of subsidy**

Section 53

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**53 Monthly subsidy—median interest rate**

- (1) The Minister may, by legislative instrument, determine:
- (a) an interest rate for the purpose of subsection (2); or
  - (b) a formula or other method for working out an interest rate for the purpose of subsection (2).

- (2) In this Act:

*median interest rate* is the lower of the following:

- (a) the interest rate determined under paragraph (1)(a), or worked out in accordance with a determination under paragraph (1)(b);
- (b) an interest rate prescribed by the regulations.

**Subdivision B—Subsidy lump sum**

**54 Subsidy lump sum payments**

- (1) If a subsidy lump sum is payable to a subsidised borrower in relation to a subsidised loan, the amount of the subsidy lump sum is worked out in accordance with the following formula:

$$\text{Subsidy lump sum} = \frac{\text{Notional monthly subsidy (see subsection (2))}}{\text{Service credit accessed (see subsection (3))}} \times$$

- (2) The *notional monthly subsidy*, for the formula in subsection (1), is the amount of monthly subsidy that would have been payable to the subsidised borrower in relation to the loan under section 49 on the following assumptions:
- (a) that the subsidised borrower had not requested the payment of a subsidy lump sum;
  - (b) that the subsidised borrower's loan limit under section 51 is 40% of the average house price.
- (3) The *service credit accessed*, for the formula in subsection (1), is the number of months standing to the subsidised borrower's service credit that is stated in the request for a subsidy lump sum under section 34.

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Note: Section 34 provides that the subsidised borrower can access no more than 48 months of his or her service credit for the purposes of obtaining a subsidy lump sum.

## **Division 4—How subsidy is paid**

### **55 How subsidy is paid—scope**

This Division applies if the Secretary, under section 27, authorises the payment of subsidy to a subsidised borrower in relation to a subsidised loan made by a loan provider.

### **56 How subsidy is paid—to loan provider for the benefit of subsidised borrower**

- (1) The Secretary must pay the subsidy to the loan provider, in accordance with section 57 or 58, by way of a payment into the subsidised borrower's subsidised loan account for the benefit of the borrower.
- (2) The loan provider must ensure that the subsidised borrower receives the benefit of the payment under subsection (1).

### **57 How subsidy is paid—monthly subsidy**

- (1) If monthly subsidy is payable to the subsidised borrower, the Secretary must pay the subsidy, as worked out under section 49, to the loan provider on a monthly basis in accordance with:
  - (a) the loan provider agreement; and
  - (b) either:
    - (i) if, for the purposes of section 81, a senior employee of an authorised Commonwealth contractor is performing the Secretary's functions under this Division under a delegation—the agreement mentioned in subsection 81(3); or
    - (ii) in any other case—a determination made by the Minister for the purposes of this section.
- (2) An amount of monthly subsidy may be paid to a subsidised borrower only if subsidy is payable to the borrower as monthly

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subsidy during the most recently ended monthly authorisation period (see subsection (3)).

Note: See section 28 for when subsidy becomes payable, and section 36 for when subsidy stops being payable.

- (3) The *monthly authorisation period* begins at the start of a day of one month, and ends immediately before the start of a day (the *authorisation day*) of the next month, as worked out in accordance with:
- (a) if, for the purposes of section 81, a senior employee of an authorised Commonwealth contractor is performing the Secretary's functions under this Division under a delegation—the agreement mentioned in subsection 81(3); or
  - (b) in any other case—a determination made by the Minister for the purposes of this section.
- (4) A determination under subparagraph (1)(b)(ii) or paragraph (3)(b) is a legislative instrument.

**58 How subsidy is paid—subsidy lump sum**

- (1) If a subsidy lump sum is payable to a subsidised borrower, the Secretary must pay the amount, as worked out under section 54, to the loan provider in accordance with:
- (a) the loan provider agreement; and
  - (b) either:
    - (i) if, for the purposes of section 81, a senior employee of an authorised Commonwealth contractor is exercising the Secretary's functions under this Division under a delegation—the agreement mentioned in subsection 81(3); or
    - (ii) in any other case—a determination made by the Minister for the purposes of this section.
- (2) A subsidy lump sum may be paid to a subsidised borrower only if subsidy is payable to the borrower as a subsidy lump sum during the most recently ended monthly authorisation period (see subsection 57(3)).

Note: See section 28 for when subsidy becomes payable.

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- (3) A determination under subparagraph (1)(b)(ii) is a legislative instrument.



## **Division 5—Subsidy for surviving partners**

### **Subdivision A—Surviving partners of subsidised borrowers**

#### **59 Surviving partners of subsidised borrowers—scope**

This Subdivision applies if:

- (a) a person dies; and
- (b) immediately before death, the person (the *deceased*) was a subsidised borrower in relation to a subsidised loan; and
- (c) the deceased has a surviving partner; and
- (d) immediately before the deceased's death, the surviving partner was also a party to the subsidised loan; and
- (e) the deceased was not a subsidised borrower in relation to the subsidised loan by virtue only of being the surviving partner of another person.

Note: The person who dies is the *deceased partner* of his or her surviving partner (see section 4).

#### **60 Surviving partners of subsidised borrowers—joint interests in land**

##### *Scope*

- (1) This section applies if, immediately before the death of the deceased partner, the interest in land by virtue of which subsidy was payable to the deceased partner was held by the deceased partner and the surviving partner as joint tenants.

##### *Transfer of subsidy entitlement*

- (2) At the time of death:
  - (a) the entitlement of the deceased partner to the payment of subsidy in relation to the subsidised loan is transferred to the surviving partner; and
  - (b) subsidy becomes payable to the surviving partner accordingly.

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*Application of this Part to surviving partner*

- (3) This Part applies to the surviving partner in the same way as it would have applied to the deceased partner (had he or she not died), subject to section 64.

Note: Section 64 provides for how this Part applies to the surviving partner.

*Continuity of entitlement period*

- (4) The transfer under subsection (2) does not break the continuity of the entitlement period in respect of which subsidy had been payable to the deceased partner immediately before his or her death.

**61 Surviving partners of subsidised borrowers—interest in land inherited by surviving partner etc.**

*Scope*

- (1) This section applies if:
- (a) immediately before the death of the deceased partner, the interest in land by virtue of which subsidy was payable to the deceased partner was not held by the deceased partner and the surviving partner as joint tenants; and
  - (b) that interest in land is, at a particular time (the **transfer time**), transferred under the deceased partner's will, or an intestacy law, to the surviving partner; and
  - (c) that interest in land is so transferred subject to the subsidised loan.

*Suspension of subsidy payments*

- (2) Payment of subsidy in relation to the subsidised loan is suspended for the period starting at the time of the deceased partner's death and ending at the transfer time.

*Entitlement to subsidy with effect from time of death*

- (3) However:

- (a) the entitlement of the deceased partner to the payment of subsidy in relation to the subsidised loan is taken to have been transferred to the surviving partner with effect from the time of death; and
- (b) subsidy is taken to have become payable to the surviving partner accordingly, with effect from the time of the deceased partner's death.

*Application of this Part to surviving partner*

- (4) At and after the time of the deceased partner's death, this Part is taken to have applied (and continues to apply) to the surviving partner in the same way as it would have applied to the deceased partner (had he or she not died), subject to section 64.

Note: Section 64 provides for how this Part applies to the surviving partner.

*Continuity of entitlement period*

- (5) The suspension and transfer (under subsections (2) and (3)) does not break the continuity of the entitlement period in respect of which subsidy had been payable to the deceased partner immediately before his or her death.

## **62 Surviving partners of subsidised borrowers—interest in land not inherited by surviving partner etc.**

*Scope*

- (1) This section applies if:
  - (a) immediately before the death of the deceased partner, the interest in land by virtue of which subsidy was payable to the deceased partner was not held by the deceased partner and the surviving partner as joint tenants; and
  - (b) that interest in land is, at a particular time (the *transfer time*), transferred under the deceased partner's will, or an intestacy law; and
  - (c) that interest in land is so transferred:
    - (i) to a person other than the surviving partner; or

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- (ii) free of the subsidised loan.

*Suspension of subsidy payments*

- (2) Payment of subsidy in relation to the subsidised loan is suspended for the period starting at the time of the deceased partner's death and ending at the transfer time.

*Subsidy taken to have stopped being payable*

- (3) Subsidy is taken to have stopped being payable to the deceased partner with effect from the start of the monthly authorisation period during which the deceased partner died.

**Subdivision B—Surviving partners holding subsidy certificates**

**63 Subsidy for surviving partners—if they hold subsidy certificates**

*Scope*

- (1) This section applies if:
- (a) a person dies; and
  - (b) the person has a surviving partner; and
  - (c) the surviving partner holds a subsidy certificate given under section 18 that is in force; and
  - (d) subsidy is not payable to the surviving partner because of section 60 or 61.

Note 1: The person who dies is the **deceased partner** of his or her surviving partner (see section 4).

Note 2: Sections 60 and 61 provide for entitlement to subsidy to be transferred from a deceased partner to a surviving partner in certain circumstances, without the requirement for the surviving partner to obtain a new subsidy certificate.

*Application of this Part to surviving partner*

- (2) This Part applies to the surviving partner in the same way as it would have applied to the deceased partner (had he or she not died), subject to section 64.

Note: Section 64 provides for how this Part applies to the surviving partner.

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*Section 61 subsidy becomes payable*

- (3) However, if subsidy becomes payable to the surviving partner because of section 61 (with effect from the time of the death of the deceased partner), any subsidy paid to the surviving partner because of the operation of subsection (2) is taken not to have become payable.

Note: If subsidy is taken not to have become payable to a surviving partner because of this subsection, the Commonwealth may recover the amount of any payments of subsidy during the entitlement period from the surviving partner (see Division 6).

### **Subdivision C—Application of this Part**

#### **64 Subsidy for surviving partners—how this Part applies**

*Scope*

- (1) This section applies if subsidy is payable to a surviving partner of a deceased partner because of section 60 or 61, or by the operation of section 63.

*How this Part applies to surviving partner*

- (2) For the purposes of this Part, unless otherwise expressly provided, the surviving partner must be treated in the same way as the deceased partner, assuming that:
- (a) the deceased partner had not died; and
  - (b) the deceased partner were eligible as provided in the following table.

Treatment of surviving partner		
Item	if ...	then ...
1	The deceased partner: (a) was a member of the Defence Force at the time of death; and (b) died because of a compensable condition	The deceased partner is assumed to have become eligible as an incapacitated member (see section 9) at the time of death

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### Division 5 Subsidy for surviving partners

#### Section 65

Treatment of surviving partner		
Item	if ...	then ...
2	Any other case applies	The deceased partner is assumed: (a) to have continued to be eligible in the same capacity as at the time of death; but (b) only to have the number of months standing to his or her service credit that he or she had completed at the time of death
<hr/>		
Note:	This section, together with sections 60, 61 and 63, ensures (among other things) that the deceased partner's accrued subsidy period and loan limit may be used in determining the surviving partner's entitlement to subsidy under this Part.	
Example:	Assume that subsidy has been payable to a person. The person dies, and this Part applies to the person's surviving partner.  Under subsection 46(1), the number of months in respect of which subsidy had been payable to the deceased partner (as at the time of death) must be taken into account in working out the surviving partner's service credit (see step 2 of the method statement in that subsection).  In addition, the number of months in respect of which subsidy has continued to be payable to the surviving partner must also be taken into account in working out the surviving partner's service credit (because after the death of the person, this Part applies to the surviving partner in the same way as it would have applied to the deceased partner).	

#### 65 Subsidy for surviving partners—if surviving partner eligible in his or her own right etc.

To remove doubt, this Division applies:

- (a) whether or not the surviving partner of the deceased partner is eligible under Part 2 in his or her own right; and
- (b) whether or not subsidy is payable to the surviving partner of the deceased partner in a capacity other than as surviving partner.

## **Division 6—Recovery of overpayments**

### **66 Recovery of overpayments—scope**

- (1) This Division applies if:
  - (a) the Secretary has paid an amount (the ***overpaid amount***) to a loan provider as subsidy, by way of a payment into a subsidised loan account for the benefit of a subsidised borrower (the ***debtor***); but
  - (b) the overpaid amount is not payable to the debtor under this Act.
- (2) This Division applies in relation to a debtor who is not, or who has stopped being, a subsidised borrower as if the person were a subsidised borrower.

### **67 Recovery of overpayments—amount payable**

- (1) The debtor must pay the amount (the ***due amount***) covered by subsection (2) to the Commonwealth.
- (2) The amount covered by this subsection is the sum of the following:
  - (a) the overpaid amount;
  - (b) interest, at the general interest charge rate per day, on so much of the overpaid amount as remains unpaid from time to time after the overpaid amount was paid to the loan provider.
- (3) In this section:

***general interest charge rate*** means the general interest charge rate worked out under section 8AAD of the *Taxation Administration Act 1953*.

Note: The debt may be reduced (or discharged) under section 68 or 69.

**Part 4** Subsidy

**Division 6** Recovery of overpayments

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**68 Recovery of overpayments—from subsidised loan account**

- (1) The Secretary may, by notice in writing to the loan provider, recover the due amount (or a part of the due amount) by requiring the loan provider to:
  - (a) add an amount equal to the due amount (or part) to the principal outstanding of the debtor's subsidised loan; and
  - (b) pay the due amount (or part) to the Commonwealth.
- (2) If the loan provider receives a notice under subsection (1), the loan provider must comply with the notice in relation to the lesser of the following amounts (the *loan account amount*):
  - (a) the amount stated in the notice;
  - (b) the amount available for payment out of the debtor's subsidised loan account in accordance with the terms of the debtor's subsidised loan.
- (3) Payment by the loan provider to the Secretary of the loan account amount is, to the extent of the payment, a discharge of any liability of the debtor to the Commonwealth under this Division.
- (4) Section 67 applies in relation to the due amount, at the time the loan account amount is paid, as if:
  - (a) so much of the overpaid amount (the *current overpaid amount*) as at that time remains unpaid were reduced by the loan account amount; and
  - (b) if the loan account amount exceeds the current overpaid amount—the amount of interest covered by paragraph 67(2)(b) were reduced by the amount of the excess.

**69 Recovery of overpayments—from sale of interest in land**

- (1) The loan provider must pay to the Commonwealth the amount covered by subsection (2), if:
  - (a) the loan provider sells an interest in land; and
  - (b) the sale is by way of enforcing a mortgage securing the subsidised loan or another loan to the debtor.



- (2) This subsection covers the lesser of the following amounts (the ***land sale amount***):
  - (a) the part of the proceeds of the sale that, apart from this subsection, would have been payable by the loan provider to the debtor;
  - (b) the unpaid part of the due amount.
- (3) Payment by the loan provider to the Commonwealth of the land sale amount is, to the extent of the payment, a discharge of any liability:
  - (a) of the debtor to the Commonwealth; and
  - (b) of the loan provider to the debtor under the mortgage or the loan agreement.
- (4) Section 67 applies in relation to the due amount, at the time the land sale amount is paid, as if:
  - (a) so much of the overpaid amount (the ***current overpaid amount***) as at that time remains unpaid were reduced by the land sale amount; and
  - (b) if the land sale amount exceeds the current overpaid amount—the amount of interest covered by paragraph 67(2)(b) were reduced by the amount of the excess.

## **70 Recovery of overpayments—in a court**

The Secretary may, on behalf of the Commonwealth, recover the due amount from the debtor in a court of competent jurisdiction as a debt due to the Commonwealth.

**Part 5** Review of decisions

**Division 1** Internal review

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**Part 5—Review of decisions**

**Division 1—Internal review**

**71 Internal review—*reviewable decisions***

Each of the following decisions is a *reviewable decision*:

<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
1	To refuse to consider an application for a subsidy certificate	Subsection 15(2)
2	To refuse to give a subsidy certificate	Subsection 16(3)
3	To vary a subsidy certificate	Subsection 24(1)
4	To cancel a subsidy certificate	Section 25
5	To refuse to authorise the payment of subsidy	Subsection 27(2)
6	To refuse to authorise the continued payment of monthly subsidy	Subsection 27(4)
7	In a notice under section 43, to state a day for subsidy to stop being payable to a person that is later than the day requested by the person	Subsection 43(3)
8	To revoke an authorisation of the payment of subsidy	Subsection 44(2)
9	To vary an authorisation of the payment of subsidy (when this Act applies as if a subsidised borrower has not been a member of the Reserves)	Subsection 45(2)
10	To determine the end of a period of warlike service	Subsection 48(3)

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<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
11	To recover a due amount in the way provided by section 68	Subsection 68(1)
12	To refuse to extend the time for making an application for review of a decision	Subsection 74(3)
13	A decision under the regulations that is declared by the regulations to be a reviewable decision for the purposes of this section	The provision of the regulations under which the decision is made

**72 Internal review—persons whose interests are affected**

A reference in this Part to a person whose interests are affected by a reviewable decision does not include a reference to a declared loan provider.

**73 Internal review—notice of reviewable decision and review rights**

- (1) The Secretary must take such steps as are reasonable in the circumstances to give notice in writing, to each person whose interests are affected by a reviewable decision, of:
  - (a) the making of the decision; and
  - (b) the person's right to have the decision reviewed under this Part.
- (2) The notice must include reasons for the decision.
- (3) A failure to comply with this section does not affect the validity of the decision.

**74 Internal review—applications for review of reviewable decisions**

- (1) A person whose interests are affected by a reviewable decision may apply to the Secretary for review of the decision.
- (2) An application must be in the approved form.

## Part 5 Review of decisions

### Division 1 Internal review

#### Section 75

Note: Section 77 deals with approved forms.

- (3) An application for review of a reviewable decision must be made within 28 days after the person is notified of the decision under section 73, or such longer period as the Secretary allows, either before or after the end of that period.

#### 75 Internal review—review of reviewable decisions

- (1) After receiving an application for review of a reviewable decision, the Secretary must cause the decision to be reviewed by the relevant person (the **reviewer**) provided in the following table:

Reviewer of reviewable decisions		
Item	If the person who made the reviewable decision is ...	the reviewer of the reviewable decision is ...
1	The Secretary personally	The Minister
2	A delegate of the Secretary	Either: (a) the Secretary personally; or (b) a delegate of the Secretary who was not involved in making the reviewable decision

- (2) After reviewing the reviewable decision, the reviewer must make a decision (an **internal review decision**):
  - (a) confirming the reviewable decision; or
  - (b) varying the reviewable decision; or
  - (c) setting aside the reviewable decision and substituting a new decision.

Note: An internal review decision is reviewable by the Administrative Appeals Tribunal (see Division 2). Under the *Administrative Appeals Tribunal Act 1975*, notice must be given to persons whose interests are affected by an internal review decision.

- (3) An internal review decision takes effect:
  - (a) on a day, provided in the internal review decision, that is after the internal review decision was made; or

- (b) if a day is not so provided—on the day on which the internal review decision was made.

## **Division 2—External review**

### **76 External review—review by Administrative Appeals Tribunal of internal review decisions**

- (1) Application may be made to the Administrative Appeals Tribunal for review of an internal review decision.
- (2) A declared loan provider is not entitled to apply to the Administrative Appeals Tribunal for review of an internal review decision.

## Part 6—Administration

### 77 Approved forms

- (1) This section applies if this Act requires a thing to be in the approved form.
- (2) To be in the *approved form*, the thing must:
  - (a) be in writing in a form approved by the Secretary; and
  - (b) include the information required by the form; and
  - (c) include any other material (including documents) required by the form.
- (3) The Secretary may approve, in writing, a form for the purposes of paragraph (2)(a).

### 78 Declared loan providers

- (1) The Minister may declare a body corporate to be a declared loan provider for the purposes of this Act if the Commonwealth and the body have entered into a loan provider agreement.

#### *Declaration takes effect immediately*

- (2) A declaration under this section takes effect immediately after it is made.

#### *Revoking declarations*

- (3) The Minister may revoke a declaration made under subsection (1).
- (4) If subsidy becomes payable to a subsidised borrower in relation to a loan made by a declared loan provider and the declaration of the loan provider is later revoked, the revocation does not affect:
  - (a) the subsidised borrower's entitlement to the payment of subsidy in relation to the loan; or

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- (b) if the subsidised borrower dies—the entitlement of a surviving partner of the subsidised borrower to subsidy in relation to the loan by the operation of section 60 or 61.
- (5) To avoid doubt, the Minister may revoke a declaration under this section whether or not the loan provider agreement mentioned in subsection (1) is in force.
- (6) In this Act:

***declared loan provider*** means a loan provider declared under this section.

## 79 Use and disclosure of personal information

- (1) This section applies to personal information about any of the following people:
  - (a) an applicant for a subsidy certificate;
  - (b) a person who has been given a subsidy certificate (whether or not the certificate is in force);
  - (c) a person who is, or has been, a subsidised borrower;
  - (d) a person who is, or has been, a partner or a dependant of a person covered by paragraph (a), (b) or (c).
- (2) A person covered by subsection (3) may, for a purpose prescribed by the regulations:
  - (a) use the information; or
  - (b) disclose the personal information to another person covered by that subsection.
- (3) This subsection covers the following people:
  - (a) the Secretary;
  - (b) a delegate of the Secretary under section 81;
  - (c) a delegate of the Secretary under the *Defence Force (Home Loans Assistance) Act 1990* (the **1990 Act**) or the *Defence Service Homes Act 1918* (the **1918 Act**);
  - (d) a loan provider, if the loan provider has:
    - (i) received an application for a subsidised loan from the person mentioned in paragraph (1)(b) of this section; or



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- (ii) made a subsidised loan to the person mentioned in paragraph (1)(c) of this section;
  - (e) the Bank as defined under section 3 of the 1990 Act, if the Bank has:
    - (i) received an application for a subsidised loan (as defined under section 3 of the 1990 Act) from the person mentioned in paragraph (1)(b) of this section; or
    - (ii) made a subsidised loan (as defined under section 3 of the 1990 Act) to the person mentioned in paragraph (1)(c) of this section;
  - (f) a credit provider as defined under section 4 of the 1918 Act, if the credit provider has:
    - (i) received an application for a subsidised advance (as defined under section 4 of the 1918 Act) from the person mentioned in paragraph (1)(b) of this section; or
    - (ii) made a subsidised advance (as defined under section 4 of the 1918 Act) to the person mentioned in paragraph (1)(c) of this section.
  - (4) The use and disclosure of personal information under subsection (2) is taken to be authorised by law for the purposes of:
    - (a) the *Privacy Act 1988*; and
    - (b) any provision of a law of a State or Territory that provides that personal information may be used or disclosed if the use or disclosure is authorised by law.
- Note: The authorisation under this subsection is only for the use and disclosure of personal information for a prescribed purpose mentioned in subsection (2).
- (5) The regulations may prescribe circumstances in which a person may, or must not, use or disclose personal information for the purposes of this section.
  - (6) In this section:

***personal information*** has the same meaning as in the *Privacy Act 1988*.

Section 80

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**80 Delegation of Minister's power to make certain determinations**

- (1) The Minister may, by signed instrument, delegate to the Secretary, or to an SES employee or an acting SES employee in the Department, the Minister's power:
- (a) to determine an average house price under section 52; or
  - (b) to make a determination under section 53 (which provides for the median interest rate).

Note: *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, a delegate under subsection (1) must comply with any directions of the Minister.

**81 Delegation of Secretary's powers and functions**

*Secretary may delegate to Defence Force officers or SES etc.*

- (1) The Secretary may, by signed instrument, delegate any of the powers or functions of the Secretary under this Act or the regulations to any of the following:
- (a) an officer of the Navy who holds the rank of Commodore or a higher rank;
  - (b) an officer of the Army who holds the rank of Brigadier or a higher rank;
  - (c) an officer of the Air Force who holds the rank of Air Commodore or a higher rank;
  - (d) an SES employee or acting SES employee in the Department.

Note: *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

*Secretary may delegate to authorised Commonwealth contractor*

- (2) The Secretary may, by signed instrument, delegate to a senior employee of a person (the ***authorised Commonwealth contractor***) covered by subsection (3) any or all of the Secretary's functions or powers under this Act or the regulations, other than a power or function under:

## Section 81

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- (a) section 73, 74 or 75 (review of decisions); or
  - (b) section 77 (approval of forms).
- (3) This subsection covers a person who provides, or proposes to provide, services for the purposes of this Act to the Commonwealth under an agreement that has been entered into:
- (a) if the person is a Commonwealth agency—with the Department; or
  - (b) if the person is not a Commonwealth agency—with the Commonwealth.

*Delegate subject to direction of Secretary*

- (4) In exercising powers or functions under a delegation, a delegate under subsection (1) or (2) must comply with any directions of the Secretary.

*Section 70 of the Crimes Act 1914*

- (5) For the purposes of the application of the definition of **Commonwealth officer** in subsection 3(1) of the *Crimes Act 1914* to section 70 of that Act, a person who performs functions, or exercises powers, under a delegation under subsection (2) is taken to be a person who performs services for the Commonwealth.

*Meaning of senior employee*

- (6) In this section:

**senior employee**, of the authorised Commonwealth contractor, means:

- (a) if the authorised Commonwealth contractor is a Commonwealth agency—an SES employee or acting SES employee in the agency; or
- (b) in any case—an employee of the contractor whose skills and responsibilities are equivalent to, or exceed, the skills and responsibilities expected of an SES employee.

Note: **SES employee** and **acting SES employee** are defined in section 17AA of the *Acts Interpretation Act 1901*.

## Section 82

### 82 Alteration of rights

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A right to receive the benefit of subsidy under this Act is granted on the basis that:

- (a) the right may be terminated under section 27 (which deals with when the payment of subsidy stops being authorised) or section 44 (which deals with the revocation of authority for the payment of subsidy); and
- (b) the right may be varied under section 45 (which deals with certain persons who stop being members of the Reserves) or by the operation of Division 3 of Part 4 (which deals with the amount of subsidy); and
- (c) the right may be cancelled, revoked, terminated or varied by or under later legislation; and
- (d) no compensation is payable if the right is cancelled, revoked, terminated or varied as mentioned in any of the above paragraphs.

### 83 Receipt and custody of public money by contractor

- (1) If an agreement covered by subsection (2) provides for an arrangement for the receipt or custody of public money by a person who is an outsider for the purposes of section 12 of the *Financial Management and Accountability Act 1997*, the arrangement is authorised for the purposes of that section.
- (2) This subsection covers the following:
  - (a) a loan provider agreement;
  - (b) an agreement mentioned in subsection 81(3).

### 84 Appropriation

The following payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) payments of subsidy under this Act;
- (b) any taxes payable in respect of payments of subsidy under this Act.

Section 85

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**85 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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*[Minister's second reading speech made in—  
House of Representatives on 28 May 2008  
Senate on 16 June 2008]*

(111/08)

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