



Home Deposit Assistance Act 1982

Act No. 40 of 1982 as amended

This compilation was prepared on 24 May 2001
taking into account amendments up to Act No. 137 of 2000

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to assist persons to purchase or build their own homes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Home Deposit Assistance Act 1982*.

2 Commencement [see Note 1]

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

3 Objects of Act

The objects of this Act are to encourage and assist persons to purchase or build their own homes, and, in the construction and the administration of this Act, regard shall be had to those objects.

Part II—Interpretation

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

amount of the prescribed earnings, in relation to a sole applicant or joint applicants, means the amount of the prescribed earnings of the applicant or applicants as defined in section 33.

applicant means a person who, in accordance with subsection 16(2), signs, or is deemed by virtue of a direction under subsection 16(3) to have signed, an application, other than a person in respect of whom a direction under section 5 is in force in relation to that application.

application means an application for a grant.

approved interest means:

- (a) an estate in fee simple;
- (b) an interest as purchaser of an estate in fee simple from the Crown in right of a State or of the Northern Territory where payment of the purchase price is to be made by instalments over a period of years;
- (c) an estate for life approved by the Secretary for the purposes of this Act;
- (d) a lease for a term of years if the Secretary is satisfied that the lease gives reasonable security of tenure to the lessee for a substantial period;
- (e) a licence or right of occupancy from the Crown in right of the Commonwealth, of a State or of the Northern Territory if the Secretary is satisfied that the licence or right of occupancy gives reasonable security of tenure to the licensee or holder of the right;
- (f) an interest of the kind referred to in section 13; or
- (g) any other interest declared by the regulations to be an approved interest for the purposes of this Act.

deceased spouse, in relation to an applicant, means a person who died before the prescribed date and was, on the date of his or her death, the spouse of the applicant.

grant means a grant under this Act.

joint applicant means any one of 2 or more persons who are applicants in respect of the same application.

lease includes sub-lease.

officer means a person exercising powers, or performing duties or functions, under or in relation to this Act.

prescribed date, in relation to a sole applicant who has, or joint applicants one of whom has, or 2 or more of whom together have, entered into a contract of a kind referred to in paragraph 15(1)(a) or (b), or commenced the construction of a dwelling as referred to in paragraph 15(1)(c) (whether or not the construction has been completed), means the date that is the date of the contract for the purposes of section 15 or the date on which the construction commenced, as the case may be.

prescribed person, in relation to a dwelling, means a person who is a prescribed person in relation to that dwelling by virtue of subsection 15(1), other than a person in respect of whom a direction under section 5 is in force in relation to that dwelling.

rural property means:

- (a) land used wholly or substantially for carrying on the business of primary production; or
- (b) land that the Secretary is satisfied should, having regard to its extent, location, use or zoning, be regarded as a rural property for the purposes of this Act.

Secretary means the Secretary of the Department.

sole applicant means an applicant other than a joint applicant.

- (4) For the purposes of this Act, a dwelling shall not be taken to be a dwelling, in relation to a person or persons, if the Secretary is satisfied that it would be unreasonable to regard that dwelling as

Section 5

suitable for the purposes of constituting the principal place of residence of the person or persons.

5 Person not intending to reside in dwelling

Where a person is:

- (a) a prescribed person in relation to a dwelling; or
- (b) an applicant in respect of an application in relation to a dwelling;

and the Secretary is satisfied that:

- (c) the person:
 - (i) was, on the prescribed date, the spouse of a prescribed person in relation to the dwelling;
 - (ii) has resided in the dwelling as his principal place of residence; and
 - (iii) no longer so resides and does not intend so to reside within a reasonable time; or
- (d) the person has not resided in the dwelling as his principal place of residence and does not intend so to reside within a reasonable time;

the Secretary may, in his discretion, direct that, for the purposes of this Act, the person is to be deemed not to be, and never to have been:

- (e) where paragraph (a) applies—a prescribed person in relation to the dwelling; or
- (f) where paragraph (b) applies—an applicant in respect of the application.

7 References to spouse

- (1) A reference in this Act, in relation to a date, to the spouse of a person shall be read as a reference to:
 - (a) a person who, on that date, was legally married to the first-mentioned person, except where, by virtue of a direction of the Secretary under subsection (2), the persons are to be treated, for the purposes of this paragraph, as if they were not spouses on that date; or

- (b) a person who, on that date, was living with the first-mentioned person as husband or wife on a *bona fide* domestic basis although not legally married to that person.
- (2) Where the Secretary is satisfied that, on a particular date, persons who were legally married to each other were living apart and had no intention of resuming co-habitation, he may direct that, for the purposes of paragraph (1)(a), they shall be treated as persons who were not spouses on that date.

9 Commencement and completion of construction of dwelling

- (1) For the purposes of this Act:
 - (a) the construction of a dwelling shall be taken to have commenced on:
 - (i) the day on which work commenced on the laying of the foundations of the dwelling; or
 - (ii) if the Secretary determines that, having regard to all the circumstances, the construction of the dwelling should be treated as having commenced on a later day—that later day; and
 - (b) the completion of the construction of a partly constructed dwelling shall be taken to have commenced on such date as the Secretary determines, having regard to all the circumstances, should be treated as the date on which that construction commenced to be completed.
- (2) Unless the contrary intention appears, a reference in this Act to the construction of a dwelling by a person (whether through a building-contractor or not) shall, if the construction of the dwelling was commenced by another person (whether through a building-contractor or not), be read as a reference to the completion of the construction of the dwelling by the first-mentioned person.

10 Dwelling consisting of part of a building

- (1) A reference in this Act to the construction of a dwelling shall be read, in the case of a dwelling that is, or is to be, a part of a building, as a reference to the construction of that building.

Section 11

- (2) A reference in this Act to the land on which a dwelling is, or is to be, erected shall be read, in the case of a dwelling that is, or is to be, a part of a building, as a reference to the land on which that building is, or is to be, erected.

11 Purchase or ownership of land or dwelling

- (1) A reference in this Act to purchase, or to ownership, in relation to land or an undivided share in land, shall be read as a reference to purchase or ownership, as the case may be, otherwise than as trustee, of an approved interest in the land or in the undivided share, as the case may be.
- (2) A reference in this Act to purchase, or to ownership, in relation to a dwelling, shall be read as a reference to purchase or ownership, as the case may be, otherwise than as trustee, of:
- (a) whether or not the dwelling is a dwelling of a kind referred to in paragraph (b)—the land on which the dwelling is, or is to be, erected; or
 - (b) where the dwelling is, or is to be, a part of a building or is, or is to be, one of 2 or more buildings erected on a single parcel of land:
 - (i) an approved interest in the dwelling in pursuance of a law of a State or internal Territory that enables the holding or enjoyment by different persons of proprietary rights in respect of different parts of that building or of different buildings erected on that parcel of land, as the case may be;
 - (ii) shares in the capital of a company that is the owner of the land on which the dwelling is, or is to be, erected, being shares that entitle the holder to a right of occupancy (whether under a lease or otherwise) in respect of the dwelling; or
 - (iii) an undivided share in the land on which the dwelling is, or is to be, erected, where the owner of that share is, or is to be, entitled to a right of occupancy in respect of the dwelling.
- (3) For the purposes of this section:

- (a) the purchase or ownership of an approved interest in land or in a dwelling by a person or persons (in this subsection referred to as the *relevant person* or *relevant persons*) jointly with another person or other persons; or
- (b) the purchase or ownership of an undivided share in an approved interest in land or in a dwelling by a person or persons (in this subsection also referred to as the *relevant person* or *relevant persons*);

being land or a dwelling in respect of which the relevant person is, or the relevant persons are, entitled to an exclusive right of occupancy, shall, if the Secretary in his discretion so determines, be treated as if it were the purchase or ownership, as the case may be, of that approved interest in the land or dwelling by the relevant person or relevant persons, as the case may be.

- (4) For the purposes of this section, the purchase or ownership of shares in the capital of a company by a person or persons (in this subsection referred to as the *relevant person* or *relevant persons*) jointly with another person or other persons, being shares that, together with an agreement between the relevant person or relevant persons and that other person or those other persons, entitle the relevant person or relevant persons to an exclusive right of occupancy in respect of a dwelling, shall, if the Secretary in his discretion so determines, be treated as if it were the purchase or ownership, as the case may be, of those shares by the relevant person or relevant persons, as the case may be.

12 Purchase of home to be moved to other land

Where a person has, or persons together have, entered into a contract for the purchase of a structure for removal to land situated in Australia, being a structure intended for use as a dwelling on that land, then, for the purposes of this Act:

- (a) that contract and any other contract relating to the removal of that structure to, or its siting on, that land shall be deemed to be a contract for the construction by a building-contractor of a dwelling on that land; and
- (b) construction under that last-mentioned contract shall be deemed to have commenced on the date on which the contract for the purchase of the structure was entered into.

Section 13

13 Dwelling on rural property

Where:

- (a) on or after 18 March 1982, a person has, or persons together have:
 - (i) entered into a contract for the construction by a building-contractor, on land situated in Australia, of a dwelling the construction of which commenced on or after that date; or
 - (ii) commenced to construct a dwelling on land situated in Australia, otherwise than through a building-contractor; and
- (b) the Secretary is satisfied that the land forms part of a rural property owned by another person (whether that other person holds the land as a trustee or not) who has given permission to the first-mentioned person or persons to occupy the dwelling when completed;

then, for the purposes of this Act, that permission shall be deemed to create an interest in the land in favour of that first-mentioned person or those first-mentioned persons, and that first-mentioned person or those first-mentioned persons shall be deemed to be the owner or owners of that interest.

14 Trusts etc.

(1) Where:

- (a) the owner of land or a dwelling holds the land or dwelling in trust for another person; or
- (b) a person has entered into a contract for the purchase of land or a dwelling to be held in trust for another person;

and the Secretary is satisfied that the other person will become the owner of the land or dwelling, the other person shall, for the purposes of this Act, other than sections 26 and 27, be deemed to be the owner of the land or dwelling or to have entered into the contract for the purchase of the land or dwelling, as the case may be.

(2) Where:

- (a) a person has entered into a contract for the construction by a building-contractor of a dwelling, being a dwelling that the

Secretary is satisfied will be owned by the person as trustee for another person; or

- (b) a person has, at the request of another person, entered into a contract, otherwise than as an agent of the other person, for the construction by a building-contractor of a dwelling, being a dwelling that the Secretary is satisfied will be owned by the other person;

the other person shall, for the purposes of this Act, be deemed to have entered into the contract.

- (3) Section 11 has effect in relation to paragraphs (1)(a) and (b) and (2)(a) of this section as if there were omitted from subsections 11(1) and (2) the words “, otherwise than as trustee,” (wherever occurring).

Part III—Grants of assistance

Division 1—Application for, and making of, grants

15 Persons who, subject to section 16, may apply

- (1) Where, on or after 18 March 1982, a person (in this section referred to as the *home acquirer*) has, or 2 or more persons (in this section referred to as the *home acquirers*) together have:
- (a) entered into a contract for the purchase of a dwelling situated in Australia;
 - (b) entered into a contract for the construction by a building-contractor of a dwelling on land situated in Australia, being a dwelling that the Secretary is satisfied will be owned:
 - (i) by the home acquirer or by any of the home acquirers, as the case may be;
 - (ii) by a person who, on the date of the contract, was the spouse of the home acquirer or of any of the home acquirers, as the case may be; or
 - (iii) jointly by 2 or more persons, each of whom is a person to whom subparagraph (i) or (ii) applies;other than a dwelling the construction of which was commenced before 18 March 1982; or
 - (c) commenced the construction, otherwise than through a building-contractor, of a dwelling on land situated in Australia, being a dwelling that the Secretary is satisfied will be owned:
 - (i) by the home acquirer or by any of the home acquirers, as the case may be;
 - (ii) by a person who, on the date on which the construction commenced, was the spouse of the home acquirer or of any of the home acquirers, as the case may be; or
 - (iii) jointly by 2 or more persons, each of whom is a person to whom subparagraph (i) or (ii) applies;
- then, subject to subsection (2) and section 5, the home acquirer or each of the home acquirers, as the case may be, is, and any person

who, on the date of the contract, or the date on which construction commenced, as the case may be, was the spouse of the home acquirer or of any of the home acquirers, as the case may be, is, for the purposes of this Act, a prescribed person in relation to the dwelling.

- (2) Subsection (1) does not apply to a person unless, on the relevant date, the person:
- (a) has attained the age of 16 years; or
 - (b) is married or engaged to be married.
- (3) Where:
- (a) a person is a prescribed person in relation to a dwelling; and
 - (b) subject to subsection (5), a grant under a prescribed Act or under this Act has not been made to the prescribed person, either alone or jointly with another person;
- the prescribed person is, for the purposes of section 16, a person to whom this subsection applies.
- (4) Where:
- (a) on the date on which a person entered into a contract or commenced construction of a dwelling as mentioned in subsection (1), the person was engaged to be married to another person; and
 - (b) the Secretary is satisfied that the other person has consented to being treated as the spouse of the first-mentioned person for the purposes of this section;
- a reference in this section to a person who, on the date of the contract or on the date on which construction commenced, as the case may be, was the spouse of the first-mentioned person shall be read as including a reference to that other person.
- (5) For the purposes of paragraph (3)(b), a grant under a prescribed Act or under this Act shall be deemed not to have been made to a person, or to persons jointly, if, in pursuance of that Act or of this Act, as the case may be, the grant has been repaid to the Commonwealth or the Commonwealth has recovered the grant.
- (6) For the purposes of this section, the date of a contract is such date as is determined by the Secretary, being a date:

Part III Grants of assistance

Division 1 Application for, and making of, grants

Section 16

- (a) where paragraph (1)(a) applies—not earlier than the earliest date on which the home acquirer or home acquirers entered into contractual relations with the owner of the dwelling in respect of the purchase of the dwelling; or
 - (b) where paragraph (1)(b) applies—not earlier than:
 - (i) the earliest date on which the home acquirer or home acquirers entered into contractual relations with the building-contractor in respect of the construction of the dwelling; or
 - (ii) the date on which the construction of the dwelling commenced;whichever is the sooner.
- (7) In this section:

prescribed Act means the *Homes Savings Grant Act 1964* or the *Homes Savings Grant Act 1976*.

relevant date means:

- (a) in relation to a person who is a prescribed person by reason of the entering into by that person or by another person of a contract of the kind mentioned in paragraph (1)(a) or (b)—the date of the contract; and
- (b) in relation to a person who is a prescribed person by reason of the commencement of the construction of a dwelling by that person or by another person as mentioned in paragraph (1)(c)—the date on which the construction commenced.

16 Applications

- (1) Where the person, or each person, who is a prescribed person in relation to a dwelling is a person to whom subsection 15(3) applies in relation to the dwelling, an application for a grant in respect of the dwelling may be made in accordance with this section.
- (2) An application for a grant in respect of a dwelling:
 - (a) shall be in writing in accordance with a form made available by the Secretary;

- (b) subject to subsection (3), shall be signed by the person, or by each person, who is a person to whom subsection 15(3) applies in relation to the dwelling; and
 - (c) shall be furnished to the Secretary on or before 31 December 1986.
- (3) Where:
- (a) an application that is required to be signed by 2 or more persons has been signed by any, but not all, of those persons; and
 - (b) the Secretary is satisfied, in respect of a person who has not signed the application as mentioned in paragraph (a), that:
 - (i) the person is unable to sign the application because of physical or mental incapacity, absence or any other reason that the Secretary considers sufficient;
 - (ii) the person has refused to sign the application;
 - (iii) the whereabouts of the person are not known; or
 - (iv) the person has died;
- the Secretary may, if he considers that the person who has not signed the application should be treated as an applicant, direct that the person is to be deemed to have signed the application.
- (4) An applicant for a grant shall furnish to the Secretary such declarations and other documents as the Secretary requires.

17 Making of grant

Subject to this Act, the Secretary may make, on behalf of the Commonwealth, a grant of moneys in accordance with this Act in respect of a dwelling to the applicant or applicants, as the case may be, for the grant.

18 Grant not payable where applicant previously owned home

- (1) A grant in respect of a dwelling shall not be made to a sole applicant if the applicant has, or to joint applicants if any of the joint applicants has or have, before the prescribed date, (whether alone or together with another person or other persons):
- (a) owned another dwelling in Australia; or

Part III Grants of assistance

Division 1 Application for, and making of, grants

Section 19

- (b) been a party to a contract, other than a contract that was discharged (otherwise than by performance of the contract) before the expiration of 3 months after it was entered into, for the purchase of another dwelling, being a contract that provided for payment of the whole or part of the purchase price by instalments.
- (2) Subsection (1) does not apply in relation to the ownership of a dwelling, or the entering into of a contract for the purchase of a dwelling, by a person or persons if the Secretary is satisfied that it would be unreasonable to regard that dwelling as the principal place of residence of the person or of those persons.

19 Grant not payable unless certain conditions satisfied

- (2) A grant shall not be made in respect of a dwelling in relation to which paragraph 15(1)(c) applies unless the dwelling has been completed or the Secretary is satisfied that substantial progress on the construction has been made.
- (3) A grant shall not be made in respect of a dwelling unless the Secretary is satisfied that the applicant has or will have, or the applicants have or will have, adequate financial resources (including resources obtained or to be obtained by borrowing) to perform in relation to the dwelling the contract referred to in paragraph 15(1)(a) or (b), or to complete the construction referred to in paragraph 15(1)(c), as the case may be.
- (4) Subsection (3) does not apply in relation to a contract for the purchase of a dwelling, being a contract that provides for the payment of the whole or part of the purchase price by instalments, if the Secretary is satisfied that it would be unreasonable for that subsection to apply having regard to all the circumstances.
- (5) A grant shall not be made to a sole applicant or to joint applicants unless the sole applicant or at least one of the joint applicants is:
 - (a) an Australian citizen; or
 - (b) a person normally resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by law.

- (6) A grant shall not be made to a sole applicant or to joint applicants if the amount of the prescribed earnings of the applicant or applicants, as the case may be, exceeds the amount that is the higher relevant amount for the purposes of subsection 39(4).

Division 3—Prescribed earnings

32 Interpretation

- (1) In this Division:

Assessment Act means the *Income Tax Assessment Act 1936*.

current year of income, in relation to an applicant, means the year of income that includes the prescribed date in relation to the applicant.

preceding year of income, in relation to an applicant, means the year of income next preceding the current year of income.

relevant year of income, in relation to an applicant, except as provided in section 37, means the preceding year of income.

- (2) A reference in this Division to a certificate stating the amount of the taxable income of a person for a year of income shall be read as a reference to a notice, certificate or other document (including a notice of assessment or amended assessment) issued by or on behalf of the Commissioner, whether for the purposes of the Assessment Act or of this Act, stating, or including a statement of, the amount of the taxable income of the person for the year of income.
- (3) Except so far as the contrary intention appears, an expression used in this Division and in the Assessment Act has the same meaning in this Division as in that Act.

33 Prescribed earnings

- (1) For the purposes of this Act, the amount of the prescribed earnings of a sole applicant or of joint applicants is:
- (a) in the case of a sole applicant—the amount of the taxable income of the applicant for the relevant year of income; or
 - (b) in the case of joint applicants—subject to subsection (2), the sum of the amounts of the taxable income of each applicant for the relevant year of income in relation to that applicant.

- (2) Where:
- (a) an application is made by joint applicants; and
 - (b) the relevant year of income is not the same year of income in relation to both or all of the applicants;
- the amount of the prescribed earnings of the applicants is the sum referred to in paragraph (1)(b) adjusted in accordance with the regulations.

34 Assessment etc. of taxable income

- (1) For the purposes of ascertaining the amount of the taxable income of an applicant for a year of income, the succeeding provisions of this section apply.
- (2) The applicant shall furnish to the Secretary:
- (a) except where paragraph (b) applies—a certificate stating the amount of his taxable income for the year of income or, if 2 or more such certificates have been issued, the later or latest of those certificates; or
 - (b) if the Secretary, in his discretion, so directs—a statement in writing, in accordance with a form made available by the Secretary, of the amount of his taxable income for the year of income and of such other particulars as are required by the form.
- (3) Notwithstanding that an applicant has furnished a statement in relation to the year of income under paragraph (2)(b), he shall, if the Secretary, in his discretion, so directs, furnish to the Secretary a certificate stating the amount of his taxable income for the year of income.
- (4) The Secretary may request the Commissioner to furnish to the Secretary a certificate stating the amount of the taxable income of the applicant for the year of income.
- (5) Where the applicant has furnished, in pursuance of the Assessment Act, a return in respect of income derived by him during the year of income, nothing in this Division shall be taken to require the application to be dealt with by the Secretary before a certificate is issued to the applicant stating the amount of his taxable income for the year of income.

Section 35

35 Amount of taxable income

For the purposes of this Division, the amount of the taxable income of an applicant for a year of income is, subject to subsection 36(2), that amount:

- (a) as stated in a certificate or, where 2 or more certificates have been issued, in the later or latest of those certificates; or
- (b) if no such certificate has been issued—as stated in a statement made under paragraph 34(2)(b).

36 Adjustment of taxable income in certain cases

- (1) This section does not apply in relation to an applicant where the relevant year of income in relation to the applicant ends immediately before the prescribed date.
- (2) Where an applicant, by notice in writing furnished to the Secretary, requests the Secretary to give a direction under this section and the Secretary is satisfied that the applicant:
 - (a) ceased, on any day after the first day of the relevant year of income and before the prescribed date, to carry on an income-earning activity and, throughout the period commencing on the first-mentioned day and including the prescribed date, did not carry on any income-earning activity;
 - (b) has not carried on, or is not likely to carry on, as the case requires, any income-earning activity for a substantial period after the prescribed date; and
 - (c) will be advantaged by the making of such a direction; the Secretary shall direct that, for the purposes of section 33, the amount of the taxable income of the applicant for the relevant year of income shall be the amount ascertained in accordance with subsection (3).
- (3) For the purposes of subsection (2), an amount shall be ascertained in accordance with the formula:

$$\frac{a(365 - b)}{365 - c}$$

where:

a is the amount of the taxable income of the applicant for the relevant year of income ascertained otherwise than in accordance with this section;

b is the number of days in the period that commenced on the day first referred to in paragraph (2)(a) and ended at the expiration of the prescribed date or, if that number is greater than 365, 365; and

c is the number (if any) by which the number of days in the period that commenced at the expiration of the relevant year of income and ended at the expiration of the prescribed date is less than *b*.

- (4) In subsection (2), *income-earning activity*, in relation to an applicant, means an activity that results in the applicant deriving income from personal exertion.

37 Relevant year of income in certain cases

- (1) Where an applicant, by notice in writing furnished to the Secretary, requests the Secretary to give a direction under this section and the Secretary is satisfied that:
- (a) by reason of circumstances that occurred before the prescribed date, the estimated amount, or the actual amount, of the taxable income of the applicant for the current year of income is less than the amount of his taxable income for the preceding year of income;
 - (b) the applicant took reasonable steps to avoid those circumstances or to mitigate their effect; and
 - (c) the applicant will be advantaged by the making of such a direction;
- the Secretary shall direct that this section shall apply in relation to the applicant.
- (2) Subject to subsection (3), where a direction is given under subsection (1) in relation to an applicant, the relevant year of income in relation to the applicant is the current year of income.
- (3) Where a direction is given under subsection (1) in relation to an applicant on the basis of an estimated amount of taxable income and the actual amount is greater than that estimated amount, the

Part III Grants of assistance

Division 3 Prescribed earnings

Section 38

relevant year of income in relation to the applicant is the current year of income or the preceding year of income, whichever is of greater advantage to the applicant.

38 Directions under sections 36 and 37

The Secretary shall not give a direction under both sections 36 and 37 in respect of the same applicant in relation to the same application.

Division 4—Amount of grant

39 Amount of grant

- (1) In ascertaining the amount of a grant to a sole applicant or to joint applicants, the succeeding provisions of this section apply.
- (2) Subject to this section, the amount of the grant is \$2,500.
- (4) Subject to this section, where the amount of the prescribed earnings exceeds the lower relevant amount but does not exceed the higher relevant amount, the amount of the grant is the amount ascertained in accordance with the formula:

$$\frac{a(b - c)}{b - d}$$

where:

a is the amount that, but for this subsection and subsections (6) and (7), would be the amount of the grant;

b is the higher relevant amount;

c is the amount of the prescribed earnings; and

d is the lower relevant amount.

- (5) For the purposes of subsection (4):
 - (a) the lower relevant amount is \$18,900 or, if the regulations otherwise provide, such amount as is ascertained in accordance with the regulations; and
 - (b) the higher relevant amount is \$21,700 or, if the regulations otherwise provide, such amount as is ascertained in accordance with the regulations.
- (6) Where, but for this subsection, the amount of the grant would include a fraction of a dollar, then:
 - (a) if the fraction is less than one-half—the fraction shall be disregarded; or
 - (b) in any other case—the fraction shall be treated as a dollar.

Part III Grants of assistance

Division 4 Amount of grant

Section 39

- (7) The grant shall not be made if the amount ascertained in accordance with this section is less than \$10.

Part IV—Family bonuses

40 Interpretation

(1) Except as otherwise provided in subsection (2), expressions used in this Part have the same respective meanings as in Part VI of the *Social Security Act 1947*.

(2) In this Part:

bonus means a bonus payable under this Part.

child means:

- (a) a child within the meaning of Part VI of the *Social Security Act 1947*; or
- (b) a student child within the meaning of that Part.

endowment means an endowment, or a family allowance, whichever expression is for the time being defined in Part VI of the *Social Security Act 1947*, and **endowment period** shall be construed accordingly.

prescribed period, in relation to a sole applicant or joint applicants, means an endowment period, or that part of an endowment period, that falls within a period commencing on the prescribed date in relation to the applicant or applicants and ending 11 months after that date.

41 Entitlement to bonus

Where the Secretary is satisfied that:

- (a) a grant, or an advance under section 56, is payable or would, but for subsections 39(6) and (7), or subsection 39(7), as the case may be, be payable to a sole applicant or to joint applicants; and

Section 42

- (b) an endowment has been, or endowments have been, paid or would, but for section 95A or 95B of the *Social Security Act 1947*, be payable to the applicant or any of the applicants in respect of the prescribed period;

the Secretary shall, on behalf of the Commonwealth, pay a bonus to the applicant or applicants in accordance with this Part.

42 Amount of bonus

The amount of the bonus payable to a sole applicant or to joint applicants is:

- (a) where there are 2 or more children in respect of whom an endowment has been, or endowments have been, paid or would, but for section 95A or 95B of the *Social Security Act 1947*, be payable to the sole applicant or to one or more of the joint applicants in respect of the prescribed period—\$1,000; or
- (b) in any other case—\$500.

43 Application of Act

Section 16 and Parts V and VI (except sections 56 and 60) apply in relation to a bonus in like manner as they apply in relation to a grant.

Part V—Administration

44 Delegation

- (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Department all or any of his powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Secretary.
- (3) A delegation under this section does not prevent the exercise of a power by the Secretary.

45 Interpretation

In sections 46, 47 and 48, a reference to a decision of the Secretary shall be read as a reference to a determination, direction, decision or approval of the Secretary, or of a delegate of the Secretary, under this Act.

46 Review of decisions

- (1) Where it appears to the Secretary that sufficient reason exists for reviewing a decision of the Secretary, he may review the decision and may affirm, revoke or vary it.
- (2) This section ceases to have effect on 31 August 1995.

47 Reconsideration by Secretary

- (1) Subject to subsection (3), a person whose interests are affected by a decision of the Secretary, other than a decision under section 34, may request the Secretary to reconsider the decision.
- (2) Upon receipt of the request, the Secretary shall reconsider the decision, and may affirm, revoke or vary it.

Section 48

- (3) A request under subsection (1) must be in writing and furnished to the Secretary not later than:
- (a) the end of the period of 28 days after the day on which notice of the decision was served on the person making the request; or
 - (b) 31 August 1995;
- whichever is the later.

48 Making and notification of decisions

- (1) A decision of the Secretary must be in writing.
- (2) Written notice of a decision of the Secretary must be served by post on the applicant, or on each of the applicants, as the case may be.
- (3) A notice under subsection (2) of a decision of the Secretary (other than a decision made under section 47) must include a statement to the effect that:
- (a) the applicant may, if dissatisfied with the decision, request a reconsideration of the decision by the Secretary under section 47; and
 - (b) the applicant may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Secretary on the reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (4) Notice under subsection (2) of a decision made on a reconsideration under section 47 must include a statement to the effect that a person affected by the decision may, if dissatisfied with the decision, make application to the Administrative Appeals Tribunal for review of the decision.

49 Appeals to Administrative Appeals Tribunal

A person whose interests are affected by a decision made under section 47 may make application to the Administrative Appeals Tribunal for a review of the decision.

50 Officers to observe secrecy

- (1) A person who is or has been an officer shall not, directly or indirectly, except for the purposes of this Act, make a record of, or divulge or communicate to any person, any information with respect to the affairs of another person acquired by him in the exercise of his powers, or the performance of his duties or functions, under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (2) Notwithstanding anything contained in subsection (1), an officer may:
- (a) if the Minister or the Secretary certifies that it is necessary in the public interest that any information acquired by the officer in the exercise of his powers, or the performance of his duties or functions, under this Act should be divulged, divulge that information to such person as the Minister or the Secretary directs;
 - (b) divulge any such information to any authority or person prescribed by the regulations; or
 - (c) divulge any such information to a person who, in the opinion of the Secretary, is expressly or impliedly authorized by the person to whom the information relates to obtain it.
- (3) An authority to which, or person to whom, information is divulged under subsection (2), and any person under the control of that authority or person, is, in respect of that information, subject to obligations and liabilities under subsection (1) as if the authority or person were a person exercising powers, or performing duties or functions, under this Act and had acquired the information in the exercise of those powers or the performance of those duties or functions.

51 Information as to applicants

- (1) Where the Secretary has reason to believe that a person is in possession of any information in relation to any matter that might affect the payment of a grant to any other person, he may, by notice in writing served by post on the first-mentioned person at the address of the person last known to the Secretary, require the

Section 52

person to furnish to him a confidential report relating to that matter within 14 days after the notice is served.

- (2) A person on whom a notice is so served shall not:
- (a) without lawful excuse, refuse or fail to comply with the notice; or
 - (b) furnish a report in response to the notice that, to his knowledge, is false or misleading in a material particular.

Penalty: \$500.

- (3) The Secretary shall not exercise his powers under subsection (1) except with the approval of the Minister.

52 Powers as to taking of evidence and production of documents

- (1) The Secretary may, for the purposes of this Act:
- (a) summon witnesses;
 - (b) receive evidence on oath or affirmation; and
 - (c) require the production of documents.
- (2) A person who has been summoned to appear before the Secretary shall not, without lawful excuse, after tender of reasonable expenses, fail to appear in obedience to the summons.
- (3) A person, whether summoned or not, who appears before the Secretary shall not, without lawful excuse:
- (a) refuse to be sworn as a witness or to make an affirmation;
 - (b) fail to answer any question that he is lawfully required to answer; or
 - (c) fail to produce any document that he is lawfully required to produce.

Penalty: \$1,000.

- (4) The Secretary shall not exercise his powers under paragraph (1)(a) or (c) except with the approval of the Minister.

53 Directions

A direction by the Secretary under this Act shall be by instrument in writing.

54 Indemnity to certain persons

Nothing contained in any law of a State or Territory operates so as to prevent a person from furnishing any information, or making any books, documents or papers available, to the Secretary or to an officer for the purposes of this Act.

Part VI—Miscellaneous

55 Payment of grants

- (1) A grant to a sole applicant shall be paid to the applicant or, if the applicant so requests in writing and the Secretary approves, to another person nominated by the applicant.
- (2) Subject to subsections (3) and (4), a grant to joint applicants shall be paid to the joint applicants or, if the joint applicants so request in writing and the Secretary approves, to a person or persons nominated by the joint applicants.
- (3) Where a joint applicant has died before the payment of a grant, subsection (2) applies in relation to the payment of the grant as if the reference in that subsection to the joint applicants did not include a reference to the deceased joint applicant.
- (4) Where, for any reason, the Secretary considers that it is not practicable to pay a grant to all the joint applicants in respect of an application, he may pay the grant to such of those joint applicants as he considers appropriate.
- (5) A grant paid in accordance with a request under subsection (1) to a person other than the sole applicant or paid under subsection (2) or (4) otherwise than to all the joint applicants in respect of an application shall, for the purposes of this Act, be deemed to have been paid to the sole applicant, or to all the joint applicants, as the case may be.

56 Advances

- (1) Where:
 - (a) the Secretary is satisfied that:
 - (i) the amount of the prescribed earnings of a sole applicant or of joint applicants has not been ascertained in accordance with Division 3 of Part III at the time of the making of the application and cannot be so

ascertained within a reasonable period after that time;
and

(ii) the applicant has, or applicants have, taken all reasonable steps to supply the information necessary to ascertain that amount; and

(b) he estimates, from such information in his possession as he considers sufficient, that an amount of a grant will be payable to the applicant or applicants;

he may make an advance on account of the grant of an amount not exceeding 80% of the amount so estimated.

- (2) Part V and this Part (except section 60) apply in relation to an advance in like manner as they apply in relation to a grant.
- (3) Nothing in subsection (1) shall be taken to limit the amount of any bonus that may be payable under Part IV in connection with an advance.

57 Appropriation

Grants are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

58 Repayments of grants in certain circumstances

- (1) This section applies where a grant has been paid in respect of a dwelling whose purchase or construction had not been completed on the date on which the application for the grant was made.
- (2) Where:
- (a) in the case of a dwelling the purchase of which had not been completed on the date on which the application for the grant was made:
- (i) the purchase of the dwelling is not completed within 3 months after the date specified in the application as the date on which it was expected that the purchase would be completed or, if no date was so specified, within 3 months after the date of payment of the grant; or
- (ii) the contract for the purchase of the dwelling is discharged otherwise than by performance of the contract; or

Section 58

- (b) in the case of a dwelling the construction of which had not been completed on the date on which the application for the grant was made:
 - (i) the construction of the dwelling is not completed within 6 months after the date specified in the application as the date on which it was expected that the construction would be completed or, if no date was so specified, within 6 months after the date of payment of the grant;
 - (ii) if the dwelling was being, or was to be, constructed by a building-contractor—the contract for the construction of the dwelling is discharged otherwise than by performance of the contract; or
 - (iii) before the expiration of 12 months after the prescribed date, the applicant, in the case of a sole applicant, does not become the owner, or none of the applicants, in the case of joint applicants, becomes the owner, of the dwelling;

and the Secretary is not forthwith notified in writing of the fact, then the sole applicant, or each of the joint applicants, as the case may be, is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

- (3) Upon the occurrence of any of the circumstances referred to in paragraph (2)(a) or (b), the Secretary may require the sole applicant or each of the joint applicants, as the case may be, by notice in writing served by post on the applicant, or each of the applicants, as the case may be, at the address of the applicant last known to the Secretary, to pay to the Commonwealth an amount equal to the amount of the grant and, in that case, the amount so payable is recoverable by the Commonwealth in a court of competent jurisdiction from the applicant, or jointly or severally from the applicants, as a debt due to the Commonwealth.
- (4) The reference in subsection (3) to each joint applicant shall be read as not including a reference to a joint applicant who died before the payment of the grant.
- (5) The Commonwealth is not, by virtue of subsection (3), entitled to recover from the persons referred to in that subsection amounts

that, in the aggregate, exceed the total amount of the debt due to the Commonwealth.

59 Notification of amount of taxable income

(1) Where:

- (a) an applicant has furnished to the Secretary a certificate, or a statement under paragraph 34(2)(b), stating the amount of his taxable income for a year of income; and
- (b) he subsequently receives a certificate, or a further certificate, as the case may be, stating the amount of his taxable income for the year of income and the amount so stated is greater than the amount referred to in paragraph (a);

he shall forthwith furnish the certificate to the Secretary or, if he is unable to do so, furnish to the Secretary, in lieu of that certificate, a fresh certificate stating the amount of his taxable income for the year of income.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) An expression used in this section and in Division 3 of Part III has the same meaning in this section as in that Division.

60 Adjustments of grants etc.

(1) Where:

- (a) an amount of a grant has been paid to a sole applicant or to joint applicants in consequence of a false or misleading statement or representation made by the applicant or by any of the applicants or a failure or omission by the applicant or by any of the applicants to comply with a provision of this Act;
- (b) an amount of a grant has been paid to a sole applicant or to joint applicants on the basis of an amount of the prescribed earnings of the applicant or applicants and the amount of those prescribed earnings is subsequently determined to be a greater amount; or
- (c) an advance has been paid to a sole applicant or to joint applicants on account of a grant and it is subsequently

Section 60

determined that no grant is payable or that the amount of the grant payable is less than the amount of the advance;
an amount equal to so much of the grant as is overpaid, the amount of the advance, or so much of the advance as exceeds the amount of the grant payable, as the case may be, is recoverable under this section from the applicant or applicants.

(2) Where:

- (a) an amount equal to the whole of a grant or of an advance is recoverable under this section from an applicant or applicants; and
- (b) a bonus has been paid in connection with the grant or the advance;

an amount equal to the bonus is recoverable under this section from the applicant or applicants.

(3) An amount recoverable under this section from an applicant or applicants is a debt due to the Commonwealth by the applicant, or by the applicants jointly and severally, as the case may be, and may be recovered by the Commonwealth in a court of competent jurisdiction.

(4) The Commonwealth is not, by virtue of subsection (3), entitled to recover from the persons referred to in that subsection amounts that, in the aggregate, exceed the total amount of the debt due to the Commonwealth.

(5) Where:

- (a) on the basis of an amount of the prescribed earnings of a sole applicant or of joint applicants it has been determined that no grant is payable, or that an amount of a grant is payable, to the applicant or applicants; and
- (b) the amount of those prescribed earnings is subsequently determined to be a lesser amount;

the Secretary may pay to the applicant or applicants any amount of grant, or increase in the amount of grant, as the case may be, determined on the basis of the second-mentioned amount of prescribed earnings.

(6) A payment shall not be made under subsection (5) if the amount that would, but for this subsection, be payable is less than \$10.

61 Misleading statements etc.

- (3) Where a person is convicted of an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act, the court may, in addition to imposing a penalty in respect of the offence, order him to pay to the Commonwealth an amount equal to the amount of any grant under this Act paid in consequence of the act, failure or omission in respect of which he was convicted.

62 Prosecutions for offences

Proceedings for an offence against this Act or the regulations may be commenced at any time within 3 years after the commission of the offence.

63 Evidence

- (1) The Secretary may by instrument in writing:
 - (a) create offices for the purposes of this section; and
 - (b) appoint persons to those offices.
- (2) All courts shall take judicial notice of the signature of any person:
 - (a) who holds or has held the office of Secretary; or
 - (b) who holds or has held an office under subsection (1);and of the fact that that person holds or has held that office, if the signature purports to be attached or appended to an official document, and any such document purporting to be so signed is *prima facie* evidence in all courts of the facts and statements contained in the document.
- (3) A certificate in writing signed by a person who holds or has held an office referred to in subsection (2) certifying:
 - (a) that assistance of a specified amount was paid to a specified person or to specified persons on a specified date; or
 - (b) that a specified amount is the amount of assistance paid to a specified person or to specified persons in consequence of a specified act, failure or omission;is *prima facie* evidence in all courts of the matters certified.

Section 63A

63A References to the Secretary to include references to Director-General

A reference in this Act to the Secretary shall, in relation to the doing of any act or thing under this Act:

- (a) during the period commencing on 2 June 1982 and ending on 30 June 1982—be read as a reference to the Director-General of Social Services or to a delegate of the Director-General of Social Services; and
- (b) during the period commencing on 1 July 1982 and ending on 10 March 1983—be read as a reference to the Director-General of Social Security or to a delegate of the Director-General of Social Security.

64 Reports

- (1) The Secretary shall, as soon as practicable after 30 June in each year up to and including 1987, furnish to the Minister a report as to the administration and operation of this Act during the year that ended on that date.
- (2) The Minister shall cause a copy of each report of the Secretary to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

65 Termination of operation of Act

A grant is not payable to a sole applicant or to joint applicants if the prescribed date, or the date that is the assumed date for the purposes of subsection 39(8), in relation to the applicant or applicants is later than 30 September 1983.

66 Regulations

The Governor-General may make regulations, not inconsistent with this Act, 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;
and, in particular, prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

Table of Acts**Notes to the *Home Deposit Assistance Act 1982*****Note 1**

The *Home Deposit Assistance Act 1982* as shown in this compilation comprises Act No. 40, 1982 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Home Deposit Assistance Act 1982</i>	40, 1982	2 June 1982	2 June 1982	
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part XXXVIII (ss. 122-125): 20 Oct 1982 (a)	—
<i>Home Deposit Assistance Amendment Act 1983</i>	47, 1983	21 Sept 1983	1 Aug 1983	S. 14
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	Ss. 3 and 4: 13 Dec 1984 (<i>see</i> <i>Gazette</i> 1984, No. S519) (b)	Ss. 2(32), 6(1), (3) and 9
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (c)	—
<i>Home Deposit Assistance Amendment Act 1986</i>	142, 1986	9 Dec 1986	9 Dec 1986	—
<i>Housing Legislation Amendment Act 1995</i>	49, 1995	23 June 1995	23 June 1995s	S. 3 (item 7)
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1-3 and Schedule 1 (items 1, 4, 6, 7, 9-11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]

Act Notes

- (a) The *Home Deposit Assistance Act 1982* was amended by Part XXXVIII (sections 122-125) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
 - (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (b) The *Home Deposit Assistance Act 1982* was amended by sections 3 and 4 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(29) of which provides that section 9 and the amendments made to the *Home Deposit Assistance Act 1982* shall come into operation on the day fixed by Proclamation for the purposes of subsection 2(20) of that Act.
- (c) The *Home Deposit Assistance Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. No. 47, 1983
S. 4.....	am. No. 80, 1982; No. 47, 1983; No. 165, 1984
S. 5.....	am. No. 80, 1982; No. 165, 1984
S. 6.....	am. No. 80, 1982 rep. No. 47, 1983
S. 7.....	am. No. 80, 1982; No. 165, 1984
S. 8.....	rep. No. 47, 1983
S. 9.....	am. No. 80, 1982; No. 165, 1984
S. 11.....	am. No. 80, 1982; No. 47, 1983; No. 165, 1984
S. 13.....	am. No. 80, 1982; No. 165, 1984
S. 14.....	am. No. 80, 1982; No. 47, 1983; No. 165, 1984
S. 15.....	am. No. 80, 1982; No. 165, 1984
S. 16.....	am. No. 80, 1982; No. 165, 1984; No. 142, 1986
Ss. 17, 18.....	am. No. 80, 1982; No. 165, 1984
S. 19.....	am. No. 80, 1982; No. 47, 1983; No. 165, 1984
Div. 2 of Part III..... (ss. 20-31)	rep. No. 47, 1983
Ss. 20-23.....	rep. No. 47, 1983
Ss. 24-31.....	am. No. 80, 1982 rep. No. 47, 1983
S. 34.....	am. No. 80, 1982; No. 165, 1984
Ss. 36-38.....	am. No. 80, 1982; No. 165, 1984
S. 39.....	am. No. 80, 1982; No. 47, 1983
S. 40.....	am. No. 80, 1982
S. 41.....	am. No. 80, 1982; No. 165, 1984
S. 42.....	am. No. 80, 1982
S. 44.....	am. No. 80, 1982; No. 165, 1984
Ss. 45-47.....	am. No. 80, 1982; No. 165, 1984; No. 49, 1995
S. 48.....	rs. No. 49, 1995
Ss. 50-56.....	am. No. 80, 1982; No. 165, 1984
Ss. 58-60.....	am. No. 80, 1982; No. 165, 1984
S. 61.....	am. No. 137, 2000
S. 63.....	am. No. 80, 1982; No. 165, 1984 rs. No. 65, 1985
S. 63A.....	ad. No. 165, 1984
S. 64.....	am. No. 80, 1982; No. 47, 1983; No. 165, 1984; No. 142, 1986
S. 65.....	am. No. 47, 1983

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.