

War Service Homes

No. 120 of 1971

An Act to amend the *War Service Homes Act 1918–1968*.

[Assented to 10 December 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1) This Act may be cited as the *War Service Homes Act 1971*.

(2) The *War Service Homes Act 1918–1968** is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *War Service Homes Act 1918–1971*.

Commencement.

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

Interpretation.

3. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1.) the definition of “ Borrower ” and inserting in its stead the following definition:—

“ ‘ Borrower ’ means a person who has received an advance or executed a mortgage or other security to the Director, and, for the purposes of sections thirty A, thirty-one and thirty-six of this Act, includes—

(a) a transferee under section thirty-five of this Act of an estate or interest in the land or land and dwelling-house that was formerly the estate or interest of a borrower in relation to the land or land and dwelling-house; and

(b) the personal representative of a person who was, immediately before his death, a borrower in relation to the land or land and dwelling-house;”;

(b) by inserting in paragraph (b) of the definition of “ Holding ” in sub-section (1.), after the word “ State ”, the words “ or under a lease for a term of not less than ninety-nine years from a State or from a local governing body ”;

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

- (c) by adding at the end of paragraph (c) of the definition of "Holding" in sub-section (1.) the words "or a unit defined in a units plan registered in accordance with a law of the Australian Capital Territory relating to unit titles, being a unit of which he is the lessee under a lease from the Commonwealth";
- (d) by omitting from sub-section (1.) the definition of "Purchaser" and inserting in its stead the following definition:—

“ ‘Purchaser’ means a person who has purchased from the Director a dwelling-house and land and, for the purposes of sections thirty A, thirty-one and thirty-six of this Act, includes—

- (a) a transferee under section thirty-five of this Act of an estate or interest in the land or land and dwelling-house that was formerly the estate or interest of a purchaser in relation to the land or land and dwelling-house; and
- (b) the personal representative of a person who was, immediately before his death, a purchaser in relation to the land or land and dwelling-house;”;
- and

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

“ (5.) Where an applicant—

- (a) is the holder, under the Crown Lands Consolidation Act, 1913 of the State of New South Wales, or under that Act as amended, of a holding known as a conditional purchase; and

- (b) satisfies the Director that the applicant has a reasonable prospect of complying with the conditions applicable to the holding under that Act, or that Act as amended,

the holding shall be deemed to be a holding for the purposes of this Act in relation to the applicant.”.

4. Section 19 of the Principal Act is amended by omitting from sub-section (4.) the words "Eight thousand dollars" (wherever occurring) and inserting in their stead the words "Nine thousand dollars".

Sale of dwelling-houses.

5. Section 21 of the Principal Act is amended by omitting the words "Eight thousand dollars" (wherever occurring) and inserting in their stead the words "Nine thousand dollars".

Maximum advance.

6. Section 30A of the Principal Act is amended by omitting sub-sections (3.) and (4.) and inserting in their stead the following sub-sections:—

Purchaser or borrower may occupy dwelling-house as tenant of Director.

“ (3.) Where the Director is empowered under this Act to enter upon and take possession of land or land and a dwelling-house the subject of a tenancy under this section, the Director may determine the tenancy.

“ (4.) A tenancy under this section is determined by the death of the tenant.

“ (5.) Where—

(a) the Director determines a tenancy under this section; or

(b) a tenancy under this section is determined by the death of the tenant and there is no new tenant under this section,

a court of summary jurisdiction may, upon application made to it by the Director, issue a warrant directed to such person as the court thinks fit requiring him, within a period to be specified in the warrant, to enter (if need be by force) into the dwelling-house and land the subject of the tenancy and to give possession of the dwelling-house and land to the Director, and the warrant shall be a sufficient authority to the person to whom it is directed to enter upon the dwelling-house and land with such assistance as he deems necessary and to give possession accordingly.”.

7. After section 30A of the Principal Act the following section is inserted:—

Storage of
goods found
in dwelling-
house.

“ 30B.—(1.) Where possession of a dwelling-house and land is taken by the Director, whether under a warrant issued under the last preceding section or otherwise, the Director may cause any goods found in the dwelling-house or on the land to be removed and stored in a safe place.

“ (2.) Where the Director has caused goods to be removed from a dwelling-house or land and stored in a safe place under the last preceding sub-section, he shall cause a notice, in accordance with the prescribed form, of the removal and storage to be published twice, with an interval of at least seven days between the dates of the publications, in a daily newspaper published in the State or Territory of the Commonwealth in which the dwelling-house and land are situated.

“ (3.) Where—

(a) a person, at any time after the removal of goods under this section, satisfies the Director that the person is entitled to possession of the goods; and

(b) the goods have not been disposed of or destroyed in accordance with the next succeeding sub-section,

the Director shall, on payment to the Director by the person of an amount fixed by the Director, being an amount not greater than the amount of the incurred expenses in relation to the goods, deliver the goods to the person.

“ (4.) After the expiration of a period of three months after a notice of the removal of goods has been published for the second time under sub-section (2.) of this section, the Director may—

(a) cause the goods to be sold by public auction; or

(b) if the Director determines that the goods are valueless or that for some other reason it is not practicable to sell the goods by public auction—cause the goods to be disposed of otherwise than by sale or to be destroyed.

“(5.) For the purposes of a sale or other disposal of goods under the last preceding sub-section, the Director shall be deemed to be the absolute owner of the goods.

“(6.) Where—

- (a) goods have been sold in accordance with this section and the proceeds of the sale exceed an amount equal to the amount of the incurred expenses in relation to the goods; and
- (b) a person satisfies the Director that he had, immediately before the sale, an interest in the goods,

the Director shall pay to the person out of that excess such amount as he considers appropriate having regard to the interest that the person had in the goods.

“(7.) Where—

- (a) goods removed from a dwelling-house or land have been sold in accordance with this section and the proceeds of the sale are less than the amount of the incurred expenses in relation to the goods; or
- (b) goods removed from a dwelling-house or land have been disposed of otherwise than by sale or have been destroyed in accordance with this section,

there is payable to the Director by the person who was, when possession of the dwelling-house and land was taken by the Director, the purchaser or borrower in relation to the dwelling-house and land—

- (c) an amount equal to the amount of the incurred expenses in relation to the goods less, where the goods have been sold, an amount equal to the proceeds of the sale; and
- (d) if the amount so payable is not paid to the Director within one month, interest on that amount or on the unpaid balance of that amount at the same rate as was, when possession of the dwelling-house and land was taken by the Director, payable under the contract of sale or the mortgage or other security in respect of the dwelling-house and land.

“(8.) An amount payable under the last preceding sub-section in respect of a dwelling-house and land that is the subject of a mortgage or other security shall, until paid, be deemed to be moneys due in respect of the dwelling-house and land for the purposes of sub-section (2.) of section thirty-six of this Act.

“(9.) No action lies against any person by reason of any act or thing done in accordance with this section.

“(10.) In this section, ‘the amount of the incurred expenses’, in relation to goods, means the amount of the expenses incurred by the Director under this section in relation to the goods.”.

Action on instalments being overdue.

8. Section 36 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (1.) the words “ by the purchaser ” and inserting in their stead the words “ under the contract of sale ”; and

(b) by omitting sub-section (5.).

9. After section 43 of the Principal Act the following section is inserted:—

Liability of purchaser or borrower who is personal representative.

“ 44. Notwithstanding any other provision of this Act, where a person is a purchaser or borrower by reason of being the personal representative of a person who was, immediately before his death, a purchaser or borrower, any liability of the first-mentioned person as such a purchaser or borrower to pay an amount to the Director is a liability to pay that amount out of the estate of the deceased purchaser or borrower and not otherwise.”.

10. After section 48c of the Principal Act the following sections are inserted:—

Advance towards payment of purchase price.

“ 48D.—(1.) In effecting a sale of property to a person under section thirty-six, forty-eight or forty-eight c of this Act, the Director may agree with the person to make an advance to the person for the purpose of assisting the person to pay to the Director the purchase price of the property.

“ (2.) An advance under the last preceding sub-section—

(a) may be made on such terms and conditions as the Director thinks fit; and

(b) shall be secured by a mortgage over the property in favour of the Director together with such other security (if any) as the Director requires.

Certain provisions not to apply in relation to certain sales, &c.

“ 48E. Part IV., Part V. and Part VI. (other than sections thirty A, thirty-one, thirty-six and thirty-eight of this Act) do not apply in relation to—

(a) a sale under section thirty-six, forty-eight or forty-eight c of this Act or to an advance under the last preceding section; or

(b) a person who is the purchaser with respect to such a sale or the borrower with respect to such an advance.”.