

TRUSTEE (INSURED HOUSING LOANS).

No. 17 of 1970.

AN ACT to authorize the investment of trust funds in certain insured housing loans, to repeal the *Housing Loans (Powers of Trustees) Act 1966*, and to make provision for incidental matters.

[18 June 1970.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Trustee (Insured Housing Loans) Act 1970*. Short title, incorporation, and commencement.

(2) This Act is incorporated, and shall be read as one, with the *Trustee Act 1898* (in this Act referred to as the Principal Act).

(3) This Act shall commence on a date to be fixed by proclamation.

2—(1) In this Act, unless the contrary intention appears— Interpretation.

“approved contract of insurance” means a contract of insurance that is to be regarded as an approved contract of insurance with an approved trustee insurer under section four;

“approved trustee insurer” means—

- (a) the Housing Loans Insurance Corporation; or
- (b) any corporation declared to be an approved trustee insurer under section five;

“contract of insurance”, when used in relation to a housing loan made or proposed to be made, means a contract insuring the lender against the whole, or against any part, of a loss in respect of the loan;

“corporation” has the same meaning as it has for the purposes of the *Companies Act 1962*;

“dwelling-house” includes—

- (a) any building that consists, or any buildings that consist, in whole or in substantial part, of residential accommodation, whether consisting of a single unit of accommodation or two or more of such units; and
- (b) any residential accommodation of a kind commonly known as a flat or home unit;

“housing loan” means a loan that is secured by a first legal mortgage (being such a mortgage as is referred to in paragraph (f) of subsection (1), or in subsection

(1A), of section five, or in section nine, of the Principal Act) of the estate of the borrower in any land and is made for any one or more of the following purposes, that is to say, of enabling the borrower—

- (a) to acquire that estate and construct, or complete the construction of, a dwelling-house on the land;
- (b) to construct a dwelling-house, or complete the construction of a dwelling-house, on the land;
- (c) to acquire that estate, there being a dwelling-house on the land;
- (d) to alter, improve, or extend a dwelling-house constructed on the land;
- (e) to meet expenses in respect of the provision or improvement of roads, kerbing, guttering, or footpaths in connection with the land;
- (f) to discharge a mortgage, charge, or other encumbrance over the land, there being a dwelling-house on the land, or a dwelling-house being constructed on the land; or
- (g) to meet the cost of any premium in respect of an approved contract of insurance entered into by the lender in respect of the loan;

“Housing Loans Insurance Corporation” means the Housing Loans Insurance Corporation established under the *Housing Loans Insurance Act 1965* of the Commonwealth;

“lender”, in relation to a housing loan, includes any person having the right to receive payment of the loan.

(2) A reference in this section to a loss in respect of a loan shall be construed as including references to—

- (a) loss of moneys constituting the loan;
- (b) loss of interest and other charges on, or in relation to, the loan; and
- (c) any other loss arising from any default in relation to the loan.

(3) A reference in this section to a dwelling-house shall be construed as including a reference to appurtenances, outbuildings, fences, and permanent provision for lighting, water supply, drainage, and sewerage provided in connection with the dwelling-house.

(4) A reference in this section to a first mortgage shall be construed as including a reference to such a mortgage or charge as is referred to in subsection (1A) of section five of the Principal Act.

(5) A reference in this section to an Act of the Commonwealth shall be construed as including a reference to any Act of the Commonwealth amending or passed in substitution for that Act.

3—(1). A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands in a housing loan so long as there is in force in respect of that loan

an approved contract of insurance; and for the purposes of this section the trustee may enter into such a contract of insurance and pay out of the trust funds the premiums and other expenses arising thereunder.

(2) Subsection (1) of section ten of the Principal Act does not apply in respect of a loan in which a trustee is authorized to invest trust funds under subsection (1) of this section; but the trustee is not chargeable with a breach of trust by reason only of the proportion borne by the amount of such a loan to the value of the property on which it is secured.

(3) The powers conferred on a trustee by this section are in addition to the powers conferred by the instrument (if any) creating the trust or by any other law that is applicable to a trustee.

(4) The powers conferred on a trustee by this section may be exercised by any body or person in relation to any funds that that body or person has, under any enactment, power, however expressed, to invest in the like manner in which trust funds are authorized to be invested.

4—(1) The Governor may, by order, declare the conditions ^{Approved contracts of insurance.} under which contracts of insurance in respect of housing loans, or any class of housing loans, are to be regarded as approved contracts of insurance for the purposes of this Act.

(2) The conditions referred to in subsection (1) of this section may relate to all or any of the following matters, that is to say:—

- (a) The amount of the loan in respect of which the contract is made;
- (b) The value of the security on which the loan is made;
- (c) The terms and conditions on which the loan is made; and
- (d) The losses covered by the contract of insurance and the terms and conditions of that contract.

(3) Where in relation to any housing loan a contract of insurance is entered into that is an approved contract of insurance that contract remains an approved contract of insurance in relation to that loan notwithstanding the subsequent variation or revocation of any order made under this section.

5—(1) Where the Governor is satisfied that a corporation has a ^{Approval of trustee insurers.} place of business in this State and is capable of properly carrying on the business in this State of insuring against losses arising in respect of housing loans (whether alone or in combination with any other business) he may, by order, declare that corporation to be an approved trustee insurer.

(2) The Governor may revoke an order made under this section, but where, by virtue of the revocation of such an order, a corporation ceases to be an approved trustee insurer it shall nevertheless be deemed to continue to be such an insurer in relation to any approved contracts of insurance entered into by it before the date on which the order was revoked.

Duty of approved trustee insurers to supply information.

6—(1) The Treasurer may by notice in writing served on a corporation to which this section applies require that corporation to furnish him, within such period as may be specified in the notice, with such information with respect to the business carried on by the corporation as may be so specified.

(2) Where any information is required to be furnished by a corporation by a notice under subsection (1) of this section, the Treasurer may by that notice, or by a further notice served on the corporation, require it to furnish him with a certificate of the correctness of the information by a person qualified to act as the auditor of the corporation in this State or under the law of the place in which it is incorporated.

(3) A corporation—

(a) which fails to comply with any requirements made by the Treasurer under this section; or

(b) which, in response to any such requirement, supplies any information that is false in any material particular,

is guilty of an offence and liable to a penalty of one thousand dollars.

(4) Where an offence is committed under this section by a corporation, every person who, at the time when the offence was committed, was a director, manager, secretary, or other similar officer of that body, or was purporting to act in any such capacity, shall be deemed guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity.

(5) A notice required to be served on a corporation under this section may, if the corporation is not a company within the meaning of the *Companies Act* 1962, be served on the corporation by leaving it at, or by sending it by post to, any place of business of the corporation in this State, or, if it has no such place of business, its last-known place of business in this State.

(6) This section applies to any corporation (other than the Housing Loans Insurance Corporation) that is an approved trustee insurer or is deemed, pursuant to subsection (2) of section five, to be an approved trustee insurer in relation to any contract of insurance.

Repeal of *Housing Loans (Powers of Trustees) Act* 1966.

7 The *Housing Loans (Powers of Trustees) Act* 1966 is repealed.

Saving for existing loans.

8 Nothing in this Act applies to a loan made before the commencement of this Act, or to a loan made in pursuance of a contract entered into before that commencement, and, notwithstanding anything in section seven, the *Housing Loans (Powers of Trustees) Act* 1966 has effect in relation to such a loan as if this Act had not been enacted.