

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

FIRST HOME OWNERS BILL 1983

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1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 7 September 1983

(Minister for Housing and Construction)

A BILL

FOR

**An Act to encourage and assist persons to purchase or build
their own homes**

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

PART I — PRELIMINARY

Short title

- 5 1. This Act may be cited as the *First Home Owners Act 1983*.

Commencement

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

Object of Act

- 10 3. The object of this Act is 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 that object.

PART II — INTERPRETATION

Interpretation

- 15 4. (1) In this Act, unless the contrary intention appears—
“amount of the prescribed earnings”, in relation to a sole applicant or joint

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applicants, means the amount of the prescribed earnings of the applicant or applicants as defined in section 19;

“applicant” means a person who, in accordance with sub-section 15 (2), signs, or is deemed by virtue of a direction under sub-section 15 (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; 5

“application” means an application under section 15;

“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; 10
- (c) an estate for life approved by the Secretary for the purposes of this Act; 15
- (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; 20
- (f) an interest of the kind referred to in section 11; or
- (g) any other interest declared by the regulations to be an approved interest for the purposes of this Act; 25

“assistance” means financial assistance 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; 30

“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 14 (1) (a) or (b), or commenced the construction of a dwelling as referred to in paragraph 14 (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 14 or the date on which the construction commenced, as the case may be; 35 40

“prescribed person”, in relation to a dwelling, means a person who is a prescribed person in relation to that dwelling by virtue of sub-section 14 (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 Permanent Head of the Department;

“sole applicant” means an applicant other than a joint applicant.

(2) A dwelling shall not be taken to be a dwelling for the purposes of this Act unless the Secretary is satisfied that—

- (a) the facilities it provides are such that it is reasonable to regard it as the principal place of residence of a person or persons; and
- (b) if any building standards are applicable to it—it complies with those standards.

Person not intending to reside in dwelling

5. Where a person is a prescribed person in relation to a dwelling, and the Secretary is satisfied that 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 a prescribed person in relation to the dwelling.

References to spouse

6. (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 sub-section (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.

Commencement and completion of construction of dwelling

7. (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) 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. 5

(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

8. (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. 15

(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.

Purchase or ownership of land or dwelling 20

9. (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— 25

- (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 30
- (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; 35
- (ii) shares in the capital of a body corporate 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 40

- (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 avoidance of doubt it is declared that, for the purposes of this section—

- (a) the purchase by a person or persons of an interest in land, in an undivided share in land or in a dwelling shall not be taken to be the purchase of an approved interest by reason only that the interest so purchased, together with an interest or interests already owned by the purchaser or any of the purchasers, constitutes an approved interest; and
- (b) the purchase by a person or persons of an interest in shares in the capital of a body corporate shall not be taken to be the purchase of the shares by reason only that the interest so purchased, together with an interest or interests already owned by the purchaser or any of the purchasers, constitutes ownership of the whole property in the shares.

(4) 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 sub-section 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 sub-section 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.

(5) For the purposes of this section, the purchase or ownership of shares in the capital of a body corporate by a person or persons (in this sub-section 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.

Purchase of home to be moved to other land

10. 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 5
- (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.

Dwelling on rural property

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11. Where—

- (a) on or after 1 October 1983, 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 15
 - (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, 20

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 the first-mentioned person or those first-mentioned persons shall be deemed to be the owner or owners of that interest. 25

Trusts, &c.

12. (1) Where—

- (a) a person holds an interest in land, or in a dwelling, in trust for any other person or persons (in this sub-section referred to as the “beneficiary” or “beneficiaries”, as the case may be); or 30
- (b) a person has, alone or together with any other person or persons, entered into a contract for the purchase of land or a dwelling, and an interest in the land or dwelling is to be held by the first-mentioned person in trust for any other person or persons (in this sub-section also referred to as the “beneficiary” or the “beneficiaries”, as the case may be), not being any of the persons who so entered into the contract, 35

and the Secretary is satisfied that the beneficiary or beneficiaries will become the owner or co-owners of the interest referred to in paragraph (a) or (b), as the case may be, the beneficiary or beneficiaries shall, for the purposes of this Act, be deemed to be the owner or co-owners of the interest referred to in paragraph (a) or to have entered into the contract for the purchase of the land or dwelling, as the case may be. 40

(2) Where—

(a) a person has, alone or together with any other person or persons, entered into a contract for the construction by a building-contractor of a dwelling, and the Secretary is satisfied that an interest in the dwelling will be held by the person as trustee for any other person or persons (in this sub-section referred to as the “beneficiary” or the “beneficiaries”, as the case may be), not being any of the persons who so entered into the contract; or

(b) a person has, alone or together with any other person or persons, at the request of any other person or persons, entered into a contract, otherwise than as an agent of the person or persons who made the request, for the construction by a building-contractor of a dwelling, and the Secretary is satisfied that an interest in the dwelling will be owned by the person or persons who made the request,

the beneficiary or beneficiaries, or the person or persons who made the request, as the case may be, shall, for the purposes of this Act, be deemed to have entered into the contract.

(3) A person deemed by virtue of this section to have entered into a contract is not deemed to have done so to the exclusion of any person who actually entered into the contract.

(4) Section 9 has effect in relation to paragraph (1) (b) of this section as if there were omitted from sub-section 9 (2) the words “, otherwise than as trustee,”.

Applicants who have dependent children

13. (1) For the purposes of this Act, an applicant shall be treated as having a dependent child if, and only if, the Secretary is satisfied that a family allowance has been paid, or would, but for section 95A or 95B of the *Social Security Act 1947*, be payable, to the applicant in respect of that dependent child in respect of the prescribed period.

(2) In this section—

“dependent child” means—

(a) a person under the age of 16 years; or

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

“family allowance” means a family allowance within the meaning of Part VI of the *Social Security Act 1947*, and “family allowance period” shall be construed accordingly;

“prescribed period”, in relation to an applicant, means a family allowance period, or that part of such a period, that falls within a period commencing on the prescribed date in relation to the applicant and ending 11 months after that date.

PART III—FINANCIAL ASSISTANCE

Division 1—Application for, and Payment of, Assistance

Persons who, subject to section 15, may apply

14. (1) Where, on or after 1 October 1983, 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— 5

- (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— 10

- (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 15

- (iii) jointly by 2 or more persons, each of whom is a person to whom sub-paragraph (i) or (ii) applies, 1

other than a dwelling the construction of which was commenced before 1 October 1983; or 20

- (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; 25

- (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 sub-paragraph (i) or (ii) applies, 30

then, subject to section 5—

- (d) the home acquirer or each of the home acquirers, as the case may be;

- (e) 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; and 35

- (f) any person to whom a determination under sub-section 9 (4) applies in relation to the dwelling,

is, for the purposes of this Act, a prescribed person in relation to the dwelling.

(2) Where a person is a prescribed person in relation to a dwelling and—

- (a) the Secretary is satisfied that neither a grant under a prescribed Act nor a payment of assistance under this Act has been made to the prescribed person, either alone or jointly with another person; and 40

(b) before the date of the contract, or the date on which construction commenced, as the case may be, the prescribed person—

(i) had not owned a dwelling in Australia; and

(ii) had not 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,

either alone or together with another person or other persons, the prescribed person is, for the purposes of section 15, a person to whom this sub-section applies.

(3) For the purposes of paragraph (2) (a), a grant under a prescribed Act or payment of assistance 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, the grant or assistance, as the case may be, has been repaid to, or recovered by, the Commonwealth.

(4) For the purposes of making a decision under paragraph (2) (a), the Secretary may satisfy himself by having regard to such records (however compiled, recorded or stored) as he thinks appropriate.

(5) For the purposes of paragraph (2) (b), a person or persons shall be taken not to have owned a dwelling, or been a party or parties to a contract for the purchase of a dwelling, during any period during which the dwelling was not the principal place of residence of the person or persons.

(6) For the purposes of this section, but subject to sub-section (7), the date of a contract is such date as is determined by the Secretary, being a date—

(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 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.

(7) For the purposes of this section, but subject to sub-section (8), the Secretary may treat a person or persons as having entered into a contract on a date determined by him, being a date not less than 2 months after the date determined under sub-section (6), and the date of the contract for the purposes of this section is the date determined under this sub-section.

(8) The Secretary shall not make a determination under sub-section (7) unless he is satisfied that it would be to the advantage of the person or persons affected.

(9) In this section—

“person” means a natural person;

“prescribed Act” means the *Homes Savings Grant Act 1964*, the *Homes Savings Grant Act 1976* or the *Home Deposit Assistance Act 1982*.

Applications

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15. (1) Where the person, or each person, who is a prescribed person in relation to a dwelling is a person to whom sub-section 14 (2) applies in relation to the dwelling, an application for assistance in respect of the dwelling may be made in accordance with this section.

(2) An application for assistance in respect of a dwelling—

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(a) shall be in writing in accordance with a form made available by the Secretary;

(b) subject to sub-section (3), shall be signed by the person, or by each person, who is a person to whom sub-section 14 (2) applies in relation to the dwelling; and

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(c) shall be furnished to the Secretary.

(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—

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(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;

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(iii) the whereabouts of the person are not known; or

(iv) the person has died,

the Secretary may, if he considers that the person should be treated as an applicant, direct that the person is to be deemed to have signed the application.

(4) An applicant for assistance shall furnish to the Secretary such declarations and other documents as the Secretary requires.

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Financial assistance

16. Subject to this Act, the Secretary may pay, on behalf of the Commonwealth, financial assistance in accordance with this Act in respect of a dwelling to the applicant or applicants, as the case may be, for the assistance.

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Assistance not payable unless certain conditions satisfied

17. (1) Assistance shall not be paid in respect of a dwelling in relation to which paragraph 14 (1) (c) applies unless the dwelling has been completed or the Secretary is satisfied that substantial progress on the construction—

(a) has been made; or

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(b) is likely to be made within a reasonable time.

(2) Assistance shall not be paid 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 14 (1) (a) or (b), or to complete the construction referred to in paragraph 14 (1) (c), as the case may be.

(3) Sub-section (2) 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 sub-section to apply having regard to all the circumstances.

(4) Assistance shall not be paid 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 who has been granted, or who is included in, an entry permit (other than a temporary entry permit) under the *Migration Act 1958*, being an entry permit that is in force; or

(c) a person to whom Division 1 of Part II of the *Migration Act 1958* does not apply by virtue of the operation of sub-section 8 (1) of that Act, being a person who the Secretary is satisfied is likely to remain permanently in Australia.

Division 2—Prescribed Earnings

Interpretation

18. (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 22, means the preceding year of income;

“succeeding year of income”, in relation to an applicant, means the year of income next succeeding the current 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.

Prescribed earnings

19. (1) For the purposes of this Act, the amount of the prescribed earnings of a sole applicant or of joint applicants is— 5

- (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—the sum of the amounts of the taxable income of each applicant for the relevant year of income in relation to that applicant. 10

(2) For the purposes of sub-section (1), in relation to an applicant in relation to whom a direction is in force under section 22, the amount of the taxable income of the applicant for the relevant year of income is that amount as reduced in accordance with the regulations. 15

Assessment, &c., of taxable income

20. (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— 20

- (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. 25

(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. 30

(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. 35

Amount of taxable income

21. For the purposes of this Division, the amount of the taxable income of an applicant for a year of income is 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 20 (2) (b).

Relevant year of income in certain cases

22. (1) Where an applicant, by notice in writing furnished to the Secretary, requests the Secretary to give a direction under this sub-section and the Secretary is satisfied that—

- (a) the applicant was a resident of Australia during the whole of the preceding year of income;
- (b) 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; and
- (c) the applicant will be advantaged by the making of such a direction, the Secretary shall direct that the relevant year of income in relation to the applicant is the current year of income.

(2) Where a direction is given under sub-section (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 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.

(3) Where the Secretary is not satisfied that an applicant was a resident of Australia during the whole of the preceding year of income—

- (a) if the estimated amount, or the actual amount, of the taxable income of the applicant for the current year of income exceeds the amount of his taxable income for the preceding year of income and the Secretary is satisfied that the applicant is or will be a resident of Australia during the whole of the current year of income—the Secretary shall direct that the relevant year of income in relation to the applicant is the current year of income; and
- (b) if the estimated amount, or the actual amount, of the taxable income of the applicant for the current year of income or the succeeding year of income exceeds the amount of his taxable income for the preceding year of income and the Secretary is not satisfied that the applicant is or will be a resident of Australia during the whole of the current year of income—the Secretary shall direct that the relevant year of income in relation to the applicant is whichever of those years of income is the year for which the applicant's taxable income is the greatest amount.

(4) Where a direction is given under sub-section (3) in relation to an applicant on the basis of an estimated amount of taxable income and the actual

amount is greater or less than that estimated amount, the Secretary shall revoke or vary the direction accordingly.

(5) In determining for the purposes of this section whether a person is a resident of Australia, section 7A of the Assessment Act shall be disregarded.

Division 3—Payment of Assistance

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Payment of assistance

23. (1) Subject to this Act, assistance to a sole applicant or to joint applicants shall be paid in accordance with the regulations.

(2) Subject to sub-section (4), where the amount of the prescribed earnings of a sole applicant or of joint applicants exceeds the lower relevant amount but is less than the higher relevant amount, the amount of any payment of assistance to be made to the applicant or each of the applicants, as the case may be, is the amount ascertained in accordance with the formula—

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$$\frac{A(B - C)}{(B - D)}$$

where—

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- A is the amount that, but for this sub-section and sub-section (4), would be the amount of the payment;
 - B is the higher relevant amount;
 - C is the amount of the prescribed earnings; and
 - D is the lower relevant amount.
- 20

(3) Assistance shall not be paid 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, is equal to, or exceeds, the higher relevant amount.

(4) A payment of an amount of assistance shall not be made if the amount is less than \$10.

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(5) In this section—

- “higher relevant amount” is the amount ascertained in accordance with the regulations;
 - “lower relevant amount” is the amount ascertained in accordance with the regulations.
- 30

PART IV—ADMINISTRATION

Delegation

24. (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.

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(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.

5 Interpretation

25. In sections 26 and 27, a reference to a decision of the Secretary shall be read as a reference to a determination, direction, decision or approval of the Secretary under this Act.

Making of decisions

10 26. (1) A decision of the Secretary shall be by instrument in writing.

(2) Notice of a decision of the Secretary shall be served by post on the applicant, or on each of the applicants, as the case may be, at the address of that person last known to the Secretary.

Review of decisions

15 27. (1) If at any time it appears to the Secretary that sufficient reason exists for reconsidering a decision of the Secretary, he may reconsider the decision and may affirm, revoke or vary it.

(2) A person whose interests are affected by a decision of the Secretary, other than a decision under section 20, may, within such time (if any) as is prescribed, request the Secretary to reconsider the decision.

(3) Upon receipt of a request under sub-section (2), the Secretary shall reconsider the decision, and may affirm, revoke or vary it.

25 (4) Where, under sub-section (3), the Secretary affirms, revokes or varies a decision, he shall, by notice in writing served by post on the applicant, or on each of the applicants, as the case may be, at the address of that person last known to the Secretary, inform that person of the results of the reconsideration of the decision, set out the findings on material questions of fact, refer to the evidence or other material on which those findings were based and give his reasons for affirming, revoking or varying the decision.

30 (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision made under sub-section (3).

(6) In sub-section (5), "decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Statements to accompany notification of decisions

35 28. (1) Notice under sub-section 26 (2) of a decision (other than a decision under sub-section 27 (3)) shall include a statement to the effect that a person affected by the decision—

- (a) may, if he is dissatisfied with the decision, request a reconsideration of the decision in accordance with sub-section 27 (2); and

- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with a decision made by the Secretary upon that reconsideration affirming, revoking or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so made.

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(2) Notice under sub-section 27 (4) of a decision made under sub-section 27 (3) shall include a statement to the effect that a person affected by the decision may, if he is dissatisfied with the decision, make application to the Administrative Appeals Tribunal for review of the decision.

Officers to observe secrecy

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29. (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.

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

(2) Notwithstanding anything contained in sub-section (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.

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(3) An authority to which, or person to whom, information is divulged under sub-section (2), and any person under the control of that authority or person is, in respect of that information, subject to obligations and liabilities under sub-section (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.

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Information as to applicants

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

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(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.

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

Powers as to taking of evidence and production of documents

31. (1) The Secretary may, for the purposes of this Act—

- (a) summon witnesses;
- (b) receive evidence on oath or affirmation; and
- 10 (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 a reasonable amount to defray expenses, fail to appear in obedience to the summons.

(3) A person, whether summoned or not, who appears before the Secretary
15 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.

20 Indemnity to certain persons

32. Nothing contained in any law of a State or Territory prevents 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 V—MISCELLANEOUS

25 Advances

33. (1) Where—

- (a) the Secretary is satisfied that—
 - 30 (i) the amount of the prescribed earnings of a sole applicant or of joint applicants has not been ascertained in accordance with Division 2 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;
 - 35 and

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

he may make an advance on account of the assistance of an amount not exceeding the amount so estimated. 5

(2) Part IV and this Part (except section 37) apply in relation to an advance in like manner as they apply in relation to assistance.

Appropriation

34. Assistance is payable out of the Consolidated Revenue Fund, which is appropriated accordingly. 10

Failure to complete purchase or construction

35. (1) This section applies where assistance has been paid in respect of a dwelling whose purchase or construction had not been completed on the date on which the application was made. (

(2) Where— 15

- (a) in the case of a dwelling the purchase of which had not been completed on the date on which the application 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 the first payment of assistance; or 20

(ii) the contract for the purchase of the dwelling is discharged otherwise than by performance of the contract; or

- (b) in the case of a dwelling the construction of which had not been completed on the date on which the application was made— 25

(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 the first payment of assistance; 30

(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 35

(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. 40

Notification of amount of taxable income**36. (1) Where—**

(a) an applicant has furnished to the Secretary a certificate, or a statement under paragraph 20 (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 2 of Part III has the same meaning in this section as in that Division.

Adjustment of payments of assistance

37. (1) Where an amount of assistance has been paid to an applicant or applicants and the whole or part of the amount should not have been paid, the whole, or that part, as the case may be, of the amount is referred to in this section as an amount overpaid, and the succeeding provisions of this section apply.

(2) If further assistance is payable, but not paid, to the applicant or applicants, the Secretary may recover the amount overpaid—

(a) where only one amount of assistance is so payable—by deduction from that amount;

(b) where 2 or more amounts of assistance are so payable—by deduction of equal amounts from the amounts so payable.

(3) So much of the amount overpaid as exceeds the total amount (if any) of further assistance payable, but not paid, to the 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 at any time be sued for and recovered in a court of competent jurisdiction by the Secretary suing in his official name.

(4) Where by virtue of sub-section (3) a debt is due by applicants jointly and severally, the Secretary is not entitled to recover amounts that, in the aggregate, exceed the amount of the debt.

(5) Without limiting the generality of sub-section (1), where—

(a) an amount of assistance has been paid to an applicant or 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; and

- (b) as a result of the determination, the whole or part of the amount of assistance is not payable,

then, for the purposes of this section, the whole, or that part, as the case may be, of the amount of assistance shall be treated as if it should not have been paid.

(6) Without limiting the generality of sub-section (1), where an amount of assistance has been paid in respect of a dwelling and any of the circumstances referred to in paragraph 35 (2) (a) or (b) occurs, then, for the purposes of this section, the amount of assistance shall be treated as if it should not have been paid.

(7) Without limiting the generality of sub-section (1), where an advance has been paid to an applicant or applicants on account of an amount of assistance and it is subsequently determined that the amount of assistance is not payable or the amount of assistance payable is less than the amount of the advance, then, the amount of the advance, or the amount of the difference, as the case may be, shall, for the purposes of that sub-section, be deemed to be an amount of assistance that should not have been paid.

(8) Where the whole or part of an amount of assistance that has become payable to an applicant or applicants has not been paid, the Secretary shall pay the whole, or that part, as the case may be, of the amount to the applicant or applicants, as the case may be, by way of a single payment or as otherwise prescribed.

- (9) An amount of less than \$10 is not payable under sub-section (8).

Misleading statements, &c.

38. (1) A person shall not—

- (a) in connection with, or in support of, an application for assistance; or
(b) with intent to deceive an officer,

make, whether orally or in writing, a statement that, to his knowledge, is false or misleading in a material particular.

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

(2) A person shall not obtain payment of assistance by means of a statement that, to his knowledge, is false or misleading in a material particular or by means of impersonation or a fraudulent device.

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

(3) Where a person is convicted of an offence against this section, 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 assistance paid in consequence of the act, failure or omission in respect of which he was convicted.

Prosecutions for offences

39. Proceedings for an offence against this Act or the regulations may be commenced at any time within 6 years after the commission of the offence.

Evidence

5 **40. (1)** All courts shall take judicial notice of the signature of any person who holds or has held the office of Secretary, and of the fact that that person holds or has held that office, if the signature purports to be attached or appended to any 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.

(2) A certificate in writing signed by a person who holds or has held the office of Secretary certifying—

10 (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,

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

Reports

41. (1) The Secretary shall, as soon as practicable after each 30 June, furnish to the Minister a report as to the administration and operation of this Act during the year ended on that date.

20 **(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.

Regulations

25 **42. (1)** 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.

30 **(2)** Without limiting the generality of the power to make regulations conferred by sub-section (1), the regulations may make provision for and in relation to—

 (a) the amounts in which payments of assistance are to be made;

 (b) the manner in which assistance is to be paid;

35 (c) where assistance is payable by way of periodical payments, the period within which those payments are to be made;

 (d) the consequences of the death of applicants entitled to assistance;

 (e) the circumstances, and the manner, in which amounts of assistance paid to applicants who have died may be recovered;

40 (f) the circumstances in which applicants entitled to assistance may cease to be so entitled;

 (g) the circumstances in which applicants who have ceased to be entitled to assistance may resume their entitlement;

- (h) the circumstances in which amounts of assistance are payable to applicants in consequence of their resumption of entitlement to assistance, and the circumstances, and the manner, in which amounts so paid are recoverable;
 - (j) the manner in which, and the conditions subject to which, applicants who have resumed their entitlement to assistance may request the payment of that assistance; and 5
 - (k) prescribing penalties not exceeding \$1,000 for offences against the regulations.
- (3) Without limiting the generality of sub-section (2), the regulations may provide for— 10
- (a) greater amounts of assistance to be payable to applicants who have dependent children;
 - (b) different scales of the amounts of assistance depending upon the option of applicants; and 15
 - (c) the manner in which such options are to be exercised.
- (4) The power to make regulations conferred by this Act shall not be taken, by implication, to exclude the power to make provision for or in relation to a matter by reason only of the fact that—
- (a) provision is made by this Act in relation to that matter or another matter; or 20
 - (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.
- (5) The power to make regulations conferred by this Act may be exercised— 25
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised, the same provision for all those cases or different provision for different cases or classes of case. 30