

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 April 1985

(*Minister for Housing and Construction*)

A BILL

FOR

An Act to amend the *Housing Loans Insurance Act 1965*, and for related purposes

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

Short title, &c.

5 1. (1) This Act may be cited as the *Housing Loans Insurance Amendment
Act 1985*.

(2) The *Housing Loans Insurance Act 1965*¹ is in this Act referred to as the
Principal Act.

Commencement

10 2. The provisions of this Act shall come into operation on a day, or on
respective days, to be fixed by Proclamation.

Title

3. The title of the Principal Act is amended by omitting “purposes
connected therewith” and substituting “other purposes”.

Interpretation**4. Section 4 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) the definition of “appraised value”;
- (b) by omitting from sub-section (1) the definition of “approved lender” and substituting the following definition:

“ ‘approved dealer’, or ‘approved lender’, means a person approved as a dealer, or as a lender, as the case may be, by the Corporation under section 5, but, except as provided by sub-section 5 (4), does not include a person whose approval under that section has been revoked;”;

- (c) by omitting from sub-section (1) the definition of “insurable loan” and substituting the following definition:

“ ‘insurable loan’ means—

- (a) a loan made for the purpose of enabling the borrower—

- (i) to alter, improve or extend a dwelling house constructed on land in which the borrower has a prescribed interest; or

- (ii) to meet expenses in respect of the provision or improvement of roads, kerbing, guttering or footpaths in connection with land in which the borrower has a prescribed interest, being land on which there has been a dwelling house or on which a dwelling house is being constructed,

being a loan made in accordance with terms and conditions approved by the Corporation; or

- (b) a loan the repayment of which is secured by an approved security over a prescribed interest of the borrower, or of any other person, in land;”;

- (d) by inserting in sub-section (1) after the definition of “mortgage” the following definition:

“ ‘negotiable mortgage security’ means a document, being a promissory note, bill of exchange, certificate of entitlement or other evidence or acknowledgment of indebtedness (other than an approved security), where—

- (a) the document entitles the holder thereof to the whole or part of, or an interest in the whole or part of, the entitlement of the mortgagee or mortgagees under one or more approved securities over one or more prescribed interests in land;

- (b) the document is redeemable from moneys directly or indirectly derived from, or connected with, approved securities over prescribed interests in land; or

- (c) the document is otherwise related to approved securities over prescribed interests in land and is included in a class of documents declared by the regulations to be

negotiable mortgage securities for the purposes of this Act;” and

- (e) by omitting sub-sections (4) and (5) and substituting the following sub-section:

“(4) Except where the contrary intention appears, a reference in this Act to the Corporation entering into a contract does not include a reference to the Corporation entering into a contract in pursuance of sub-section 17 (3B).”.

Approved dealers and approved lenders

5. Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “a lender” and substituting “a dealer, or as a lender, or as both,”;
(b) by omitting from sub-section (3) “as a lender”; and
(c) by omitting sub-section (4) and substituting the following sub-section:

“(4) Notwithstanding the revocation, in whole or in part, of the approval of a person under sub-section (2), the person shall continue to be either or both of the following, as the case requires, namely—

- (a) an approved dealer for the purposes of this Act in relation to any approved security that is the subject of a contract of insurance entered into under paragraph 17 (2) (b) by the Corporation before the revocation; and
(b) an approved lender for the purposes of this Act in relation to any loan that is the subject of a contract of insurance entered into by the Corporation before the revocation.”.

Membership of Corporation

6. Section 7 of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(5) The Chairman and the Deputy Chairman are entitled to retire at any time after attaining the age of 55 years.”.

Disqualification from membership

7. Section 8 of the Principal Act is repealed.

8. Section 10 of the Principal Act is repealed and the following section is substituted:

Disclosure of interests

“10. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Corporation.

“(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting and the member shall not, without the approval of the Minister—

- (a) be present during any deliberation of the Corporation with respect to that matter; or
- (b) take part in any decision of the Corporation with respect to that matter.”.

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Corporation to carry on certain insurance business

9. Section 17 of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) Subject to this Act, the Corporation is empowered to enter into a contract of insurance—

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- (a) insuring a lender against the whole or part of any loss in respect of an insurable loan made, or proposed to be made, by the lender; or

- (b) insuring an approved dealer against the whole or part of any loss of a kind specified in the regulations, being loss that is directly or indirectly connected with one or more approved securities relating to negotiable mortgage securities issued, or proposed to be issued, by the dealer.”;

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- (b) by omitting from sub-section (2A) “sub-section (2)” and substituting “paragraph (2) (a)”;

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- (c) by inserting after sub-section (3) the following sub-sections:

“(3A) Sub-section (3) shall not be taken to limit the generality of paragraph (2) (b).

“(3B) Subject to this Act, the Corporation is empowered to enter, as the agent of an insurer, into a contract of insurance insuring a person against the whole or part of any loss arising from the person having to perform obligations of a mortgagor under an approved security over a prescribed interest in land.

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“(3C) The Minister may, from time to time, by instrument in writing, direct the Corporation to enter, under sub-section (2), into contracts in respect of loans included in a class of loans specified in the direction, being loans—

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- (a) made for purposes that accord with the policies of the Government of the Commonwealth in relation to housing; and

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- (b) in respect of which the Corporation would not so enter into contracts in the ordinary course of business,

and, subject to sub-section (2A), the Corporation shall comply with the direction.

“(3D) The Minister shall not give a direction under sub-section (3C) unless he has given the Corporation a reasonable opportunity to furnish advice to him on the matter and has had regard to any advice so furnished.

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“(3E) The Minister shall cause a copy of a direction given under sub-section (3C) to be laid before each House of the Parliament within 15 sitting days of that House after the giving of the direction.”; and

(d) by adding at the end the following sub-section:

“(6) The Corporation shall ensure as far as practicable that a substantial part of its business relates to loans made for purposes of enabling persons to acquire or construct residential accommodation.”.

Limitations in respect of contracts of insurance

10. Section 20 of the Principal Act is amended by adding at the end the following sub-section:

“(2) The Minister may, from time to time, by instrument in writing, direct the Corporation not to enter into contracts of insurance in respect of approved securities relating to a class of negotiable mortgage securities specified in the direction, and the Corporation shall comply with that direction.”.

11. Section 24 of the Principal Act is repealed and the following section is substituted:

Corporation may make payment whether or not insured exercised rights

“24. A contract of insurance in relation to an insurable loan or in relation to an approved security that relates to negotiable mortgage securities may include provision, however expressed, for the making of a payment by the Corporation under the contract notwithstanding that the person insured or any other person has not exercised any or all of that person’s rights in relation to a matter to which the contract relates, other than rights under the contract.”.

Policies of Corporation in the conduct of its business

12. Section 25 of the Principal Act is amended by adding at the end the following sub-section:

“(6) A reference in sub-section (5) to the Corporation entering into a contract includes a reference to the Corporation entering into a contract in pursuance of sub-section 17 (3B).”.

Premiums, &c., to be charged by Corporation

13. Section 26 of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-sections:

“(2) The premiums and other charges shall be—

(a) in the case of a contract entered into in pursuance of a direction given under sub-section 17 (3C)—as determined by the Corporation within such limits (if any) as are determined by the Minister; or

(b) in any other case—as determined by the Corporation.

“(2A) The Minister shall not make a determination under paragraph (2) (a) unless he has given the Corporation a reasonable

opportunity to furnish advice to him on the matter and has had regard to any advice so furnished.”; and

- (b) by adding at the end the following sub-section:

“(6) Sub-sections (4) and (5) have effect subject to sub-section 17 (3C).”.

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Corporation not obliged to enter contract in respect of particular loan

14. Section 27 of the Principal Act is amended by adding at the end the following sub-section:

“(2) A reference in sub-section (1) to the Corporation entering into a contract includes a reference to the Corporation entering into a contract in pursuance of sub-section 17 (3B).”.

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15. Section 30 of the Principal Act is repealed and the following section is substituted:

Corporation guaranteed by Commonwealth

“30. By force of this section, the Commonwealth guarantees the due payment by the Corporation of all money (other than money due in respect of money borrowed under section 31D) that is, or may at any time become, payable by the Corporation to a person other than the Commonwealth.”.

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Payments to the Commonwealth

16. (1) Section 31B of the Principal Act is amended—

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- (a) by inserting after sub-section (1) the following sub-section:

“(1A) For the purpose of placing the Corporation, as far as practicable, on an equal footing with other insurers, the Corporation shall pay to the Commonwealth in respect of a financial year an amount determined by the Minister.”; and

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- (b) by omitting sub-section (3) and substituting the following sub-sections:

“(3) In the making of a determination under sub-section (1) or (2), the Minister shall have regard to—

- (a) any advice furnished by the Corporation to the Minister in relation to the financial affairs of the Corporation; and

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- (b) any losses that have resulted, or are likely to result, from compliance by the Corporation with directions given under sub-section 17 (3C).

“(4) In the making of a determination under sub-section (1A), the Minister shall have regard to—

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- (a) any reinsurance costs of the Corporation;
 (b) the reinsurance costs of other insurers; and
 (c) the amount of business carried on by the Corporation.

“(5) In this section, ‘insurer’ means a person carrying on the business of insuring lenders against loss in respect of loans secured by mortgages.”.

5 (2) The amendments made by sub-section (1) apply in relation to the financial year ending on 30 June 1985 and each subsequent year.

Interim payments

17. Section 31C of the Principal Act is amended—

- 10 (a) by inserting in sub-section (1) “or (1A)” after “(1)”; and
(b) by omitting from sub-section (3) “determined by the Minister under sub-section (1) of section 31B to be payable by the Corporation to the Commonwealth in respect of that year” and substituting “on account of which the amount was, or amounts were, paid”.

Proper accounts to be kept

15 18. Section 36 of the Principal Act is amended by adding at the end the following sub-section:

“(2) The Corporation shall keep a separate account of its receipts and expenditure arising out of business carried on in pursuance of directions given under sub-section 17 (3C).”.

Annual report

20 19. Section 39 of the Principal Act is amended by inserting in paragraph (2) (a) “sub-section 17 (3C),” before “section 20”.

Assignment of contracts of insurance

20. Section 42 of the Principal Act is amended—

- 25 (a) by omitting sub-section (1) and substituting the following sub-section:
“(1) Subject to sub-section (2) and to such terms and conditions (if any) as the Corporation determines, a contract of insurance may be assigned—
30 (a) where the contract relates to an insurable loan secured by an approved security—to the person to whom the approved security is transferred or assigned or in whom that security becomes vested;
(b) where the contract relates to an insurable loan not so secured—to the person to whom the right of repayment of the loan is transferred or assigned; or
35 (c) where the contract relates to an approved security or approved securities relating to one or more negotiable marketable securities—to the person to whom any interest in the approved security or approved securities is transferred or assigned.”; and
40 (b) by inserting in sub-section (2) “under paragraph (1) (a) or (b)” after “assigned”.

Officers' rights

21. Section 45 of the Principal Act is repealed.

Regulations

22. Section 47 of the Principal Act is amended by inserting in sub-section (2) before paragraph (a) the following paragraphs:

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“(aa) declaring classes of documents to be negotiable mortgage securities for the purposes of this Act;

(ab) specifying kinds of loss for the purposes of paragraph 17 (2) (b);”.

Transitional

23. A provision of a contract of insurance in effect immediately before the commencement of section 11 in pursuance of section 24 of the Principal Act continues in effect as if it had been made in pursuance of section 24 of the Principal Act as substituted by section 11.

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