

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FIRST HOME OWNERS BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Housing and  
Construction, the Hon. Chris Hurford, M.P.)

FIRST HOME OWNERS BILL 1983

Introductory Note

The purpose of this Bill is to provide a legislative basis for the First Home Owners Scheme, which is a Scheme to provide assistance to persons to purchase or build their own homes.

The First Home Owners Bill provides for the commencement of the Scheme from 1 October 1983. This scheme replaces the former Government's Home Deposit Assistance Scheme and provides substantial assistance to first home buyers.

The main features of the First Home Owners Bill 1983 are:-

Eligibility and making application for assistance

Generally speaking, an application may be made by a person, or persons acting jointly, buying or building their first home in Australia. They must have, or expect to have, title to the land on which the home is built or other acceptable security of tenure. Migrants must also have the right to permanent residence in Australia. With certain exceptions, assistance may not be made to a person who (or whose spouse) has previously received a grant under the Homes Savings Grant Acts, the Home Deposit Assistance Act or received assistance under the First Home Owners Scheme, or has previously owned or had an interest in a home in Australia.

Amount of Assistance

The amount of assistance payable to applicants is to be determined in accordance with regulations to the Bill. Regulations are being made which provide that an applicant with two dependent children may receive a maximum of \$7,000; with one child - \$6,500; and without children - \$5,000 payable as a periodic benefit over five years.

Provision is also made for the payment of this benefit by way of lump sum and reduced periodic benefit.

Basically the Bill provides that the income of applicants will be the assessable taxable income of applicants under the provisions of the Income Tax Assessment Act, with provision also being made for the determination of the "taxable" income of persons who are not obliged under the tax legislation to furnish a tax return. The income of all applicants joined in a particular application will be added before the fixed income limits are applied to applicants' income. The taxable income of applicants will normally be the taxable income for the income year preceding the date of home acquisition, although in certain circumstances account may be taken of a later period of income.

Detailed machinery provisions relating to payment of assistance to applicants and to suspension and resumption of payment of assistance in circumstances where an applicant sells the first home and buys another within twelve months, are to be prescribed in the regulations.

Detailed explanations of each clause of the Bill follow.

PART I - PRELIMINARY

Clause 1:     Short title

Formal

Clause 2:     Commencement

Formal

Clause 3:     Objects of the Act

This clause sets out the objects of the Act. It states that the object is to encourage and assist persons to purchase or build their own homes and in the construction and administration of the Act, regard shall be had to that object.

PART II - INTERPRETATION

Clause 4:     Interpretation

"amount of prescribed earnings"

This definition provides that the prescribed earnings of a sole applicant or of joint applicants means the amount defined in clause 19 and the regulations.

"applicant"

This definition identifies an applicant as a signatory or deemed signatory to an application in accordance with the provisions of clause 15(2) and (3) but excludes a person who is to be disregarded under clause 5.

"application"

As stated in the Bill, this means an application for assistance.

"approved interest"

This expression, which is used specifically in clause 9, is defined in order to set out the forms of land tenure that are acceptable for the purposes of the Act. To summarise them in broad terms, the approved forms of tenure are:-

- (a) an estate in fee simple (i.e. freehold title);
- (b) a freehold title being bought by instalments from the Crown in the right of a State or the Northern Territory;
- (c) an interest in an approved estate for life;
- (d) a long-term lease or sublease giving security of tenure and a Crown lease, licence or right of occupancy giving security of tenure;

(e) an interest of a kind referred to in clause 11 (which is a reference to a person building on a rural property to which he does not hold title); and

(f) an interest declared by regulation to be an approved interest.

"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 a sub-lease.

"officer"

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

"prescribed date"

This is the date as defined by reference to clause 14. The prescribed date is:-

- (a) in the case of a person purchasing an existing home - the date the contract is made;
- (b) in the case of a home that is, or is to be, built by a building-contractor - the date the building contract is made;
- (c) in the case of an owner-builder - the date on which construction of the dwelling-house commenced; or
- (d) such other date as the Secretary determines which may include the determination of a date nearer settlement where a long delay has occurred between the dates envisaged above and the settlement taking place.

"prescribed person"

This identifies a prescribed person by reference to clause 14(1) and the Secretary's power under clause 5 to disregard certain prescribed persons.

"rural property"

means a rural holding which the Secretary is satisfied is used for primary production or, should be regarded as being a rural property. A less stringent form of land tenure is required for persons constructing homes on rural properties where that person does not hold title to the land.

"Secretary"

This means the Permanent Head of the Department.

"sole applicant"

This means an applicant other than a joint applicant.

Sub-clause (2) of clause 4

Provides that dwelling is not a dwelling for the purposes of the Act unless the Secretary is satisfied that it complies with any relevant local building standards and the facilities provided in that dwelling are such that it is reasonable to regard the dwelling as a person's principal place of residence. Payment may not be made in relation to substandard and temporary dwellings. Previous ownership of such dwellings may be disregarded for the purposes of clause 14.



Clause 5: Person not intending to reside in dwelling

The clause provides that where a person is a prescribed person or an applicant in relation to a dwelling, but does not intend to reside in that dwelling, then the Secretary, in his discretion, may direct that the person is not, a prescribed person or applicant in relation to that dwelling. This provision is meant to cover a case such as where a person, e.g. a parent, has entered into a relevant contract merely to act as guarantor and without any intention of residing in the subject dwelling - without this provision that person would be obliged to join in the application for assistance. Another example where the section could be applied would be where a couple separated at the time of purchase and one party did not reside in the dwelling and has no intention of so doing.

Clause 6: References to spouse

Clause 6 provides that a reference to a spouse includes a reference to a de facto as well as a de jure spouse. Sub-clause (2) provides that the Secretary may direct that, on a particular date, legally-married persons are not spouses if they are living apart and have not intention of resuming co-habitation.

Clause 7: Commencement and completion of construction of dwelling

This clause, makes provision for the determination of the date of commencement of construction of a dwelling. Basically, that date is the date on which work commenced on the laying of the foundations of the dwelling. However, the Secretary has a discretion to determine, having regard to all the circumstances, that construction commenced on

a later date. Sub-clause (2) further provides that where a person completes the construction of a dwelling partly-constructed by another person then the commencement of the completion of the dwelling is to be taken as the prescribed date.

Clause 8: Dwelling consisting of part of a building

Clause 8 provides that the commencement of construction of a dwelling which forms part of a building shall be read as the commencement of construction of the building.

Sub-clause (2) further provides that, in cases where a dwelling is a part of a building, then a reference to the land on which a dwelling is, or is to be erected, is to be read as a reference to the land on which the building is, or is to be, erected.

Clause 9: Purchase or ownership of land or dwelling

The broad purpose of the clause is to provide a specification in precise legal terms of the common expressions "purchase of a dwelling" or "ownership of a dwelling".

Sub-clause (2) provides a differentiation between a detached dwelling on a single parcel of land, and a dwelling which is either part of a building, or else is one of two or more buildings on a single parcel of land. The sub-clause also recognises purchase of shares in the capital of a body corporate which entitle the purchaser to a right

of occupancy in respect of a dwelling. This provision will facilitate payment of assistance to persons wishing to settle under multiple occupancy proposals where title to the land is held by a cooperative society or other incorporated body.

Sub-clause (3) provides that the purchase of the remaining part interest in a dwelling is specifically excluded. A part owner cannot apply for assistance on acquiring the remaining interests or interests in the dwelling as he was eligible to apply for assistance when the original interest was purchased.

Sub-clause (4) provides that in cases where a non-applicant is a joint proprietor of the subject land that person does not affect the application if an exclusive right of occupancy of the land is provided to the applicant.

Sub-clause (5) is a provision similar to that in sub-clause (4) in relation to the purchase of shares in an appropriate body corporate.

Clause 10: Purchase of a home to be moved to other land

Clause 10, relates to cases in which the subject dwelling originally stood on other land, or else was constructed off-site. A contract to purchase such a dwelling shall be deemed to be a contract for the construction of such a dwelling, and commencement of construction of such dwelling shall be deemed to have commenced on the date on which the contract to purchase the dwelling was entered into.

Clause 11: Dwelling on rural property

Clause 11 provides that where a person commences construction as an owner-builder, or contracts for the construction of a dwelling, on rural land owned by another person; and where the Secretary is satisfied that the owner of the land has given permission for occupation of the dwelling then that permission shall be deemed to create an interest in the relevant land. "Rural property" is defined in clause 4(1).

Under these provisions a person building a home on a rural property need not be put to the legal costs of creating a separate interest in land to satisfy the requirements of the legislation regarding tenure.

Clause 12: Trusts etc.

Clause 12 relates to relevant trusts in relation to purchase or ownership of land or the construction of a dwelling. Broadly, sub-clauses (1) and (2) provide that where, on behalf of an applicant, a trustee enters into a contract for the purchase of land or a dwelling, or holds land, or a contract for the construction of a dwelling then the applicant may be deemed to have entered into the contract, or to have held the land, provided the Secretary is satisfied that the applicant will become the owner of the land or dwelling.

Sub-clause (3) provides that this provision does not operate to exclude any persons who actually entered into the contract. Therefore that other person's income would have to be tested if they are a prescribed person in relation to that home.

Sub-clause (4) provides that the interest in land purchased or owned must be an approved interest for the purposes of clause 9 if assistance is to be payable.

Clause 13: Applicants who have dependent children

Sub-clause (1) is a procedural clause linking the meaning of expressions used in this clause and in the regulations with expressions used in Part VI of the Social Security Act 1947. To be eligible for an additional amount of assistance in respect of dependent children, the Secretary must be satisfied that within the "prescribed period" an applicant was in receipt of a family allowance under the Social Security Act 1947 or would but for sections 95A or 95B of the Social Security Act 1947 (provisions which relate to endowment entitlement in respect of children in receipt of payments under a prescribed educational scheme), including Tertiary Education Assistance Scheme, Pre-school Teacher Education Assistance Scheme, Aboriginal Study Grants Scheme, Commonwealth Teaching Service Scholarships Scheme, Post-graduate Awards Scheme, and Adult Secondary Education Assistance Scheme.

Sub-clause (2) defines those expressions having special meanings for the purposes of the clause. The period of 11 months specified in the definition of "prescribed period" takes into account that endowment may not be available for up to one month from the birth of a child and that a pregnancy may extend into the tenth month. Thus payment of endowment, resulting in eligibility for a dependency entitlement, may not occur until 11 months after a home contract, which may have been entered into in anticipation of a birth.

PART III - FINANCIAL ASSISTANCE

Division 1 - Application for, and Payment of, Assistance

Clause 14:    Persons who, subject to clause 15, may apply

Sub-clause 1 sets down the basic threshold for persons who may apply for assistance. That is, the Bill is directed towards providing assistance to "home acquirers", and sub-clause (1) makes provision for that class of persons. Basically, the sub-clause provides that a home acquirer is a person who has:

- . entered into a contract for the purchase of an existing dwelling;
  
- . entered into a contract with a builder for the construction of a dwelling on land that is owned, or will be owned, by the home acquirer; or

commenced construction as an owner-builder of a dwelling on land that is owned, or will be owned, by the home acquirer.

Sub-clause (1) provides also for a variety of circumstances arising in cases where there is more than one home acquirer in relation to a home acquisition. It further provides that all of the home acquirers in relation to a particular home acquisition, and the spouses of those home acquirers, are prescribed persons. The precise meaning of the terms used in sub-clause (1) are derived from the provisions of Part II - Interpretation.

Sub-clause (2) provides that where a person is a prescribed person in relation to a dwelling, and no previous grant under the Home Savings Grant Acts, the Home Deposit Assistance Act, or assistance under the First Home Owners Scheme has been paid to that person and that person had not owned alone or jointly another dwelling in Australia, or been party to a terms purchase contract for more than three months in relation to a dwelling in Australia that person may apply for assistance.

Sub-clause (3) provides that where a person has received a grant under the provisions of the Home Savings Grants Acts 1964 and 1976, the Home Deposit Assistance Act 1982 or assistance under the First Home Owners Act and has repaid that grant or assistance, or the amount paid has been recovered by the Commonwealth then the payment of the grant or assistance is not a barrier to the payment of assistance under the Bill.

Sub-clause (4) is a procedural clause relating to storage of records.

Sub-clause (5) provides that a person shall not be taken to have owned a dwelling or been a party to a contract for the purchase of a dwelling during any period during which the dwelling was not the principal place of residence of that person or persons. Under this provision a person who owned a previous dwelling which was not that person's principal place of residence may not be disqualified from receiving assistance in respect of a later home.

Sub-clause (6) enables the Secretary to determine the date on which a person entered into a contract being the earliest date on which the home acquirers entered into contractual relations in respect of the purchase or construction of the dwelling.

Sub-clauses (7) and (8) enable the Secretary to determine that the home acquirers entered into a contract on a later date, provided that the later date is not less than two months after the date on which the person actually entered into that contract and provided that the determination would be of advantage to the applicant. This provision ensures that a person affected by a contract which had a long delay between formation and performance need not be unfairly disadvantaged.

Sub-clause (9) provides that only natural persons may be applicants for assistance.



Clause 15: Applications

Sub-clause (1) provides that a prescribed person under clause 14(2) may apply for assistance.

Sub-clauses (2) to (4) - procedural.

Clause 16: Payment of Financial Assistance

This clause provides the Secretary with the power to pay financial assistance to the applicants.

Clause 17: Assistance not payable unless conditions satisfied

Sub-clauses (1) to (3) provide:

assistance may not be made to owner-builders unless substantial progress has been made on construction, or the Secretary is satisfied that the applicant is likely to make substantial progress within a reasonable time, or unless the dwelling has been completed;

assistance may not be made unless the Secretary is satisfied that an applicant has adequate financial resources for the performance of the home acquisition;

- . an exception may be made to the adequate financial resources condition in terms purchase cases.

Sub-clause (4) provides that assistance may not be made unless a sole applicant, or at least one of joint applicants, is an Australian citizen, or a person normally resident in Australia who has permanent residence status. This requirement must be satisfied before the application can be determined.

Division 2 - Prescribed Earnings

Clause 18: Interpretation

Interpretation.

Clause 19: Prescribed earnings

Sub-clause (1) provides that the prescribed earnings of a sole applicant is the amount of his taxable income in the relevant year of income, (the year preceding the year in which the home was purchased or constructed), and that the prescribed earnings of joint applicants is the sum of the amounts of taxable income of the joint applicants. "Taxable Income", pursuant to clause 19(2), takes its meaning from the Income Tax Assessment Act 1936.

Sub-clause (2) provides that where the income of an applicant is dealt with under clause 22 the amount of taxable income in respect of the relevant year is the amount reduced in accordance with the regulations.

Clause 20: Assessment etc. of taxable income

Sub-clauses (1) to (3) make provision for the supply to the Secretary of information relating to the taxable income of an applicant. Basically, the clause provides that where an applicant has in his possession a notice of assessment or notice of amended assessment from the Commissioner of Taxation then the applicant is to provide that information. Provision is also made for the applicant to

supply other forms of documentation relating to taxable income from the Commissioner where this is appropriate. In cases where an applicant has not been obliged under the tax legislation to furnish a tax return, provision is made in the clause for income information to be supplied direct to the Secretary.

Sub-clause (4) provides for the Secretary to obtain direct from the Commissioner information relating to the income of an applicant. A complementary provision exists in Section 16 of the Income Tax Assessment Act 1936.

Sub-clause (5) provides that, for the purposes of Division 3, the Secretary is not obliged to consider an applicant's income until a certificate is issued in cases where a return has been made but a certificate has not been issued.

Clause 21: Amount of taxable income

Clause 21 is a machinery provision which ensures that the latest determination of assessable income is to be used in the calculation of the assistance. If no assessment has been made, income is to be determined in relation to a statement made under clause 20 (2) (b).

Clause 22

Clause 22 provides that the Secretary may test either the preceding year or the current year of income whichever is of greater advantage to the applicant and calculate the applicant's assistance

accordingly. Where the later year is to be tested, the income is deflated in accordance with a formula prescribed in the regulations and tested against the preceding years' income limits.

Sub-clauses (3) and (4) provide that where an applicant is not a resident in Australia as defined in the Income Tax Assessment Act during the year preceding home acquisition the applicant's income to be tested shall be generally the taxable income for the first year in which the applicant was resident for the whole year.

### Division 3 - Payment of Assistance

#### Clause 23: Payment of assistance

The relevant amounts of assistance payable are to be prescribed in the regulations.

Sub-clauses (2) to (5) prescribe the formula to be used in the calculation of the assistance payable where an applicant's income or joint applicant's income exceed the amount to be prescribed in the regulations.

Sub-clause (4) also provides that an amount of less than \$10 is not to be paid.

PART V - ADMINISTRATION

Clause 24: Delegation

This clause permits the Secretary to delegate his powers in respect of the detailed administration of the legislation. He may not delegate his power of delegation.

Clause 25: Interpretation

The clause defines a decision of the Secretary.

Clause 26: Making of decisions

Clause 26 provides that decisions of the Secretary are to be in writing and served on the applicant or applicants at their last address known to the Secretary.

Clause 27: Review of decisions

Sub-clause (1) provides that where sufficient reason exists the Secretary may review a decision and affirm, revoke or vary that decision. This clause enables review of decisions in circumstances such as production of additional evidence by an applicant or where evidence of an error in calculation of entitlement has been discovered.

Under sub-clauses (2) and (3) a person affected by a decision of the Secretary, other than a decision under clause 20 which relates to taxable income, may request reconsideration of that decision and the Secretary is required to then so reconsider it. The Secretary may affirm, revoke or vary the decision.

Sub-clause (4) requires the Secretary to inform each person affected by the decision in writing of the results of the re-consideration of the decision and set out the findings of material questions of fact, refer to the evidence or other material on which those findings were based and give reasons for affirming, revoking or varying the decision.

Sub-clause (5) provides a right of appeal to the Administrative Appeals Tribunal where a decision has been reconsidered by the Secretary under sub-clause (3).

Clause 28: Notification of rights under clause 28

Written notice of rights under clause 27 are required to be given to all applicants affected by a decision under clause 26. An applicant affected by a decision under clause 28 (3) must be given written notice of his right of appeal to the Administrative Appeals Tribunal.

Clause 29: Officers to observe secrecy

Officers and former officers of the Department, except for the purposes of the Act, may not record or divulge information acquired in the course of his duties about the affairs of any person. Sub-clause (2) specifies the circumstances in which the divulging of such information shall be lawful.

The clause specifies a penalty for breach of this provision.

Clause 30: Information as to applicants

This clause authorises the Secretary to obtain confidential reports on applicants where the information may affect the payment of assistance.

Clause 31: Powers as to taking of evidence and production of documents

This clause authorises the Secretary to require production of documents and to summon witnesses and receive evidence on oath.

Clause 32: Indemnity to certain persons

This clause indemnifies persons providing information or documents where they might otherwise be prevented by a State law.



PART V - MISCELLANEOUS

Clause 33: Advances

In cases where an applicant is unable to establish promptly his prescribed earnings for the purposes of Division 2 of the Bill, the Secretary is empowered to advance to the applicant the amount of assistance that is estimated will eventually be payable.

Clause 34: Appropriation

This clause provides legislative authority for appropriation of moneys from the Consolidated Revenue Fund for the period to which the Act applies. That is, the funds will be provided by special appropriation rather than by annual appropriation under the Appropriation Bills.

Clause 35: Failure to complete purchase or construction

Clause 37 empowers the Secretary to require repayment of assistance if the transaction to acquire the home or construction of the home is not completed within a specified time after the expected completion date or within a specified time after payment of assistance, and provides a penalty for failure to notify that the transaction or construction was not completed within those times. A similar requirement is imposed where an applicant or joint applicants do not become the owners of the dwelling. The Commonwealth is empowered to proceed in court for recovery of the assistance paid as a debt due to the Commonwealth.

Clause 36: Notification of amount of taxable income

Where an applicant has lodged a certificate or statement in relation to his income with the Secretary and subsequently his income for that year is determined to be greater than the amount on that certificate or statement the applicant will be obliged, under penalty, to advise the Secretary of the later determination of his taxable income.

Clause 37: Adjustments of payments of assistance

This clause provides for recovery of amounts which should not have been paid, by way of variation of the amount of assistance remaining to be paid to the applicant. The clause also authorises recovery by way of a civil claim in a court where necessary. Circumstances in which such recovery might be required include:

- assistance paid but it is established subsequently that the prescribed earnings is a greater amount and a lesser amount should in fact have been paid.
- an advance or part of an advance made in accordance with clause 33, where it is established subsequently that no assistance, or assistance less than the amount of the advance, is payable.

The clause also provides that where an amount payable to an applicant has not been paid, that amount shall be paid to the applicant in a single payment or as otherwise prescribed.

Clause 38:     Misleading statements, etc.

This clause provides for penalties upon conviction for offences against the legislation by making or presenting deliberately false or misleading statements or by means of impersonation or fraudulent device.

A court may, in addition to imposing a penalty for such an offence, order repayment of assistance paid in consequence of the offence.

Clause 39:     Prosecutions for offences

Clause 39 limits prosecutions for offences to six years after the offence.

Clause 40:     Evidence

Clause 40 empowers courts to accept official documents as prima facie evidence if signed by the Secretary or by persons formerly holding that position. The clause also authorises courts to accept the certificate of such a person as prima facie evidence of the amount of grant paid.

Clause 41:     Reports

This clause requires the Secretary to furnish to the Minister an annual report on the operation of the legislation as soon as practicable after 30 June each year, and requires the Minister to table the report in the Parliament within fifteen sitting days after receipt.

Clause 42:     Regulations

This clause authorises the making of regulations that may be necessary for giving effect to the legislation.

The first section of the report is devoted to the general description of the project and the objectives to be achieved. It also contains a brief review of the work done in the past and a statement of the scope of the present investigation. The second section is devoted to the description of the experimental apparatus and the methods used for the collection and analysis of the data. The third section contains the results of the experiments and a discussion of their significance. The fourth section is devoted to the conclusions drawn from the work and the suggestions for further research.

References

The following references are given in the report: [1] J. Doe, "The Theory of...", [2] A. Smith, "The Practice of...", [3] B. Brown, "The History of...", [4] C. Green, "The Future of...".





