

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VETERANS' AFFAIRS LEGISLATION  
AMENDMENT BILL (NO.1) 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,  
The Honourable Bruce Scott MP)



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# OUTLINE

## Outline and Financial Impact

This Bill gives effect to certain measures relating to Veterans' Affairs legislation.

Amendments to the *Defence Service Homes Act 1918* will incorporate certain provisions of the Consumer Credit Code that is to be adopted by all State and Territory Governments in 1996. It will also allow Defence Service Homes Scheme beneficiaries rights under the Consumer Credit Code for matters not specified in this amending bill.

Amendments to the *Veterans' Entitlements Act 1986* will streamline the granting of a pension to the dependant of a veteran who dies from a war-caused injury or disease.

Unless otherwise indicated, the measures in this Bill have nil or negligible financial impact.

### Schedule 1 Amendments of the *Defence Service Homes Act 1918*

The amendments ensure loan beneficiaries under the Defence Service Homes Scheme will have consumer rights similar to those that other borrowers will have when all State and Territory Governments adopt a common Consumer Credit Code.

Date of effect            Schedule 1, with the possible exception of item 5, commences on Royal Assent. Item 5 commences on Royal Assent, the commencement day of the Consumer Credit Code or 1 September 1996, whichever is the latest day.

Financial impact        1996-97            (\$4.418m)

**Schedule 2 Amendments of the Veterans' Entitlements Act 1986**

The dependant of a veteran who dies from a war-caused disability will be eligible for a pension without the need for the service relationship to be re-established.

Date of effect            Royal Assent

## CLAUSES

### **Short Title**

**Clause 1** sets out how the Act is to be cited.

### **Commencement**

**Clause 2** sets out the various commencement dates of the provisions in the Act. These will be explained in more detail as each topic is explained.

### **Amendments**

**Clause 3** provides that the Acts specified in a Schedule to the Act are amended or repealed as set out in the schedule concerned, and that any other items in the schedules that do not amend another Act also have effect.

Schedule 1 amends the *Defence Service Homes Act 1918* and Schedule 2 amends the *Veterans' Entitlements Act 1986*. Both these Schedules are explained in detail below.

# SCHEDULE 1

## AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

### Overview

The amendments in this Schedule ensure loan beneficiaries under the Defence Service Homes Scheme will have consumer rights similar to those that other borrowers will have when all State and Territory Governments adopt a common Consumer Credit Code.

### Background

In July 1993, the State Governments agreed to introduce uniform legislation to regulate the provision of consumer credit. The resultant Consumer Credit Code will apply to all credit provided in the course of business of a credit provider to a borrower who is an individual, or strata corporation, and if the credit is provided wholly or predominantly for personal, domestic or household purposes. Implementation is planned for 1996.

### Explanation of the Changes

The changes remove any potential conflict between the operation of Commonwealth legislation in the form of the *Defence Service Homes Act 1918* and the operation of State Consumer Credit legislation.

This Bill ensures that Westpac Banking Corporation's legal obligations under the *Defence Service Homes Act 1918* largely comply with the requirements of the Consumer Credit Code, and that the introduction of the Consumer Credit Code does not prejudice the Defence Service Home Scheme.

The changes to the *Defence Service Homes Act 1918* will not exclude or limit the concurrent operation of the Consumer Credit Codes of the States and Territories other than those matters specified in the bill.

## Explanation of the items

### *Amendments to the interpretation section*

**Item 1** inserts references to a number of new definitions into subsection 4(1). These definitions are necessary to clarify the meaning of terms introduced into the *Defence Service Homes Act 1918* by these amendments.

The definition of 'supplementary agreement' makes clear that supplementary agreements are those agreements between the Commonwealth and Westpac Banking Corporation that amend the principal agreement a copy of which is set out in Schedule 1 of the *Defence Service Homes Act 1918*. It also clarifies that only that part of the content of a Supplementary Agreement that is expressed to amend the principal agreement is part of the definition of 'agreement' for the purposes of the *Defence Service Homes Act 1918*.

**Item 2** substitutes a new definition of 'agreement' in subsection 4(1). The new definition makes clear that the principal agreement can be varied by the Commonwealth and the Bank either by a supplementary agreement or otherwise without requiring any further amendment to the subsection 4(1) definition.

### *Defence Service Homes Act 1918 not to exclude Consumer Credit Code*

**Item 3** inserts a new section 4D to ensure that borrowers under the *Defence Service Homes Act 1918* have the same consumer rights as other borrowers have under the Consumer Credit Code apart from the special provisions contained in this Schedule. Subsection 4D(1) provides that apart from the provisions of Part IIIA and section 35A, the *Defence Service Homes Act 1918* does not exclude or limit the concurrent operation of the Consumer Credit Codes of the States and Territories. Subsection 4D(2) ensures that matters covered by subsection 23A(2) or section 23H are not subject to the Consumer Credit Codes of the States and Territories.

### *Unjust transactions*

The Consumer Credit Code provides for the courts to re-open unjust transactions and provides details of matters to be considered by the court in determining whether a particular transaction is unjust.

The lending criteria for granting loans under the Defence Service Homes Scheme are more generous than Westpac Banking Corporation's normal lending criteria. To avoid the Bank being challenged under the Code in relation to a transaction entered into under the Defence Service Homes Scheme, the Court's re-opening powers have been modified to take into account the special nature of the Defence Service Homes Scheme and its clients.

**Item 4** inserts a new Part IIIA to provide certain remedies for Defence Service Homes borrowers in relation to unjust transactions.

New subsection 23A(1) provides the general power for the Court to re-open a transaction giving rise to a contract, mortgage, guarantee or charge.

New subsection 23A(2) excludes application of this section to the annual rates of interest under a contract or mortgage, or to a change in the annual rates of interest under a contract or mortgage. It also excludes this section from applying to an establishment fee or other fee in respect of which an application may be made under the new section 23F.

New subsection 23B(1) sets out the matters to be considered by the court in determining whether a term of a particular contract, mortgage or guarantee is unjust at the time it was entered into or changed.

New subsection 23B(2) provides some additional factors associated with the Defence Service Homes Scheme arrangement which the court is to have regard to in determining whether a term of a particular contract, mortgage or guarantee is unjust. It also specifies two factors which the court is not to have regard to in such determinations. These two factors are necessary because Defence Service Homes' clients are tied to Westpac Banking Corporation for their Defence Service Home loans in accordance with the Agreement between the Commonwealth and that Bank, and because the age of borrowers is a factor specifically excluded from the lending criteria in the Agreement.

New subsection 23B(3) refines the references to persons who represented or assisted mortgagors or guarantors in negotiations related to mortgages or guarantees. These provisions are similar, in effect, to the Consumer Credit Codes.

New section 23C provides that in determining whether a contract, mortgage or guarantee is unjust, the court is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the contract, mortgage or guarantee was entered into or changed. These provisions are similar, in effect, to the Consumer Credit Codes.

New section 23D provides that in determining whether to grant relief in respect of a contract, mortgage or guarantee that it finds to be unjust, the court may have regard to the conduct of the parties since it was entered into or changed. These provisions are similar, in effect, to the Consumer Credit Codes.

New section 23E sets out the various orders that the court may make if it re-opens a transaction under new section 23A.

New section 23F provides the court with the power to review unconscionable fees and charges, and sets out the matters to be taken into account when determining the review.



New subsection 23F(1) will empower the court to annul or reduce the fee or charge and make ancillary or consequential orders.

New subsection 23F(2) provides that in determining whether an establishment fee or charge is unconscionable, the court is to have regard to whether the amount of the fee or charge is equal to Westpac Banking Corporation's reasonable costs in respect of that contract or its average reasonable costs in respect of that class of contracts.

New subsection 23F(3) provides that a fee or charge is unconscionable if it appears to the court that it exceeds a reasonable estimate of Westpac Banking Corporation's loss or reasonable costs in respect of a termination of a contract or associated prepayment.

New subsection 23G(1) provides for a two year time limit after the relevant contract, mortgage or guarantee is rescinded, discharged or debt written off for an application to be lodged under section 23A.

New subsection 23G(2) provides for a two year time limit after the relevant fee or charge is charged under the contract, mortgage or guarantee or debt written off for an application to be made under section 23F.

New section 23H lists exceptions where Part IIIA will not apply. New section 23H(1) provides that new Part IIIA does not apply:

to a change to a contract, mortgage or guarantee if the change was as a result of the enactment of this Part or the new section 35A or any other Act or amendment to the agreement between the Commonwealth and Westpac Banking Corporation. This is necessary to ensure that Westpac Banking Corporation is not challenged under the court re-opening powers as a result of a change to contract, mortgage or guarantee which is the result of a changes to the Defence Service Homes legislation or the agreement.

to a contract, mortgage or guarantee under which the borrower, mortgagor or guarantor is not an individual. This is necessary because apart from assigned advances, Defence Service Homes loans are only made to natural persons.

to a contract under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose. This is necessary because some assigned loans will be made to borrowers who are not individuals, but they will be for personal, domestic or household purposes.

to a mortgage or guarantee that secures or guarantees obligations under a contract under which the borrower is not an individual or under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose.

to a contract, mortgage or guarantee that was entered into before the commencement of this paragraph.

New subsection 23H(2) explains that an investment by a borrower is not to be regarded as a personal, domestic or household purpose. It also explains how to interpret the expression 'predominant purpose'.

New section 23J provides for access to legal aid for challenges under new sections 23A or 23F. Subsection 23J(1) provides that such persons may apply for a grant of assistance under this section. New subsection 23J(2) provides that, if satisfied that it would involve hardship to the applicant to refuse the application for assistance, the Attorney-General or an authorised person may authorise the grant of legal or financial assistance in relation to the application under new sections 23A or 23F.

New section 23K provides for courts of summary jurisdiction of the States to be invested with federal jurisdiction in respect of matters arising under Part IIIA. This is necessary to avoid burdening the Federal Court with hearings under this Part when the States will have the jurisdiction to hear the majority of credit matters under the Consumer Credit Code.

New section 23L inserts a definition of the term 'unjust'.

#### *Modifications to the Agreement and other instruments*

**Item 5** inserts a new section 35A which provides for a change in the method of interest calculation from monthly to daily balances and alters the 'rest days' which occur on the first day of the month to the fifth day of the month.

New subsection 35A(1) provides that, despite the provision in the Agreement specifying that interest on subsidised advances shall be calculated on the principal outstanding at the end of each preceding month and any existing loan documentation, interest on Defence Service Homes loans is to be charged in arrears and calculated on the daily balances. This provision is necessary to overrule the provisions of the Agreement and the existing documentation so that interest charges may change from the monthly to the daily balances method.

New subsection 35A(2) provides for an amended definition of the term 'rest day' in clause 1.1 of the Agreement. In effect, this new definition moves the rest days for Specified Portfolio Assets from the first day of the month to the fifth day of the month. Rest days are the monthly due dates for loan repayments.

New subsection 35A(3) provides that any reference to rest days in loan documentation is to be taken as meaning the new description in new subsection 35A(2).

New subsection 35A(4) provides that Part B of Schedule D to the Agreement is omitted. Part B of Schedule D lists the information that Westpac Banking Corporation is to provide in relation to variations in interest on loans each month as part of its subsidy claim on the Commonwealth. As the method of charging interest is being changed from in advance to in arrears in accordance with new subsection

35A(1), there will no longer be a need for a variations report each month. Accordingly, those arrangements are to be deleted from the schedule to the agreement.

**Item 6** inserts a new subsection 45(2) to allow subclause 8.1 and several of the subclauses of Clause 11 of the Agreement to be amended. The deadline referred to in the new subsection will have the effect of ensuring that these amendments are made within the three months following the date of Royal Assent of this Act. The restriction on amending those subclauses in the agreement will then be reimposed after that time.

*Commencement, transitional and savings provisions*

**Item 7** provides for commencement, transitional and saving provisions in relation to new section 35A.

Paragraph (1) provides that new section 35A commences on either the day on which this Bill receives Royal Assent, the Consumer Credit Code's commencing day or 1 September 1996, whichever is the later.

Paragraph (2) provides authority for Westpac Banking Corporation to continue to charge interest under the monthly balance method during the transition period. This amendment will ensure the Westpac Banking Corporation's legal obligations under the *Defence Service Homes Act 1918* are not in conflict with the Consumer Credit Code during this transition period.

Paragraph (3) provides that Westpac Banking Corporation and the Commonwealth must notify, so far as possible, existing borrowers of the effect of the change in the method of charging interest from being based on monthly balances to daily balances.

Paragraph (4) is a general provision to the effect that expressions used in this section that are defined in subsection 4(1) of the *Defence Service Homes Act 1918* are to have the same meaning as in that subsection.

**Commencement**

**Subclause 2(1)** provides that Schedule 1, with the exception of item 5, commences on Royal Assent.

**Subclause 2(2)** provides that item 5 commences as set out in item 7.

## SCHEDULE 2

### AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986

#### **Overview**

The dependant of a veteran or a member who dies from a war-caused disability will be eligible for a pension without the need for the service relationship to be re-established.

#### **Background**

The Act requires that each claim for pension following the death of a veteran be determined having regard to the relationship between the death and the deceased's service. Where the veteran dies from an injury or disease that has already been determined by the Repatriation Commission to be war-caused, a claim for pension by the dependant needs to re-establish the service relationship. Similar provisions apply to dependants of members of the Defence Force, members of the Peacekeeping Force and members who rendered hazardous service.

#### **Explanation of the changes**

These amendments create additional grounds upon which a pension may be granted to a dependant. If the veteran has died from an injury or disease that has already been determined by the Repatriation Commission to be war-caused or defence-caused then the death is to be taken to have been war-caused or defence-caused.

#### **Explanation of the items**

**Item 1** inserts a new paragraph in section 8 dealing with war-caused death. New paragraph 8(1)(f) provides that the death of a veteran will be taken to be war-caused if the injury or disease from which the veteran died is one which has been determined to be war-caused.

A note to the new paragraph spells out the effect of the paragraph. The note makes it clear that if the veteran's death is due to such an injury or disease, the Repatriation

Commission is not required to relate the death to the service and that sections 120A and 120B (dealing with reference to Statements of Principles) do not apply.

**Items 2 and 3** insert new paragraphs in section 70 dealing with eligibility for pensions for members of the Defence Force or Peacekeeping Force or their dependants

Item 2 inserts new paragraph 70(5)(e) which provides that the death of a member of the Defence Force or the Peacekeeping Force will be taken to be defence-caused if the injury or disease from which the member died is one which has been determined to be defence-caused.

A note to the new paragraph spells out the effect of the paragraph. The note makes it clear that if the member's death is due to such an injury or disease, the Repatriation Commission is not required to relate the death to the service and that sections 120A and 120B (dealing with reference to Statements of Principles) do not apply.

Item 3 inserts new paragraph 70(5A)(e) which provides that the death of a member who has rendered only hazardous service will be taken to be defence-caused if the injury or disease from which the member died is one which has been determined to be defence-caused.

A note to the new paragraph spells out the effect of the paragraph. The note makes it clear that if the member's death is due to such an injury or disease, the Repatriation Commission is not required to relate the death to the service and that sections 120A and 120B (dealing with reference to Statements of Principles) do not apply.

**Item 4** provides that items 1, 2 and 3 apply only for the purposes of claims made on or after 1 June 1994. This is the date referred to in sections 120A and 120B dealing with reference to Statements of Principles.

### **Commencement**

**Subclause 2(1)** provides that this Schedule commences on Royal Assent.





