

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

FIRST HOME OWNERS BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Housing
and Construction the Hon. Stewart West MP)

Outline

Explanatory Memorandum

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The purpose of the Bill is to provide for a number of machinery amendments of minor policy significance or of a routine administrative nature, and to provide for a fixed appropriation to contain expenditure under the First Home Owners Scheme to within Budget appropriation.

Financial Implications

These changes will ensure that the integrity of the First Home Owners Scheme Budget appropriation is assured.

Notes on Clauses

Clause 1 - Short title

Formal.

Clause 2 - Commencement

Provides that the Bill will come into operation on receiving the Royal Assent.

Clause 3 - Interpretation

The proposed amendments to section 4, the definition section, transfer the definition of "prescribed Act" from section 14(9) to section 4, and redefine the term "prescribed date" so as to be consistent with the proposed amendments to sections 14(6) and 14(7). The proposed amendment to the section also deletes part of the definition of "rural property" so as to provide that the deeming provision in section 11, originally intended as a concession to children of farmers building on a family property, is not extended to persons who are not related to the landholder, and who have no substantial tenure, and who are thus outside the objects of the Act.

Clause 4 - Purchase or ownership of land or dwelling

The proposed amendments to section 9 and section 14(1) will make express the policy of the legislation that assistance under the Act will not be available unless home acquirers are buying the whole of the interest in the subject dwelling, or otherwise have an exclusive right to occupy the dwelling.

The change of words from "buildings" to "dwellings separately" in section 9 2(b) overcomes a drafting imperfection, while the proposed amendment to section 9(2)(b)(ii) ensures that persons, who acquire a home through the purchase of shares in a body corporate, purchase shares representative of the value of the dwelling which they will occupy.

Clause 5 - Persons who may apply

It is proposed to amend section 14(1) so as to take up the policy change mentioned above in the explanation of clause 4. A drafting inconsistency in section 14(2)(b)(ii), relative to the provision in section 14(2)(b)(i), is corrected. The below-mentioned new provision in section 23, proposed in clause 9, requires a concurrent amendment to section 14(3). The proposed amendment to section 14(5) makes express provision, in relation to the previous ownership eligibility condition, for cases where a person lived in a dwelling while seeking alternative accommodation. Sections 14(6) and 14 (7) each contain a discretionary power for the determination of the "prescribed date" (otherwise the date of contract, or date construction commenced, as defined in section 4). These two discretions have been reduced to one by the deletion of section 14(6), the insertion of a new section 14(7), and by appropriate amendment to the "prescribed person" definition in section 4. The "prescribed Act" definition is deleted from section 14(9), and is inserted in section 4.

Clause 6 - Financial assistance

The amendment proposed for section 16 follows from the change from standing to fixed appropriation proposed for section 34, and gives the Secretary power to schedule the appropriations relative to claims for assistance from applicants.

Clause 7 - Amount of taxable income

The proposed amendment to section 21 provides that in certain limited cases the "taxable income" of an applicant, for the purposes of this Act, will be as determined by the Secretary.

Clause 8 - Relevant year of income in certain cases

Certain inconsistencies in treatment have become apparent as to the manner in which comparable cases were dealt with, as between sub-sections 22(2) and 22(3), which will be removed by the proposed amendments to section 22. The amendments will also substitute the test of "domicile", rather than "resident" as defined for taxation purposes, in cases where an applicant has not been present in Australia for the whole of certain income years.

Clause 9 - Payment of assistance

In some cases, applicants do not proceed with a home purchase contract even though assistance has been made available for that purpose. Under the Act, it is necessary at present to repay such moneys, even though a fresh application in

relation to another dwelling is on foot, and even though it is financially awkward for the applicant to repay. The proposed amendments to section 23 provide an offset procedure for the above, and certain related, circumstances.

Clause 10 - Money out of which assistance is payable

The standing appropriation in section 34 is to be removed and replaced by a fixed appropriation provision.

Clause 11 - Misleading statements

The Act presently provides, by virtue of the relevant penalty, that the obtaining of assistance on a fraudulent application is an indictable offence. The proposed amendment to section 38(2) will make the offence one which is to be dealt with summarily.

Clause 12 - Evidence

The evidence provisions in section 40 provide that courts can only take notice of the signature of the Secretary in relation to Departmental documents. It is proposed that the Secretary may appoint other officers of the Department in this regard.

Clause 13 - Amendments related to sexist language.

Clause 13 of the Bill amends the Act in relation to sexist language.

Clause 14 - Application of amendments

Formal.

