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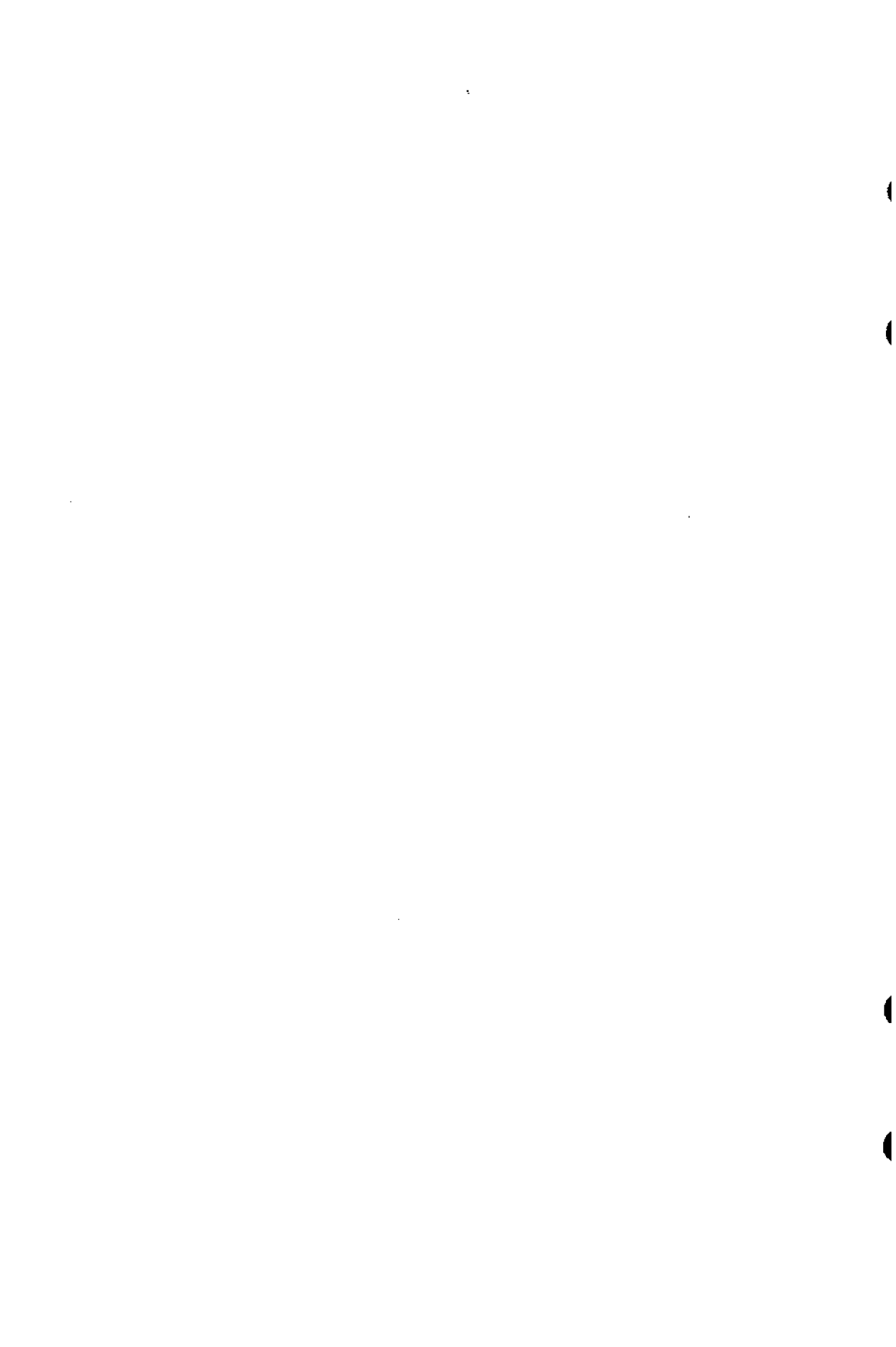
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE FORCE (HOME LOANS ASSISTANCE) BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Defence Science and Personnel
the Honourable Gordon Bilney, MP)



DEFENCE FORCE (HOME LOANS ASSISTANCE) BILL 1990

OUTLINE

This Bill gives effect to the introduction of a new scheme providing home loan assistance for members of the Defence Force which was announced in the Parliament on 11 May 1989 by David Simmons the then Minister for Defence Science and Personnel. The Bill includes necessary consequential amendments to the Defence Service Homes Act 1918.

The Bill includes as a schedule an agreement entered into between the Commonwealth and National Australia Bank which gives National Australia Bank the exclusive right to participate as the lender under the scheme.

The Bill provides for payment of a housing loan subsidy to the National Australia Bank which is to be paid into the loan account of the subsidised borrower. The subsidy will only be payable when a person has satisfied the necessary service, loan purpose and occupancy prerequisites which are set down in the Bill.

The scheme has been designed to provide members of the Defence Force who entered after 14 May 1985 with assistance in purchasing their own homes, both during and immediately after service; such members are ineligible for assistance under the Defence Service Homes Act. The scheme will also provide an incentive for members to remain in the Defence Force for longer periods because the subsidy is to be payable for a period which is directly related to the member's length of service.

The objectives of the scheme are:

- (a) to attract and retain Defence Force personnel;
- (b) to encourage home ownership during service as a cost effective alternative to rental assistance; and
- (c) to assist in the re-integration of Defence Force personnel into the community on return to civilian employment.

Amendments to the Defence Service Homes Act

The amendments to the Defence Service Homes Act are to allow certain members of the Defence Force who have an entitlement under the Defence Service Homes Act to elect to relinquish that entitlement in favour of being included as a person who can be eligible to receive the benefits available under this Bill. The amendments also provide all persons who receive a subsidised loan under this Bill with the ability to access the insurance facilities which are available under the Defence Service Homes Act.

FINANCIAL IMPACT STATEMENT

The financial impacts of the new housing loan assistance scheme are:

- (a) the Department of Defence will meet the ongoing monthly subsidy payments which will be payable to the National Australia Bank;
- (b) the Department of Defence will meet administration costs of promotion of the scheme, assessing applications for entitlement certificates and other approvals, and payment of subsidy;
- (c) the Department of Defence will be required to pay Fringe Benefits Tax in relation to the subsidy;
- (d) National Australia Bank will pay to the Commonwealth a franchise premium of \$42 million on 15 May 1990;
- (e) National Australia Bank will pay to the Commonwealth a commission payment each year the amount of which will be based on the number of subsidy commencements which have occurred in the previous year.

The costs for (a), (b), (c) and the revenue from (e) will be dependant on the extent of take-up of subsidised loans. The figures which have been provided in Table 1 and Table 2 are only indicative and the take-up rate of 8% which was used in their calculation, which would appear to be very conservative, was based on historical data for the Defence Service Homes scheme. The figures do not take account of those members who will make the election to relinquish their Defence Service Homes entitlements, a figure which cannot be reliably estimated at this time.

The commission payments described in (e) will only be payable to the Commonwealth if the number of subsidy commencements in any year is above 2800 (the exception being the period 15 May 1991 to 31 December 1991 when the threshold is 1400) and will only be payable on the number of subsidy commencements in excess of the threshold; the maximum number of subsidy commencements on which the commission will be paid in any year is 1700 (again the exception is 15 May 1991 to 31 December 1991 when the maximum will be 3100).

If the commission is to be paid, the amount of the commission per subsidy commencement in the range outlined above will be as follows:

- (a) \$985 - 15 May 1991 to 31 December 1996;
- (b) \$1,760 - 1 January 1997 to 31 December 2001;
- (c) \$2,700 - 1 January 2002 to 31 January 2007.

Table 1: Defence Outlays

	1990/91 \$m	1991/92 \$m	1992/93 \$m	1993/94 \$m
(a) Subsidy	-	.977	2.604	4.992
(b) Administration	.135	.343	.359	.374
(c) Fringe Benefits Tax	-	.459	1.224	2.346
Total	.135	1.779	4.187	7.712

Table 2: Commonwealth Revenues

	1990/91 \$m	1991/92 \$m	1992/93 \$m	1993/94 \$m
(d) Franchise Premium	42	-	-	-
(e) Commission Payments	-	-	-	-

NOTES ON CLAUSES

PART 1 - INTRODUCTORY

Clauses 1 and 2 - Short Title and Commencement

1. These clauses provide for the short title and the commencement of the legislation.

2. All clauses other than those in Part 1, and Schedule 2 will take effect from the date they are Proclaimed unless any clause or schedule is not proclaimed by 15 May 1991 at which time that clause or schedule will automatically come into effect. Part 1 and Schedule 1 will commence on the date of Royal Assent. 15 May 1991 is the date the scheme is to commence full operation and is the first date from which National Australia Bank can advance subsidised loans under the franchise agreement.

Clause 3 - Definitions

3. This clause contains all the definitions which apply generally throughout the Bill.

4. The "advanced amount" definition refers to the amount of money which is loaned by National Australia Bank to a person (as recorded in the loan contract between National Australia Bank and the borrower) and it is the amount which is to be used for the purpose of calculating subsidy.

5. The "agreement" definition refers to the franchise agreement between the Commonwealth and the National Australia Bank (Schedule 1) which sets down all the obligations of both parties in respect of the operation of the scheme.

6. The "approved form" definition refers to the documents to be used in the scheme, the form of which is to be determined by the Secretary.

7. The "Bank" definition refers to National Australia Bank Limited which is the bank with which the Commonwealth has entered into a franchise agreement (Schedule 1) for the provision of "subsidised loans" (as defined in this section). It includes assigns of National Australia Bank but, under the franchise agreement (Schedule 1), these require Commonwealth concurrence.

8. The "basic service period" definition sets out the periods of qualifying service which members of the Defence Force must complete before they can be in a position to accrue an "entitlement period" as defined in Clause 23 and therefore be entitled to the payment of subsidy. The relevant "basic service period" is dependant on a person's category within the definition of "eligible person".

9. The basic service period is to be "effective full-time service" and by definition must be "continuous full-time service". If continuity of service is broken in the circumstances described in clause 7 before the "basic service period" is completed, the period of service prior to the break in continuity of service cannot be treated as "effective full-time service" for the purposes of the "basic service period".

10. Consequently, a person in this position will be required to complete a full "basic service period" on re-commencement from the absence which caused continuity to be broken.

11. For most members and former members of the Defence Force the "basic service period" will be six years. For members who serve in the "Middle East operational area" or who are discharged as "incapacitated members" there is no basic service period.

12. The "benchmark interest rate" is the interest rate which is to be used as the basis for calculation of subsidy and for determining the total monthly repayment payable to National Australia Bank. The borrower's repayment will be the difference between the total repayment and the monthly subsidy.

13. The benchmark interest rate is defined in detail in Sub-clause 5.15 of the franchise agreement at Schedule 1. It is to be calculated by averaging the owner occupied housing loan interest rates of the five largest home loan lenders on the last day of each month. The five largest lenders will be determined once a year in September on the basis of data provided by the Reserve Bank of Australia for the month of July.

14. The definition of "child" relates to the definition of a person's family as contained in clause 6.

15. The "commencing day" is the day on which the various operational aspects of the scheme as contained in Part 2 commence and that day will be either 15 May 1991 or any earlier day set by Proclamation.

16. A "compensable disability" is a disability suffered by members of the Defence Force which entitles them to compensation and leads to their discharge from the Defence Force on medical grounds. Such a disability may enable them to receive special consideration under the scheme through the removal of the need to provide a "basic service period" and extension of their "entitlement period".

17. The "continuous full-time service" definition identifies the type of service which a member must complete and is integral to the definition of "effective full-time service" as defined in this section.

18. The "DSH Act" definition is included because this Bill includes amendments and references to the Defence Service Homes Act 1918 which are detailed in Schedule 2.

19. The "effective full-time service" definition identifies the type of service which must be completed for a member to complete the "basic service requirement" and accrue an "entitlement period" (as defined in sub-clause 23(3)). It clearly specifies the absences which are not to be treated as "effective full-time service".

20. The "eligible person" definition identifies the people who have completed the relevant "basic service period" as defined in this section. Payment of subsidy is made if an "eligible person" has been issued with an "entitlement certificate" and obtains a "subsidised loan". A widow or widower of an eligible person may also be issued with an entitlement certificate.

21. Paragraph (a) of the definition refers to a "non-DSH member" who is still serving in the Defence Force and has completed the standard "basic service period" of six years "effective full-time service".

22. Paragraph (b) refers to a person who has re-entered the Defence Force after having been previously discharged for a "compensable disability" (as defined in this section) but was not an "incapacitated person" (as defined in this section) because they were engaged for a period of less than six years at the time of their discharge.

23. This paragraph allows for that previous service to count towards the person's "basic service period" in the new period of service. Such a person must have re-entered within 2 years of their date of discharge to ensure consistency with the restriction on taking up of entitlements by former members of the Defence Force as described in sub-clause 7(3).

24. Paragraph (c) includes an "incapacitated person" who is defined in this section.

25. Paragraph (d) refers to an "incapacitated person" who, having been rehabilitated, has re-entered the Defence Force. Previous service which was not included in the "entitlement period" (as defined in Clause 23) at the time of discharge can be taken into account in determining the "basic service requirement" to be completed in the new period of service. The extent of this credit for previous service arrangement is shown in part (c) of the "basic service period" definition.

26. Paragraph (e) includes a "rejoining member" who is defined in this section.

27. Paragraph (f) includes an "operational service member" who is defined in this section.

28. Paragraph (g) includes a person who was an eligible person under paragraphs (a), (b), (d), (e) or (f) but then resigned, retired or was discharged from the Defence Force. This ensures that persons who do have an entitlement are able to utilise that entitlement after they leave the Defence Force in which case the scheme is providing them with a re-settlement benefit. However, if such a person fails to apply for an entitlement certificate within 2 years of the date of resignation, retirement or discharge, that person will cease to be an "eligible person" under clause 4.

29. An "entitled person" is a person who has been issued with an "entitlement certificate" (as defined in this section) and that person is then in a position to approach National Australia Bank to apply for a subsidised loan. Such a person only remains an "entitled person" while the "entitlement certificate" is in force in accordance with sub-clause 11(2).

30. An "entitlement certificate" is issued to an eligible person or the widow of a deceased eligible person under clause 11 of the Bill and certifies that the the required service qualifications have been met.

31. The "Family Court" definition is included in relation to sub-clause 18(1) and paragraphs 29(d) and 29(e) which refer to Family Court Orders and their effect on the ownership of the property and the continuation of subsidy payments.

32. The "finishing day" (31 December 2006) is the last day on which "entitlement certificates" can be issued.

33. A "government authority" is defined in relation to the compulsory acquisition of homes by government bodies for which special consideration will be given in the scheme under sub-clause 12(4) and in the definition of house.

34. The "holder" definition identifies the person to whom an entitlement certificate is issued and who is therefore the entitled person (as defined in this section) while the certificate remains valid.

35. The "house" definition identifies the types of dwellings which are considered to be acceptable for purchase by participants in the scheme and also the types of dwellings which must be disposed of by a person who wishes to obtain a subsidised loan. These conditions are necessary to ensure that, before subsidy commences, there can be no question of the subsidy being used for investment purposes and to ensure that the subsidy is used properly in respect of the purchase or improvement of a permanent home for the person and his or her family, if any.

36. The dwellings described in paragraphs (a), (b), (c) or (d) cannot be the subject of a subsidised loan but also need not be disposed of for subsidy to be payable if a person already owns such a dwelling.

37. An "incapacitated person" is a person who has been discharged because of a "compensable disability" (as defined in this section) and but for that disability would, in normal circumstances, have completed an engagement or appointment of at least 6 years with the Defence Force. Such a person receives compensatory benefits under the scheme by having the service which would ordinarily have been the "basic service period" treated as part of the "entitlement period" as defined in paragraph 23(3)(d), subject to a maximum of ten years.

38. The "intestacy law" definition relates to the cessation of subsidy on the death of an eligible person as specified in sub-clause 29(h) and transfers of the property in respect of which subsidy has been paid under sub-clauses 30(3) and 30(4).

39. The "member" definition identifies those who are serving in the Defence Force.

40. The "Middle East operational area" definition is required to identify the area in the Middle East where a member must have served if the member is to meet the definition of an "operational service member" as defined in this section.

41. The "non-DSH member" definition identifies the members of the Defence Force for whom the scheme is fundamentally designed. It excludes any person who has already taken out a Defence Service Homes Loan, a person who is eligible for a Defence Service Homes loan unless that person elects to relinquish that eligibility in order to obtain benefits under this Bill. This election facility is explained in the explanatory notes for Schedule 2 concerning the section 4BA amendment to the Defence Service Homes Act.

42. An "operational service member" is a member who is allotted for service in the "Middle East operational area" and, as a consequence, will be entitled to the additional benefit of having the period of service which would normally be the basic service period (as defined in this section) treated as an entitlement period (as defined in sub-clause 23(3)).

43. A "rejoining member" is a person who was an eligible person under paragraphs (a), (b) or (d) of the "eligible person" definition in this section, resigned, retired or was discharged from the Defence Force, and then within a period of two years re-entered the Defence Force. Such members will remain eligible persons throughout the second period of service.

44. This means that having completed the basic service period in the previous period of service, a person in this position will not be required to complete another basic service period on re-entry to the Defence Force. It also provides an incentive for people who have had at least six years service to re-enter the Defence Force and caters for parents who resign to care for their young children but later wish to resume their career in the Defence Force.

45. A "reviewable decision" is a decision made under the authority of this Bill which can be reviewed by the Secretary, or his delegate, or the Minister in circumstances where the Secretary made the reviewable decision, in accordance with clause 33. If after the review of a decision, the person concerned is not satisfied, the matter can be referred to the Administrative Appeals Tribunal.

46. The "Secretary" definition refers to the Secretary to the Department who has the power and responsibility for determining and authorising eligibility and the payment of subsidy under the scheme. It is anticipated that by virtue of the Administrative Arrangements Order and section 19A of the Acts Interpretation Act 1901, this will be the Secretary to the Department of Defence.

47. The "spouse" definition provides that a person who is legally married is a spouse and defines the circumstances in which a person who is not legally married can be a spouse. The definition is required in relation to the provisions relating to ownership of a house (contained in Part 2) and subsidy (contained in Part 3).

48. The "student" definition relates to the definition of "child" (as defined in this section).

49. A "subsidised borrower" is a person who has been advanced a "subsidised loan" on which subsidy is payable and who is liable to repay the outstanding amount of the loan either alone or jointly with their spouse.

50. A "subsidised loan" is a housing loan which was advanced to an "entitled person" and can only be provided where the person has satisfied all the qualifying requirements of the scheme. It is a loan approved and advanced by National Australia Bank under the franchise agreement (Schedule 1) in respect of which subsidy is either being paid or is to be paid in the near future.

51. The "subsidy" is the benefit provided by the scheme and is the amount of money paid by the Commonwealth to the National Australia Bank for the benefit of the borrower. It is calculated in accordance with clause 25.

52. The "subsidy period" is the period for which subsidy can be paid. It represents a person's remaining period of entitlement being the "entitlement period" (as defined in sub-clause 23(3)) less the "used subsidy period" (also defined in sub-clause 23(3)).

53. The "widow" definition assumes a woman who was legally married to a deceased male person is a widow and defines the circumstances in which a woman who is not legally married to a deceased male person can be a widow. The definition is required in relation to the transfer of an entitlement to a widow on the death of an eligible person/subsidised borrower.

54. The "widower" definition assumes a man who was legally married to a deceased female person is a widower and defines the circumstances in which a man who is not legally married to a deceased female person can be a widower. The definition is required in relation to the transfer of an entitlement to a widower on the death of an eligible person/subsidised borrower.

Clause 4 - When do former members stop being eligible members

55. This clause limits the period in which former members of the Defence Force may apply for an entitlement certificate. Applications must be made within 2 years of the person's date of cessation from the Defence Force.

56. This restriction has been introduced into the scheme to ensure that persons who did not utilise their subsidy entitlements during service will use their entitlement soon after their cessation date to assist in their re-integration into the civilian community; one of the objectives of the scheme.

57. If the application for an entitlement certificate is not submitted within 2 years of the date of cessation from the Defence Force (ie. while the person is an eligible person) the entitlement will lapse.

58. In the case of a "rejoining member", unless the member has used or is using the entitlement accrued in the previous period of service it will lapse two years after the date the member first left the Defence Force (refer to paragraph 23(3)(c)). This enhances the retention incentive in the scheme by ensuring that a person cannot resign without detriment. This condition does not affect the right of such a person to receive a credit for the previous service in relation to the basic service period as a "rejoining member".

Clause 5 - Ownership of house

59. This definition is required to specify the circumstances in which a person who has applied for a subsidised loan is an owner of another house for the purposes of the scheme. Any person who is the owner of two or more houses at the time they are applying for subsidy or an increase in subsidy, will not be entitled to the subsidy until that person is the owner of only one houses.

60. Paragraph 5(1)(a) prescribes that ownership exists if a person owns more than 50% of a property.

61. Paragraph 5(1)(b) prescribes that ownership exists if a person owns jointly with his/her spouse or children more than a 50% interest in a house.

62. Paragraph 5(1)(c) prescribes that ownership exists if a person owns less than 50% of a house but that interest when added to separate interests in the same property held by the spouse or children of the person is greater than 50%.

63. Sub-clause 5(2) specifies the types of interests in a property which apply for the purposes of sub-clause 5(1).

Clause 6 - Family members

64. This clause defines a person's family and utilises the definitions of child, spouse and student contained in clause 3. The definition is necessary in relation to meeting the personal occupancy standards to be applied in the scheme. Paragraph 20(2)(e) prescribes that the house to be purchased using a subsidised loan must be suitable, and used as a home for the person and/or the person's family (as defined) to ensure that subsidy is not being used for the purpose of buying an investment property.

Clause 7 - Breaking continuity of service

65. This clause defines the absences or breaks in service which mean that "continuous full-time service" as defined in clause 3 has not been maintained. A break in "continuous service" also means that a period of "effective full-time service" ceases on the day that continuity is broken. This is an important factor in relation to the "basic service period" (as defined in clause 3).

66. Paragraph 7(1)(a) specifies that absences in excess of 12 months would normally break continuity of service. The exceptions to this rule will be prescribed in regulations and are likely to be maternity or paternity leave, compensation leave and leave to accompany a spouse, who is also a member, on a long term posting.

67. Paragraph 7(1)(b) refers to the transfer of a member from one arm of the Defence Force to another which is not treated as a resignation from the Defence Force. Where the period of time between the cessation from the old Service and commencement in the new Service is excessive, beyond 21 days, continuity will be deemed to have been broken, subject to sub-clause 7(2).

68. Sub-clause 7(2) provides that a person who would normally fall into the category described in sub-clause 7(1)(b) will not be penalised if the delay between the cessation and commencement dates was caused by administrative delays outside of the member's control.

69. Sub-clause 7(3) highlights the fact that the absences specified in the definition of "effective full-time service" which are not effective full-time service (ie. absences which are between 21 days and 12 months) do not break continuity of service.

Clause 8 - Multiple widows or widowers

70. This clause specifies which widow or widower of a deceased eligible person will inherit the remaining subsidy entitlement of the deceased eligible person in the event that there is more than one person who meets the definitions of widow and widower as defined in clause 3. This could arise if a person had a legal spouse but was also living in a defacto relationship with another person.

71. Sub-clause 8(1) means that the widow or widower living with the person at the time of death will be the sole widow or widower for the purposes of the scheme.

72. Sub-clause 8(2) caters for the situation where the couple may have been living apart temporarily.

Clause 9 - Approval of agreement etc.

73. This clause provides Parliamentary approval of the franchise agreement between the Commonwealth and National Australia Bank which is included at Schedule 1.

**PART 2 - ENTITLEMENT CERTIFICATES, LOAN INCREASES
AND SALES PURCHASES AND TRANSFERS**

Division 1 - Entitlement certificates

74. An entitlement certificate is defined in clause 3. An entitlement certificate is formal advice from the Commonwealth that all the prescribed service qualifications have been satisfied. A person to whom an "entitlement certificate" is issued becomes an "entitled person".

Clause 10 - Application for certificate

75. This clause sets out the rules by which a person can seek an entitlement certificate.

76. Sub-clause 10(1) requires that an application for an entitlement certificate be submitted to the Secretary to the Department who is the approving authority.

77. Sub-clause 10(2) states that an application for an entitlement certificate must be submitted in writing on the approved form. The approved form will be determined and issued by the Secretary.

78. Sub-clause 10(3) allows widows or widowers of deceased eligible persons to apply for an entitlement certificate within 2 years of the eligible person's death or resignation, retirement or discharge, whichever is the earlier, otherwise the entitlement will lapse. Essentially, this gives the widow or widower the same rights in respect of applying for entitlement certificates that the deceased eligible person would have had if he or she had not died.

79. This restriction is consistent with clause 4 and prevents unused entitlements being held for indefinite periods. This clause does not detract from the widow's or widower's rights in respect of applying for entitlement certificates if the widow or widower is an eligible person in his or her own right.

Clause 11 - Issue of certificate

80. This clause prescribes the rules associated with the issue of an entitlement certificate once an application for an entitlement certificate has been made. The entitlement notice will be an accountable document with a finite life.

81. Sub-clause 11(1) requires the Secretary to issue an entitlement certificate if the applicant has satisfied the requirements of the Bill. It also requires that the entitlement certificate must be in the approved form determined and issued by the Secretary. Note that Schedule B of the franchise agreement (Schedule 1) provides for certain matters which must be included in an entitlement certificate.

82. Paragraph 11(2)(a) states that an entitlement certificate remains valid from the date of issue until the first payment of subsidy is made on the subsidised loan.

83. Paragraph 11(2)(b) states that the maximum period for which an entitlement certificate remains valid when subsidy has not yet commenced is 12 months from the date of issue. This is a control to ensure that where there are entitlement certificates which are not used after significant periods of time, there has been no change in the eligibility status of the person to whom the certificate was issued.

Clause 12 - Criteria for issue of certificate

84. This clause states the conditions that an applicant for an entitlement certificate must meet before the Secretary can issue the entitlement certificate.

85. Paragraph 12(1)(a) means that a person can only ever hold one valid entitlement certificate. If an entitlement certificate has already been issued to a person and that certificate is not yet 12 months old, then the Secretary cannot issue another entitlement certificate to that person. This control is necessary to ensure that a person cannot obtain more than one subsidised loan at any point in time.

86. Paragraph 12(1)(b) means that the entitlement certificate can only be issued to a person who was an eligible person when the application for an entitlement certificate was made (sub-paragraph (i)) or the widow or widower of a deceased person who was an eligible person at the time of death (sub-paragraph (ii)).

87. Paragraph 12(1)(c), in relation to serving members, paragraph 12(1)(d), in relation to operational service members, and paragraph 12(1)(e), in relation to rejoining members, state that an entitlement certificate can only be issued after that member has served six months towards the person's entitlement period. The "entitlement period" is defined in clause 23.

88. As the entitlement period is normally determined on the basis of completed years of service, such members are being given a concession in that they are being allowed to take out a subsidised loan before they have completed sufficient service to reach what is the normal minimum entitlement period of one year.

89. If a member takes out a subsidised loan prior to having completed one year of service towards the entitlement period then during each year of the loan there will be a period when that person is effectively receiving subsidy in advance. Consequently, any person who ceases with the Defence Force during such a period will be required to repay subsidy paid in advance. Clause 31 of the Bill and clause 8 of the franchise agreement provide for the repayment procedures.

90. This arrangement was included in the scheme to allow members of the Defence Force the opportunity to enter the scheme six months earlier than they would otherwise have been able to; the alternative being that once the basic service requirement had been completed (except for operational service members who are not required to complete a basic service period) a member would have had to wait for another 12 months to take out a subsidised loan.

91. Paragraph 12(1)(f) ensures that an entitlement certificate is only issued if a person has a subsidy period as defined in clause 23 and that subsidy period has not yet expired.

92. Sub-clause 12(2) relates to the portability provisions in the scheme which preclude a person transferring their subsidy entitlement to another house more than once after leaving the Defence Force. There is no limit on such transfers while the person remains a member of the Defence Force. The limitation enhances the housing compensation and retention incentive objectives of the scheme by encouraging members to enjoy the benefits of a home loan subsidy during service.

93. This sub-clause identifies whether an application must be rejected under the portability limitation by determining the number of certificates which have been issued (paragraph 12(2)(a)) and then identifying when they were issued (paragraph 12(2)(b)).

94. Transferring of an entitlement from one house to another will always require the issue of a new entitlement certificate as the person is required to seek a new subsidised loan from the bank.

95. Sub-clause 12(3) means that the widow or widower is allowed portability once in the two year period following the earlier of the deceased eligible person's date of resignation, retirement or discharge, or date of death.

96. If the deceased eligible person had a subsidised loan at the time of death, and the widow took over that same subsidised loan under clause 30, the widow or widower will be able to get one more entitlement certificate within the two year period (paragraph 12(3)(a)).

97. If the deceased eligible person did not have a subsidised loan at the time of death, it will be possible to issue to the widow or widower two entitlement certificates within the two year period (paragraph 12(3)(b)). The first would be the initial subsidised loan and the second would be the exercise of the portability facility. The only exception to these rules would be an occurrence referred to in sub-clause 12(4).

98. Sub-clause 12(4) sets down the circumstances which are exceptions to the portability restrictions imposed under sub-clauses 12(2) and 12(3). These circumstances are considered to be compelling reasons for an entitled person to purchase another house when the person would not otherwise be able to obtain an entitlement certificate. This is conditional upon the person applying for a new entitlement certificate within 12 months from the date the subsidised loan was discharged.

99. Sub-clause 12(5) provides for an additional exception to the portability restriction where a former member of the Defence Force who was medically discharged for a compensable disability (as defined in clause 3) finds it necessary to move to another house because of factors directly attributable to the compensable disability which caused the former member to be discharged. The Secretary must be satisfied that a move is necessary and that these factors are directly attributable to the reason for the discharge before a new entitlement certificate will be issued. This sub-clause does not apply to widows or widowers.

100. Sub-clause 12(6) restricts the issue of entitlement certificates to the term of the franchise with National Australia Bank which ends on 31 December 2006. National Australia Bank can only advance a loan which is to be subsidised when an entitlement certificate has been issued. A valid entitlement certificate which is presented with an application for a subsidised loan and accepted by National Australia Bank after 31 December 2006 may still be processed as a valid application.

Clause 13 - Cancellation of certificate

101. This clause specifies the circumstances in which the Secretary is to consider cancelling an entitlement certificate and also the mechanisms by which the cancellation takes place.

102. Paragraph 13(1)(a) allows the Secretary to consider cancellation of an entitlement certificate if the certificate was issued as a result of the person deliberately providing false or misleading information. If the Secretary does decide to cancel the certificate the advice of cancellation must be provided to the person in writing.

103. Paragraph 13(1)(b) allows the Secretary to consider cancellation of an entitlement certificate if the certificate was issued and it was subsequently revealed that the person was not entitled to it. If the Secretary does decide to cancel the certificate the advice of cancellation is to be provided to the person in writing.

104. Sub-clause 13(2) requires the Secretary to forward a copy of any cancellation certificate to National Australia Bank so that it will not inadvertently treat a loan application from the person concerned as a subsidised loan application. The special provisions for dealing with subsidised loan applications contained in the franchise agreement (Schedule 1) would therefore not apply.

Division 2 - Loan Increases**Clause 14 - Application for approval in relation to loan increase**

105. This clause describes the rules in relation to the seeking of approval to obtain additional subsidised loan funds on a house by a person who already has a subsidised loan.

106. Paragraphs 14(1)(a) and 14(1)(b) specify the circumstances which must exist before a person can apply for an increase in an existing subsidised loan. \$40,000 is the maximum subsidised loan under the scheme (as described in clause 21) and as such it is only possible to apply for an increase if the existing subsidised loan borrowings total less than \$40,000.

107. Sub-clause 14(2) requires that a formal application be lodged for an increase in a subsidised loan on an approved application form which will be provided by the Secretary.

108. Sub-clause 14(3) requires that an application for an increase in a subsidised loan by a person who is no longer a member of the Defence Force be made within 2 years of the date of cessation. This ensures consistency with the conditions relating to the take up of an initial subsidised loan by a person who has ceased to be a member of the Defence Force.

109. Sub-clause 14(4) requires that a widow or widower of a deceased eligible person must make an application for an increase in the loan amount within 2 years of the date of the deceased eligible person's death or resignation, retirement or discharge, whichever is the earlier. This is consistent with the widow or widower's right to apply for entitlement certificates under sub-clause 10(3).

Clause 15 - Grant of Approval

110. This clause describes the conditions which must be met by an applicant for an increase in the subsidised loan if the Secretary is to issue a notice of approval for the increase. It also describes the mechanisms by which that approval, if granted, is passed on to the applicant and National Australia Bank.

111. Paragraph 15(1)(a) ensures that the applicant for the increase does have a subsidy period (as defined in clause 23).

112. Paragraph 15(1)(b) ensures that the person is not the owner of another house (as defined in clause 5) to ensure consistency with sub-clause 20(2)(d) in regard to initial loans. If the person had purchased another house since the initial subsidised loan had been processed, and still owns that house, then the increase will not be approved but there will be no action taken in respect of the initial subsidised loan.

113. Sub-clause 15(2) specifies the purposes for which the increase in the subsidised loan must be used. They ensure that the new subsidised amount is being utilised for the purpose of enhancing the house in respect of which subsidy is already being paid.

114. Sub-clause 15(3) means that approvals cannot be granted after 31 December 2006 as is the case for the issue of entitlement certificates.

115. Sub-clause 15(4) requires the Secretary to formally advise the applicant and National Australia Bank if an application for an increase in the amount of the subsidised loan is approved.

116. Sub-clause 15(5) means that a notice of approval will be valid for a period of twelve (12) months.

Clause 16 - Revocation of Approval

117. This clause means that the Secretary can revoke an approval given under clause 15 if the approval was granted to a person as a result of false or misleading information provided by that person.

118. Sub-clause 16(1) gives the Secretary the power to revoke an approval to a person if satisfied that the approval resulted from the provision of false or misleading information by that person. The notice of revocation must be provided to the person in writing.

119. Sub-clause 16(2) requires a copy of any revocation notice to be forwarded to National Australia Bank.

120. Sub-clause 16(3) means that any approval which has been revoked is, for the purposes of the scheme, to be regarded as if it was never issued. This ensures that any subsidy that was paid in respect of the grant of approval that was revoked can be recovered under clause 31.

Division 3 - Sale etc. of houses subject to subsidised loans

Clause 17 - Application for approval in relation to sale, purchase or transfer

121. This clause specifies the circumstances in which a person who wishes to change the ownership of the property in respect of which subsidy is being paid must apply for approval of the change if payment of subsidy is to continue.

122. Paragraph 17(1)(a) states that a subsidised borrower who is the sole owner of the property but intends to include his/her spouse as an owner as a joint tenant is to apply for the approval of the Secretary if subsidy is to continue to be paid.

123. Paragraph 17(1)(b) states that a subsidised borrower who owns the property as a joint tenant with his or her spouse but intends to remove the spouse from being a joint tenant, thereby becoming the sole owner, is to apply for the approval of the Secretary if subsidy is to continue to be paid.

124. Sub-clause 17(2) states that an application in accordance with sub-clause 17(1) must be on the approved form (as defined in clause 3) and must be lodged with the Secretary before the change in ownership occurs.

Clause 18 - Grant of Approval

125. This clause describes the circumstances in which the Secretary is to approve an application made in accordance with clause 17.

126. Paragraph 18(1)(a) states that approval must be given if the change in ownership is not ordered by the Family Court. If it was ordered by the Family Court, then subsidy may cease in accordance with paragraph 29(d).

127. Paragraph 18(1)(b) states that approval must be given if, as a result of the change in ownership, the owner is the subsidised borrower alone or the subsidised borrower and his/her spouse as joint tenants. Approval is not to be given if any person other than the subsidised borrower or spouse become owners or part owners of the house in respect of which subsidy is being paid. This is to ensure that the Commonwealth subsidy is for the benefit of members and former members of the Defence Force and their spouses.

128. Sub-clause 18(2) requires the Secretary to issue a formal notice of approval to the applicant and a copy of that approval to National Australia Bank.

Clause 19 - Revocation of Approval

129. This clause means that the Secretary can revoke an approval given under clause 18 if the approval was granted to a person as a result of false or misleading information provided by that person.

130. Sub-clause 19(1) gives the Secretary the power to revoke an approval to a person if satisfied that the approval resulted from the provision of false or misleading information by that person. The notice of revocation must be provided to the person in writing.

131. Sub-clause 19(2) requires a copy of a revocation notice to be forwarded to National Australia Bank.

132. Sub-clause 19(3) means that any approval which has been revoked is, for the purposes of the scheme, to be regarded as if it was never issued. This ensures that any subsidy that was paid in respect of the grant of approval that was revoked can be recovered under clause 31.

PART 3 - SUBSIDY

Clause 20 - When is subsidy payable?

133. This clause describes the conditions that must be satisfied before subsidy payments can commence.

134. Clause 20(1) provides that subsidy can only ever be paid to the National Australia Bank in respect of a loan advanced by that bank in accordance with the franchise agreement (Schedule 1).

135. Paragraph 20(2)(a) means that payment of subsidy to a person can only commence if that person is an entitled person as defined in clause 3.

136. Paragraph 20(2)(b) means that subsidy is only ever payable while a person has a subsidy period as defined in clause 23.

137. Paragraph 20(2)(c) relates to the circumstance where subsidy has been overpaid and it puts in place a condition that subsidy will not be paid unless the appropriate procedures for recovery of the overpayment plus interest (if applicable) have been agreed to by the subsidised borrower.

138. Paragraph 20(2)(d) means that subsidy cannot commence if a person owns another "house" (as defined in clause 3) in addition to the house for which the subsidised loan is required. Consequently, a second house must be disposed of before subsidy can commence. Evidence of the disposal will need to be provided to satisfy the Secretary.

139. This restriction is required to ensure that the subsidy is utilised for the purpose of assisting members and former members to purchase homes for owner occupation.

140. If a person already owns a home and seeks the subsidy for a second home then it could be argued that the subsidy is being used for investment purposes. The scheme is not to be utilised for the purpose of assisting members of the Defence Force to purchase investment properties.

141. Sub-paragraph 20(2)(e)(i) means that subsidy is only payable if ownership of the house lies with the subsidised borrower alone or the subsidised borrower and his or her spouse as joint tenants. If any other person is a part owner of the property, subsidy is not payable. This restriction ensures that the subsidy is paid for the benefit of entitled persons and their spouses only.

142. Sub-paragraph 20(2)(e)(ii) means that the house must be occupied by the entitled person and/or his/her family, if any, for subsidy to commence. Again, this ensures the subsidised loan is being used to provide a home for the entitled person and family, if any.

143. Sub-paragraph 20(2)(e)(iii) means that the house for which the payment of subsidy is sought must be suitable for occupation by the entitled person and family, if any. This ensures that the entitled person cannot claim that the house is inadequate after subsidy has commenced in order to be able to obtain Defence subsidised rental accommodation.

144. Sub-paragraph 20(2)(e)(iv) means that the house must be utilised for residential purposes only and cannot be used for business activities, otherwise the subsidy would be utilised for purposes other than the purchase of a dwelling. This is one of the primary reasons for introducing the scheme.

145. Paragraph 20(2)(f) requires that the subsidised loan must be secured by a first registered mortgage to ensure that the funds are used for the purposes for which they were intended.

146. Sub-paragraph 20(2)(g)(i) allows payment of subsidy if the subsidised loan is used to buy land and build a house on that land. This includes the situation where in reality the person used the loan to buy the land and was able to use other sources of funds to pay for the house to be built; legally, the house and the land become the same property when the house is built on the land and as such the this type of arrangement is allowable under the scheme.

147. Sub-paragraph 20(2)(g)(ii) allows payment of subsidy if the subsidised loan is used to build a house on land already owned by the entitled person.

148. Sub-paragraph 20(2)(g)(iii) allows payment of subsidy if the subsidised loan is used to buy a house and the land at the same time.

149. Sub-paragraph 20(2)(g)(iv) allows payment of subsidy if the subsidised loan is used to complete a partly built house.

150. Sub-paragraph 20(2)(g)(v) allows payment of subsidy if the subsidised loan is to be used to enlarge, renovate or repair an already complete house which is already owned and occupied by the entitled person. It also allows the subsidised loan to be utilised to construct permanent improvements on the property. This would include garages, fencing, and permanent swimming pools.

151. Sub-paragraph 20(2)(g)(vi) allows payment of subsidy if the subsidised loan is to be used to discharge an existing loan which was taken out for the purposes described in sub-paragraphs 20(2)(g)(i) to 20(2)(g)(v). This means that entitled persons who already own their home prior to becoming an eligible person are not precluded from taking up their entitlement because they made the effort to purchase their own home before they completed the eligibility requirements of the scheme. Such persons must still occupy the house when subsidy commences.

152. Sub-clause 20(3) restricts the use of a subsidised loan to properties located in Australia.

153. Sub-clause 20(4) means that any person who cancels subsidy voluntarily under clause 28 will only be permitted to obtain a new subsidised loan in respect of the same house if that person applies for a new entitlement certificate within twelve (12) months of the date subsidy ceased to be payable. If the person fails to apply for a new certificate within that 12 month period, the person will not be permitted to obtain a new subsidised loan on the same house and will only be able to utilise any remaining subsidy period through the purchase of another house.

154. This restriction is designed to discourage the use of the request for cessation provision (clause 28) and ensure that the provision is only used when absolutely necessary. It will prevent the situation where borrowers could manipulate the timing of their subsidy payments to coincide with interest rate fluctuations and thereby unreasonably maximise their subsidy benefit.

155. Sub-clause 20(5) means that an entitled person is not restricted in the number of successive subsidised loans that can be taken out. Only one subsidised loan can be held at any one point in time but once a loan is paid out an entitled person can seek another subsidised loan immediately whether on the same house (the exception being the circumstance described in sub-clause 20(4)) or another house using the portability facility.

156. Sub-clause 20(6) ensures that where a person purchases a house and the property is subject to a crown lease for a term of more than 50 years, the person will not be precluded from having satisfied the ownership and purchase requirements as specified in paragraphs 20(2)(e) and 20(2)(g).

Clause 21 - Maximum amounts on which subsidy is payable

157. This clause specifies that the maximum amount of a subsidised loan is to be \$40,000 and sets down the method of determining the amount on which subsidy is payable.

158. Sub-clause 21(1) determines that the amount on which subsidy is payable for an initial subsidised loan on a particular property is \$40,000 or the "amount advanced" (as defined in clause 3) if it is less than \$40,000. This means that for an entitled person who chooses to borrow less than \$40,000, subsidy will be calculated using the actual amount borrowed. This will be smaller than the subsidy calculated in respect of an entitled person who borrowed the maximum \$40,000.

159. Sub-clause 21(2) determines the amount on which subsidy is payable for an entitled person who borrowed less than \$40,000 when they took out their subsidised loan but later borrows an additional amount to increase the subsidised loan following approval of such an increase under clause 15.

160. In this circumstance, the amount on which subsidy is payable is to be the initial "advanced amount" (as defined in clause 3) plus the additional amount borrowed, or \$40,000 whichever is the lesser. The amount on which subsidy is payable is not the principal outstanding on the loan at the time the additional amount is borrowed plus the additional amount borrowed.

Clause 22 - Minimum amounts on which subsidy is payable

161. This clause sets down the minimum subsidised borrowings which can be obtained under the scheme and, given that the maximum subsidised borrowing is \$40,000, restricts the number of additional borrowings which can be obtained.

162. Sub-clause 22(1) sets the minimum borrowing on which subsidy is payable at \$10,000. This minimum has been set to avoid the significant administrative burden which would ensue if entitled persons were able to continually seek small borrowings. The National Australia Bank has agreed that \$10,000 is an appropriate minimum.

163. Sub-clause 22(2) describes the only exception to the minimum borrowings as set down in sub-clause 22(1). Where the entitled person has total subsidised borrowings of between \$30,000 and \$40,000, the entitled person will be permitted to obtain an amount of less than \$10,000 but only in order to take the total of borrowings up to the maximum of \$40,000, and subsidy will be payable on that amount.

Clause 23 - Subsidy period - eligible persons

164. This clause sets down the periods for which subsidy can be paid. Subsidy will cease when a person no longer has a subsidy period as defined in this section.

165. Sub-clause 23(1) states that subsidy can only ever be paid in respect of a subsidised loan while the eligible person has a subsidy period (as defined in sub-clause 23(2)).

166. Sub-clause 23(2) defines the subsidy period as being the "entitlement period" (as defined in sub-clause 23(3) less the "used subsidy entitlement" (also as defined in sub-clause 23(3)).

167. Sub-clause 23(3) contains the definitions in relation to sub-clause 23(2).

168. The "entitlement period" definition describes the means of calculating the period for which subsidy, as calculated in accordance with clause 25, can be paid in respect of a subsidised loan. The entitlement period is an integral part of the retention incentive in the scheme. This is because it is directly based on the member's length of service in the Defence Force.

169. The maximum entitlement period allowed under the scheme is 20 years, irrespective of whether the member has been a member of the Defence Force on more than one occasion.

170. Paragraph (a) specifies the entitlement period for a member in normal circumstances where the member must have completed the relevant basic service period before beginning to accrue an entitlement, which must be effective full-time service (as defined in clause 3). For example, a member who has completed 10 years of effective full-time service will have an entitlement period of 4 years. Entitlement periods continue to grow even if a subsidised loan is then in place.

171. Paragraph (b) specifies the entitlement period for a member who is an operational service member as defined in clause 3. Such a member is not required to complete a basic service requirement which means that the entitlement period began to accrue on the day the member entered the Defence Force and will be equal to the member's total effective full-time service (as defined in clause 3). For example, a member who serves in the Middle East and completes 10 years effective full-time service will have an entitlement period of 10 years.

172. Paragraph (c) specifies the entitlement period for a "rejoining member" who had a subsidy period from a previous period of service. It means that the "rejoining member" will only be able to utilise that subsidy period if a subsidised loan has been taken out, and subsidy is being paid in respect of that subsidised loan at the time the 2 year period after the date of resignation, retirement or discharge expires, otherwise the subsidy period from the previous period of service lapses. A rejoining member is not required to complete another basic service period and will accrue a further entitlement period from the date of re-entry.

173. Any subsidy period whether or not it was accrued in a previous period of service is to be included when calculating whether the person has reached the maximum 20 years of subsidy payment. For example, a rejoining member who completes 7 years service, leaves the Defence Force, rejoins after 12 months and is receiving subsidy when the 2 year period after resignation, retirement or discharge expires, and then serves a further 3 years will have an entitlement period of 4 years.

174. Paragraph (d) specifies the entitlement period for a member who is a rejoining member who is not covered under paragraph 23(3)(c). The effect of this paragraph is to ensure that, upon rejoining, such persons receive a subsidy period equal to the number of completed years of service after they rejoin the Defence Force. It should be noted that a rejoining member is not required to complete another basic service period and will accrue an entitlement period from the date of re-entry.

175. Paragraph (e) specifies the entitlement period for an incapacitated person (as defined in clause 3). Such a person is not required to have completed a basic service requirement which means that the entitlement period began to accrue on the day the member entered the Defence Force and will be equal to the member's total effective full-time service (as defined in clause 3).

176. Paragraph (f) specifies the entitlement period for eligible persons who are not covered under paragraphs (a), (b), (c), (d) and (e) who are former members of the Defence Force. Their entitlement period is that which had accrued up to the date of cessation.

177. The "used subsidy period" definition refers to the entitlement period (as defined in this section) which has been utilised through the payment of subsidy on a subsidised loan.

Clause 24 - Subsidy period - widows and widowers

178. This clause sets out the conditions for determining the subsidy period which is to be made available to the widow or widower of a deceased eligible person.

179. Sub-clause 24(1) specifies that subsidy can only be paid to a widow or widower while the widow or widower has a subsidy period as defined in sub-clause 23(2).

180. Sub-clause 24(2) defines the subsidy period which accrues to a widow or widower. This period is equal to the subsidy period (as defined in clause 23) which the deceased eligible person was or would have been entitled to at the time of death.

181. Sub-clause 24(3) defines the subsidy period that accrues to the widow or widower where the deceased eligible person is a "prescribed member" as defined in sub-clause 24(4). This period is equal to the subsidy period (as defined in clause 23) which the deceased eligible person was or would have been entitled to at the time of death. In this instance the subsidy period is the same as if the member had been discharged as an incapacitated person.

182. Sub-clause 24(4) defines a "prescribed member" who is a deceased member who had completed less than 16 years of service and for whom compensation is payable in respect of his or her death. A deceased person who had completed more than 16 years of service at the time of death had an entitlement period which is greater than the maximum entitlement which is available under the special provisions in the scheme for incapacitated persons (paragraph 23(3)(d)).

183. For the purposes of this clause, sub-clause 24(4) defines a "widow or widower" as a person who is not an eligible person in his or her own right. This distinction is required to ensure that the restrictions which apply to widows or widowers under the scheme will not necessarily apply to a widow or widower who is also an eligible person.

Clause 25 - Calculation of amounts of subsidy

184. This clause sets out the method of calculating the monthly subsidy for a subsidised loan.

185. Sub-clause 25(1) describes the manner in which the formulae are to be utilised to calculate the monthly subsidy amount for each subsidised loan.

186. Sub-clause 25(2) sets out the formula for calculating the regular monthly repayment which is the full amount which, but for the subsidy, would ordinarily be payable by the borrower to National Australia Bank. In this scheme the interest rate charged by the bank is to be the "benchmark rate" as defined in clause 3 and in clause 5.15 of the franchise agreement at Schedule 1.

187. The formula is the standard formula for calculating loan repayments for credit foncier housing loans. Credit foncier is a common method of calculating home loan repayments and it involves fixed repayments which comprise an interest component, which reduces over time, and a principal component, which increases over time.

188. The "LA" or loaned amount is determined in accordance with clause 21.

189. Sub-clause 25(3) is the formula to calculate the monthly subsidy. It involves calculating the total interest payable over a term of 25 years, averaging that amount over the 300 months in the 25 year term, and then applying a factor of 40% to that average monthly figure to produce the monthly subsidy. The subsidy is thus 40% of the average monthly interest payable over the life of the loan.

Clause 26 - Joint loans to entitled persons who are spouses

190. This clause allows two entitled persons who are married or in a bona fide defacto relationship to utilise both entitlements on the one subsidised loan. This means that the maximum amount on which subsidy is payable, as defined in sub-clauses 21(1) and 21(2), is \$80,000. In such cases, any reference to the maximum amount on which subsidy is payable is to be read as \$80,000 not \$40,000.

191. Sub-clause 26(1) relates to the amount on which subsidy is payable and ensures that when both persons are entitled to a subsidy period (as determined under clause 23) the amount on which subsidy is payable is a maximum of \$80,000. If, at any time, only one of those persons continues to be entitled to a subsidy period, the maximum amount on which subsidy is payable reverts to \$40,000.

192. Sub-clause 26(2) refers to the circumstance where the amount on which subsidy is payable is \$80,000 under sub-clause 26(1) but one of the persons dies and as such the other becomes eligible for the widow or widower entitlement provided under clauses 24 and 30. This sub-clause states that the amount on which subsidy is payable will continue to be \$80,000 while the surviving person remains entitled to both subsidy periods. However, when either subsidy period expires, the maximum amount on which subsidy is payable shall revert to \$40,000 until the remaining subsidy period expires.

Clause 27 - Notice that subsidy will not be paid

193. This clause describes the circumstances and the mechanisms in which the Secretary may stop subsidy because of factors revealed subsequent to the commencement of subsidy payments which show that a person should not have been issued with an entitlement certificate or subsidy should not have commenced.

194. Sub-clause 27(1) states that if the circumstances described in paragraph 27(1)(a), 27(1)(b) or 27(1)(c) arise and the Secretary wishes to stop the payment of subsidy, the person must be given a written notice that subsidy will not be paid on or after the date of that notice.

195. Paragraph 27(1)(a) allows subsidy to be stopped if the person had provided false or misleading statements.

196. Paragraph 27(1)(b) allows subsidy to be stopped if it is revealed that the person did not have a right to be issued with an entitlement certificate.

197. Paragraph 27(1)(c) allows subsidy to be stopped if it is revealed that the conditions contained in sub-clause 20(2) were not met at the time subsidy commenced even though, at that time, the Secretary was satisfied that those conditions had been met.

198. Sub-clause 27(2) states that subsidy stops being payable in respect of an increase in the amount of the loan if that increase resulted from an approval under clause 15 which was later revoked under clause 16 because the person had provided false or misleading information. The person must be given notice in writing that the relevant amount of subsidy will cease on or after the date of the notice.

199. Sub-clause 27(3) requires a copy of any written notice issued under sub-clause 27(1) to be forwarded to National Australia Bank in accordance with the provisions of the franchise agreement.

200. Sub-clause 27(4) states that subsidy ceases to be payable on or after the day specified in the notice and any payments of subsidy which had been paid prior to the date of the notice are recoverable under clause 31.

201. Sub-clause 27(5) states that where a notice has been issued under sub-clause 27(2), although subsidy stops being payable on or after the date of the notice, any amounts which should not have been paid prior to that date will be recoverable in accordance with clause 31.

Clause 28 - Request to cancel subsidy

202. This clause allows a subsidised borrower to elect to cancel subsidy and specifies the processes by which the cancellation occurs.

203. Sub-clause 28(1) allows a subsidised borrower to submit a written request to cancel subsidy.

204. Sub-clause 28(2) allows only one request for cancellation of subsidy on a subsidised loan. Once subsidy has been cancelled on the request of the subsidised borrower, it can only re-commence in respect of the same house if a new entitlement certificate is applied for within 12 months of the date subsidy ceased as specified in sub-clause 20(4).

205. Sub-clause 28(3) requires the Secretary to issue a notice of cancellation and cancel subsidy on receipt of a cancellation request from the subsidised borrower.

206. Sub-clause 28(4) requires the Secretary to forward a copy of a cancellation notice to National Australia Bank in accordance with the franchise agreement.

207. Sub-clause 28(5) specifies that if cancellation is to occur under this section, subsidy stops being payable on the date of the notice of cancellation or any later date requested by the subsidised borrower.

Clause 29 - When does subsidy stop?

208. This clause describes all the circumstances where subsidy ceases to be payable.

209. Paragraph 29(a) requires that subsidy cease when the subsidised loan is paid out.

210. Paragraph 29(b) requires that subsidy cease when a person no longer has a subsidy period as defined in clauses 23 and 24.

211. Paragraph 29(c) requires that subsidy cease if the property ownership is changed from being a joint tenancy to a tenancy-in-common. This is analogous to the situation where subsidy is not payable at the outset in accordance with sub-paragraph 20(2)(e)(i).

212. Paragraph 29(d) requires that subsidy cease when, under an order of the Family Court, ownership of the house (as defined in clause 5) in respect of which subsidy is payable is forcibly transferred to (a) the subsidised borrower's spouse or former spouse, so that the subsidised borrower no longer owns the property, or (b) to include the subsidised borrower's former spouse as an owner as a joint tenant, which means that the part owner is not a spouse.

213. Paragraph 29(e) requires subsidy to be cancelled when ownership of the property to which subsidy relates has been transferred without the approval of the Secretary to the Department under clause 18.

214. Paragraph 29(f) requires subsidy to be cancelled if the widow or widower of a deceased eligible person who is in receipt of subsidy dies. This relates to a fundamental condition in the scheme that a subsidy entitlement can only ever be carried over to the widow or widower of an eligible person. A widow or widower who is receiving subsidy as a result of the deceased spouse having been an eligible person at the time of death, is not permitted to then transfer that entitlement when he or she dies even if he or she has a new spouse.

215. Paragraph 29(g) requires subsidy to be cancelled if the subsidised borrower died and did not have a spouse (as defined in clause 3) at the time of death.

216. Paragraph 29(h) requires subsidy to be cancelled when, following the death of the subsidised borrower, the ownership of the property is transferred to a person other than the widow or widower.

217. There is one circumstance where a transfer to a widow or widower can mean that subsidy ceases to be payable. This occurs where there was a "defacto" widow or widower living with the deceased eligible person at the time of death, and subsidy had been suspended under sub-clause 30(2), but the property is passed to the legal widow or widower. This means that the suspension of subsidy can never be lifted under sub-clauses 30(3) and 30(4) and subsidy must cease to be payable under this section.

Clause 30 - What happens on the death of a borrower who is an eligible person?

218. This clause describes the processes to be adopted in relation to continuation of subsidy payments when certain subsidised borrowers die. A subsidised borrower who is or was the eligible person is defined in this clause as a "prescribed borrower". The only circumstance where a subsidised borrower is not the eligible person is when the subsidy entitlement has been transferred to the widow or widower of a deceased eligible person. Subsidy will not continue to be paid under this clause if any of the conditions in clause 29 apply.

219. Subsidy continues unaffected if the spouse of a member or former member dies. Conversely if the subsidised borrower is a widow or widower of an eligible person, subsidy would stop under the provisions of paragraph 29(f) and this clause would not apply.

220. Sub-clause 30(1) states that when the "prescribed borrower" owns the dwelling with his or her spouse as joint tenants and then dies, subsidy will continue to be paid unless the circumstances described in clause 29 require cessation of the subsidy. Where a couple own a home as joint tenants, the surviving person automatically inherits the house.

221. Sub-clause 30(2) states that when the "prescribed borrower" is the sole owner of the dwelling and then dies, irrespective of the fact that there may be a widow or widower who will eventually properly inherit the remaining entitlement, subsidy is to be suspended until the dwelling is sold or transferred to the widow or widower in accordance with the will or intestacy law. Subsidy can only be re-commenced in accordance with sub-clauses 30(3) and 30(4).

222. Sub-clause 30(3) applies to the situation where the widow or widower is the person who was living with the deceased eligible person immediately before his/her death. It states that when subsidy has been suspended in accordance sub-clause 30(2) it can be re-commenced if the house has been sold or transferred to the widow or widower and the widow or widower takes over as the borrower on the same loan in respect of which the subsidy was being paid at the time of death. Subsidy is to be back-paid to the date of the suspension.

223. Sub-clause 30(4) applies to the situation where there was no widow or widower living with the deceased eligible person at the time of death but there was a widow or widower who was legally married to the deceased eligible person at the time of death. It states that when subsidy has been suspended in accordance sub-clause 30(2), it can be re-commenced if the property has been sold or transferred to the legal widow or widower under the will or intestacy law and the widow or widower takes over as the borrower on the same loan in respect of which the subsidy was being paid at the time of death. In such a circumstance the subsidy would be back-paid to the date the suspension occurred.

224. Sub-clause 30(5) requires that written notice of any suspension of subsidy must be forwarded to National Australia Bank.

225. Sub-clause 30(6) states that a widow or widower who is entitled to be paid subsidy under this clause is to be treated as a subsidised borrower for the purposes of the Act. This is required because following a transfer as the result of a death, the widow or widower of a subsidised borrower would not normally be a subsidised borrower (as defined in clause 3) because he or she was not an entitled person.

226. A subsidised borrower must normally have held an entitlement certificate and therefore have been an entitled person as defined. It was the deceased spouse who was the entitled person/subsidised borrower in respect of that subsidised loan.

227. Sub-clause 30(7) defines a "prescribed borrower" to be a subsidised borrower who is or was an eligible person. This restricts the application of clause 30 (including suspensions of subsidy) to cases where the member or former member of the Defence Force dies.

Clause 31 - Recovery of certain payments by Commonwealth

228. This clause describes the processes by which an overpayment of subsidy is to be recovered.

229. Sub-clause 31(1) sets out the circumstances where an amount of subsidy is directly recoverable by the Commonwealth by the person in respect of whom subsidy was overpaid. The amount payable is the "due amount" as defined in sub-clause 31(8).

230. Paragraph 31(1)(a) specifies that the amount to be recovered must have been paid to National Australia Bank by the Commonwealth for the purpose of being a subsidy payment.

231. Paragraph 31(1)(b) specifies that the amount described in paragraph 31(1)(a) must not be payable under the Bill ie. it must have been an unauthorised payment arising generally either as a result of fraud or error.

232. Paragraph 31(1)(c) ensures that the amount to be recovered is not an amount that National Australia Bank would be required to pay to the Commonwealth under clauses 8.1 and 8.5 of the franchise agreement (Schedule 1).

233. Paragraph 31(1)(d) ensures that if the overpaid amount is to be recovered through National Australia Bank under the process set down in sub-clause 8.2 of the franchise agreement with National Australia Bank (Schedule 1), that amount is not recoverable by the Commonwealth directly from the person who was overpaid.

234. Sub-clause 8.2 of the franchise agreement provides a process by which if a person has received the benefit of subsidy which was not payable, and the loan account is still open, the due amount can be repaid either by National Australia Bank or the borrower. National Australia Bank would then be able to add the amount concerned to the loan account, thereby increasing the principal outstanding on the loan, and essentially bringing the loan account into the state it should have been but for the overpayment.

235. The person who has been overpaid will be asked to consent to this method of recovery as an alternative to paying the due amount directly to the Commonwealth. However, if the person fails to provide that consent or repay directly to the Commonwealth, this recovery method will be automatically implemented. The entitled person will also need to consent to the possible use of this method of recovery in the loan contract with National Australia Bank.

236. Sub-clause 31(2) refers to the process described in sub-clause 8.4 of the franchise agreement with National Australia Bank (Schedule 1) whereby the Commonwealth will reimburse National Australia Bank losses it incurs where it enforces the mortgage, having earlier increased the loan by making a recovery under sub-clause 31(1)(c), and there are insufficient proceeds to cover the debt to the bank. This sub-clause gives the Commonwealth the right to recover the amount paid to National Australia Bank under sub-clause 8.4 of the franchise agreement (Schedule 1) from the person who had the subsidised loan.

237. Sub-clause 31(3) refers to the situation where before a due amount can be recovered, National Australia Bank enforces the mortgage. This sub-clause requires National Australia Bank to pay to the Commonwealth the due amount, or the balance of the due amount if part of it had already been recovered, from the proceeds of the sale of the property which would normally have been payable to the borrower.

238. Sub-clause 31(4) states that any payment received by the Commonwealth under sub-clause 31(3) discharges the liability of the former subsidised borrower to the Commonwealth and the liability of National Australia Bank to the former subsidised borrower. However, the liability discharged is only to the extent of the amount actually paid if the amount is less than the due amount.

239. Sub-clause 31(5) states that any due amount, or part of a due amount which is not recovered from the borrower under the processes described in this clause can be recovered by the Commonwealth in an appropriate court of law.

240. Sub-clause 31(6) allows the Secretary to reduce the due amount, through the issue of a written notice, where the former subsidised borrower applies for special consideration on the grounds that repayment of the due amount would cause the person unreasonable financial hardship.

241. Sub-clause 31(7) requires the Secretary to forward any written notice issued under sub-clause 31(6) to National Australia Bank.

242. Sub-clause 31(8) defines the "due amount" for the purposes of the section.

Clause 32 - Waiver

243. This clause allows the Secretary to make decisions in respect of writing off, waiving the right to recover (either fully or partially) or arranging repayment in instalments an amount which is recoverable under clause 31, and specifies the circumstances in which such decisions can be made. Any such decision is required to be in writing.

244. Paragraph 32(1)(a) gives the Secretary the power to write off the due amount as determined under clause 31.

245. Paragraph 32(1)(b) gives the Secretary the power to waive the right of the Commonwealth to recover all or part of a due amount as determined under clause 31.

246. Paragraph 32(1)(c) gives the Secretary the power to allow a due amount to be repaid in instalments.

247. Sub-clause 32(2) states that the Secretary can make a decision under sub-clause 32(1) whether or not the person concerned has made an application for waiver. This ensures that the Secretary can write off a debt if he believes it is not recoverable.

248. Sub-clause 32(3) requires that an application for special consideration from a person only be approved if the repayment of the due amount will cause the person unreasonable financial hardship.

249. Sub-clause 32(4) specifies the day on which a decision made under sub-clause 32(1) is to take effect.

250. Sub-clause 32(5) highlights the fact that any amount which is owed to the Commonwealth by National Australia Bank is not subject to this clause and cannot be written off, waived or paid in instalments at the discretion of the Secretary.

PART 4 - MISCELLANEOUS**Clause 33 - Internal review of reviewable decisions**

251. This clause sets down the processes which are to be adopted in relation to the making of reviewable decisions and the reviewing of reviewable decisions by persons other than the Administrative Appeals Tribunal. The decisions under this Bill which are reviewable decisions are listed in the definition of "reviewable decision" in clause 3.

252. Sub-clause 33(1) requires that whenever a reviewable decision is made, the terms and reasons relating to the decision, along with a statement of the review rights, must be provided in writing to the person who is affected by the decision.

253. Sub-clause 33(2) gives the person affected by the decision the right to apply for a review.

254. Sub-clause 33(3) states the rule regarding the timing of an application for review of a reviewable decision which is that the application must be lodged within 30 days of receiving notice of the decision unless the Secretary agrees to extend that period.

255. Sub-clause 33(4) specifies who is to review a reviewable decision and that is to be a person who is delegated by the Secretary under this clause but also a person who was not involved in the making of the decision and who is senior to the person who made the decision.

256. Sub-clause 33(5) requires the Minister to review the decision if the Secretary had personally made the decision which is to be reviewed.

257. Sub-clause 33(6) sets down the powers of the reviewing person in respect of the review.

258. Sub-clause 33(7) means that the review processes available under this clause are not available to National Australia Bank if it were to object to a decision.

Clause 34 - Review of decisions by Administrative Appeals Tribunal

259. This clause provides authority, and outlines the processes, for a person who has had a decision reviewed under clause 33, but then objects to the decision arising from that review, to apply to the Administrative Appeals Tribunal to have it review the decision made by the reviewing person under sub-clause 33(6).

260. Sub-clause 34(1) requires that whenever a reviewable decision has been reviewed, the terms and reasons relating to the review decision, along with a statement of the rights with respect to a further review by the Administrative Appeals Tribunal, must be provided in writing to the person who is affected by the decision.

261. Sub-clause 34(2) states that a reviewable decision remains valid even if a statement setting out the person's right to a further review through the Administrative Appeals Tribunal is not provided under paragraph 34(1)(c).

262. Sub-clause 34(3) gives the authority for a person to apply to the Administrative Appeals Tribunal for a review of a decision made under sub-clause 33(6).

263. Sub-clause 34(4) ensures that the term "decision" has the same meaning in this Bill as it has in the Administrative Appeals Tribunal Act 1975.

Clause 35 - Certain provisions of agreement not to be revoked or amended

264. This clause specifies the clauses in the franchise agreement with National Australia Bank (Schedule 1) which cannot be altered in any way without reference to Parliament. These clauses are crucial to the continuing operation of the scheme in accordance with the Bill. They impact on the calculations of money to be paid to National Australia Bank which are appropriated in clause 38.

Clause 36 - Exchange of Information

265. This clause instructs the Commonwealth and National Australia Bank to provide each other any information required by the other in accordance with the franchise agreement (Schedule 1) and provides authority for the provision of that information. Sub-clause 36(1) applies in respect of the Commonwealth's responsibilities and sub-clause 36(2) applies in respect of National Australia Bank's responsibilities.

Clause 37 - Delegation

266. This clause specifies the persons to whom the Secretary may delegate any of his powers and functions.

Clause 38 - Appropriation

267. This clause is a special appropriation which ensures that payments of subsidy and payments made to reimburse National Australia Bank in accordance with clause 8.4 of the franchise agreement are always available. A special appropriation is necessary to make clear the intention that payments of subsidy (whether initially or on reimbursement) are always to be made.

Clause 39 - Annual report

268. This clause requires the Secretary to submit an annual report to the Minister after the completion of each financial year. The Minister is then required to lay the report before the House of Representatives and the Senate within 15 sitting days from the day he/she received the report.

Clause 40 - Regulations

269. This clause sets down the right of the Governor-General to make regulations in respect of the scheme. The only prescribed matter in the Bill for which regulations must be passed, is the need to define the periods of leave beyond 12 months which will not constitute a break in the continuity of service (as defined in clause 7).

SCHEDULE 1**AGREEMENT BETWEEN THE COMMONWEALTH OF AUSTRALIA AND
NATIONAL AUSTRALIA BANK LIMITED****Recital**

270. The recital sets the scope of the Commonwealth's agreement with National Australia Bank - that the Commonwealth wishes to introduce a scheme of home loan assistance for certain members of the Australian Defence Force and that National Australia Bank has agreed to participate as the lender under the scheme.

Clause 1 - Definitions and Interpretations**Sub-clause 1.1 - Definitions**

271. These establish the terms which are used throughout the agreement.

Sub-clause 1.2 - Interpretation

272. This sub-clause sets the framework for interpreting the Agreement in relation to applicable time and references to gender, plural and such matters.

Clause 2 - Agreement

273. This clause provides for the parties to act in accordance with the Agreement and for National Australia Bank to be bound by the Defence Force (Home Loans Assistance) Act and the Agreement.

Clause 3 - Franchise

274. This clause provides for the rights of National Australia Bank to be the exclusive lender under the scheme and to be the only recipient of subsidy paid on loans made under the scheme before 31 December 2006.

Clause 4 - Franchise Payments**Sub-clause 4.1 - Payments**

275. This sub-clause provides for National Australia Bank to pay the Commonwealth the sum of \$42 million on the commencement of the scheme and commission payments on loans above and below a certain threshold in each calendar year during the life of the scheme. The level of commission payments are set out in Schedule 1 to the Agreement.

Sub-clause 4.2 - Provision of Invoices

276. This sub-clause provides for the Commonwealth to invoice National Australia Bank for the commission payments.

Sub-clause 4.3 - Times for Payment

277. This sub-clause provides for the times by which the commission payments must be made.

Sub-clause 4.4 - Checking of Invoices

278. This sub-clause provides for National Australia Bank to check and confirm that the invoices supplied are correct and for the Commonwealth to submit a further invoice where it has omitted to claim certain sums.

Sub-clause 4.5 - Manner of Payment

279. Moneys payable by National Australia Bank shall be paid to the Receiver of Public Moneys.

Sub-clause 4.6 - Resolution of Disputes as to Payments under Sub-clause 4.1(b)

280. This sub-clause provides for disputes about commission payable to be referred to arbitration under clause 24.

Sub-clause 4.7 - Provision for Possible Refund of Part or all or \$42 Million Referred to in Clause 4.1 (a)

281. This sub-clause provides for the Commonwealth to refund part or all of the initial franchise payment of \$42 Million in the event that the Commonwealth passes legislation to reduce benefits or restrict eligibility under this scheme or to introduce another scheme of Housing Loan Assistance for members eligible under this scheme.

282. A refund is only payable if the Commonwealth's action causes the numbers of Subsidised Loans provided by National Australia Bank to fall below 2000 in certain periods in the first 4 years following commencement of the scheme. If agreement on the size of the refund cannot be reached, the matter may be settled by arbitration under clause 24.

283. This sub-clause mirrors clause 13 of the agreement with Westpac which is appended to the Defence Service Homes Amendment Act 1988.

Clause 5 - Subsidised Loans

284. This clause generally provides for the provision by National Australia Bank of Subsidised Loans to persons entitled under the scheme.

Sub-clause 5.1 - Preliminary Enquiries

285. This sub-clause provides for National Australia Bank to assist a person enquiring about the scheme.

Sub-clause 5.2 - Entitlement Certificates

286. This sub-clause provides for the procedure to be followed where a person seeks an Entitlement Certificate from National Australia Bank or the Commonwealth.

Sub-clause 5.3 - Grants of Approval

287. This sub-clause provides for the procedures for dealing with circumstances where a borrower wishes to change the particulars of the title of the home to which a Subsidised loan relates or to increase the amount of the Subsidised Loan.

Sub-clause 5.4 - Application for Subsidised Loan

288. This sub-clause provides for the procedures which need to be followed before National Australia Bank need consider a loan application in accordance with the Agreement.

Sub-clause 5.5 - Obligation of the Bank to make a Subsidised Loan

289. This sub-clause obligates National Australia Bank to make a loan to a person who holds an Entitlement Certificate if they meet the agreed Lending Criteria. If a Subsidised Loan is made National Australia Bank will complete part of the Application for Payment of Subsidy and return it to the Commonwealth.

Sub-clause 5.6 - Application of Lending Criteria

290. The Bank agrees to only reject applications for loans where an applicant fails the agreed lending criteria.

Sub-clause 5.7 - Lending Criteria

291. This sub-clause sets out the lending criteria which will be used to assess loan applications under the scheme. The criteria are similar to those generally used by major financial institutions.

Sub-clause 5.8 - Alteration of Lending Criteria

292. This provides for lending criteria to be altered if market conditions change.

Sub-clause 5.9 - Factors to be Excluded by the Bank

293. This sub-clause provides for National Australia Bank not to discriminate against persons seeking loans under the scheme.

Sub-clause 5.10 - Provision of Reasons for Rejection

294. This sub-clause provides for National Australia Bank to explain the reasons for rejecting a loan application to affected applicants.

Sub-clause 5.11 - Entitled Person to include Spouse in Certain Cases

295. This sub-clause provides for National Australia Bank to apply the lending criteria to both persons where a couple applies for a loan.

Sub-clause 5.12 - Non-discrimination

296. This sub-clause provides that National Australia Bank will not discriminate between persons applying under the scheme and their other housing loan customers.

Sub-clause 5.13 - Security

297. This sub-clause provides for the means by which loans under the scheme will be secured. This will be a first mortgage on a Property solely in the name of the Subsidised Borrower and Joint Borrower (spouse) using National Australia Bank's standard mortgage agreement. (Note: The mortgage agreement secures the Property. A home loan agreement establishes the terms and conditions under which the money is lent.)

Sub-clause 5.14 - Loan Agreement

298. This clause provides for the loan agreement or contract between National Australia Bank and the subsidised borrower to be in the form set out at Schedule D of the Agreement.

299. It is further provided that certain specific provisions will remain in the home loan agreement regardless of any agreed amendments. These provisions are necessary to ensure that subsidised borrowers have the capacity to receive the full amount of the subsidy available to them.

Sub-clause 5.15 - Calculation of Benchmark Rate

300. This sub-clause details the means by which the "benchmark rate" is to be calculated. The benchmark rate is used by National Australia Bank to calculate interest payable under the loan and is used by the Commonwealth to calculate subsidy.

301. The rate is calculated on the last day of each month and applied to the loan in the month following the next month. Hence a rate calculated on 31 October will be applied to loans on 1 December. This ensures delays in calculation and disagreements do not affect the smooth operation of borrowers' loan accounts.

302. The benchmark rate is based on the variable home loan rates charged by the five major banking groups on the largest number of loans outstanding. The average of such rates applied in each State or Territory in which the Groups provide housing loans forms the benchmark. The regulated home loan interest rates which apply to certain loans made prior to the de-regulation of home loans in 1986 are not included in the calculation. Where National Australia Bank offers a lower rate to its own customers, that rate is used as the benchmark.

303. The banking groups used in the calculation are set for the first 13 months of the scheme. Thereafter, the five major banks are redetermined on the basis of the value of housing loans outstanding during July.

304. Where one bank is absorbed or merges with another then the remaining major banks are used in the calculation. This provision allows for calculation of the benchmark if one of those banks ceases to operate in its own right between determinations of the five major banks. This allows for the proposed merger of the Commonwealth Bank and the State Bank of Victoria.

305. Disputes about the benchmark rate are subject to "fast-track" arbitration in accordance with clause 24. Where this is unsuccessful, the rate first advised by the Commonwealth will hold for the next month.

306. This sub-clause may not be amended without Parliamentary approval.

Clause 6 - Fees

307. This clause provides for the fees to be charged by National Australia Bank to customers under the scheme to be no higher than those charged to its other housing loan customers.

Clause 7 - Subsidy

308. This clause provides for the payment of subsidy by the Commonwealth in accordance with the Bill and for National Australia Bank to ensure that subsidy received is used to benefit borrowers.

309. Subsidy is calculated under the Bill in equal monthly amounts. Hence, the clause provides that subsidy will not be paid in respect of part months during which the borrower is liable under the mortgage. Thus subsidy does not commence until the second rest day of a loan. This ensures subsidy is always paid in respect of a full month.

Clause 8 - Recovery of Over-payments

310. This clause provides the mechanism by which the Commonwealth will recover over-payments of subsidy. It is designed to link with clause 31 of the Bill.

311. Recovery will be either direct from the borrower or through National Australia Bank. The bank will add any over-payments recovered through it to the borrowers' loan account. If, at a later stage, the bank is forced to sell the property as mortgagee and makes a loss, the Commonwealth will repay the bank the amount of the loss which is attributable to the recovery. The Commonwealth will then undertake recovery in its own right directly from the borrower.

312. The clause provides for recovery action where the borrower seeks a review of the matter in accordance with clauses 33 or 34 of the Bill.

Clause 9 - Further Housing Loans

313. This clause provides for borrowers to obtain loans in excess of \$40,000 from National Australia Bank.

Clause 10 - Promotion and Operation of the Scheme

314. This clause provides for the promotion of the scheme by both National Australia Bank and the Commonwealth.

Clause 11 - Information

315. This clause provides for the exchange of specific information between National Australia Bank and the Commonwealth to ensure the smooth operation of the scheme.

316. National Australia Bank also agrees to participate in the preparation of annual reports and evaluations of the effectiveness of the scheme. Formal evaluations will be made in a 3 - 5 year cycle.

Clause 12 - Acknowledgement of Commonwealth Administrative Arrangements

317. This clause allows for the Commonwealth to discharge its responsibilities through any Department or statutory authority. This does not affect the limitations on the delegation powers of the Secretary under clause 37 of the Bill.

Clause 13 - Dealings with South Africa

318. Under this clause National Australia Bank recognises Australia's policy restricting dealings with South African firms and warrants that it is not a South African owned or controlled bank.

Clause 14 - Stamp Duty

319. Stamp duty is to be borne by National Australia Bank.

Clause 15 - Legal and Accounting Costs

320. Each party will bear its own costs in preparing the Agreement.

Clause 16 - Applicable Law

321. This Agreement will be read in accordance with the laws of Victoria and disputes will be submitted to the courts of Victoria.

Clause 17 - Notice

322. Notices are to be taken as received by the other party when sent in accordance with the provisions of this clause.

Clause 18 - Waiver

323. This provides that a failure to enforce some provisions of the Agreement does not affect either parties rights.

Clause 19 - Entire Agreement

324. This clause provides that this is the entire agreement between the parties and that there is no other agreement or understanding between the parties.

Clause 20 - Amendments or Variations

325. This provides for agreed amendments and variations to be in writing.

Clause 21 - Assignment

326. Limits assignment of rights and obligations under the Agreement.

Clause 22 - Disposal by the Bank

327. Allows for National Australia Bank to securitize mortgages made under the scheme provided it meets certain conditions regarding dealings with customers and the Commonwealth.

Clause 23 - Further Assurances

328. Provides that the parties will work together to ensure the Agreement operates effectively.

Clause 24 - Arbitration

329. Provides for arbitration of disputes under the Agreement between the Commonwealth and National Australia Bank.

Clause 25 - Confidentiality

330. Provides for National Australia Bank not to reveal confidential information.

Clause 26 - Warranties

331. The Bank warrants that, for its part, entering into this Agreement is not precluded by any matter known to it.

Clause 27 - Indemnities

332. Each party indemnifies the other from the costs of certain actions.

Clause 28 - Relationship of the Parties

333. This clause makes it clear that each party is not authorised to say or do things in the name of the other except as otherwise provided for in the Agreement and that no other relationship is implied by the Agreement.

Clause 29 - Default Provisions

334. This clause provides for defaults by National Australia Bank and the Commonwealth.

335. In the case of certain persistent failures by the National Australia Bank the Commonwealth may terminate the Agreement.

336. It also provides for interest to be payable on moneys over-due. Interest does not apply to the late payment of subsidy.

Clause 30 - Audit

337. This provides for an external audit certificate to be provided by National Australia Bank on an annual basis to the effect that their systems, accounts and records concerning subsidised loans can be relied upon.

338. If the certificate is qualified the National Australia Bank has agreed to rectify the failing within 28 days.

Clause 31 - Enabling Legislation

339. This clause provides for the Agreement to be subject to the passage of Enabling Legislation in the form agreed to by National Australia Bank. If the Defence Force (Home Loans Assistance) Bill is amended during passage, National Australia Bank may terminate the Agreement if the amendment adversely affects its position. There is provision for National Australia Bank to agree to amendments or for the parties to discuss whether the Agreement can be amended so that the scheme may operate.

340. This clause is similar in nature to clause 6 of the agreement with Westpac attached to the Defence Service Homes Amendment Act 1988. Clause 6 was the subject of an inquiry by the Senate Standing Committee on Legal and Constitutional Affairs. In a report tabled on 8 March 1989 (Parliamentary Paper No 473) the Committee found that the inclusion of such a clause was necessary to recognise the commercial realities of the situation. It did not fetter the Parliament's power to amend legislation - it merely recognised it.

Schedule A

341. This schedule sets out the commission payable by National Australia Bank in respect of subsidy payment commencements above and below certain limits.

Schedule B

342. This schedule sets out the information to be included in certain forms which will be used in the administration of the scheme.

Schedule C

343. This schedule sets out the form of a declaration to be made by a Bank Manager prior to the commencement of subsidy on a particular loan.

Schedule D

344. This schedule incorporates the home loan agreement which National Australia Bank will use in relation to subsidised loans. The agreement is a modified version of the agreement commonly used by National Australia Bank. It has a number of additional features connected with this scheme. These include:

- . the loan is to be a credit foncier loan over a 25 year term unless otherwise agreed between the borrower and the National Australia Bank;
- . monthly repayments sought from borrowers will be reduced by the amount of the Commonwealth's subsidy;
- . the interest rate will be the benchmark rate until subsidy ceases to be payable;
- . the borrowers acknowledge and agree to the subsidy recovery arrangements in the Bill and the Agreement

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS TO THE DEFENCE SERVICE HOMES ACT 1918

345. This schedule sets out the amendments which are required for the Defence Service Homes Act 1918 as a consequence of the provisions contained in the body of this Bill which affect eligibility under the Defence Service Homes scheme and, secondly, because any person who takes out a subsidised loan under this Bill will have access to the insurance services provided under the Defence Service Homes Act.

Sub-section 4(1)

346. The amendment to sub-section 4(1) of the Defence Service Homes Act provides for an abbreviated name to describe this Bill.

Section 4BA - Election to surrender eligible status

347. This amendment is the inclusion of a new section 4BA which sets down the rules in which a person can elect to surrender his or her eligible status under the Defence Service Homes scheme in order to be able to apply for the benefits available under this Bill.

348. Sub-section 4BA(1) describes the criteria which must be met if a person is to be given the opportunity to make the election to surrender eligibility under the Defence Service Homes Act.

349. Sub-section 4BA(2) requires that the election be made in writing and handed to the Secretary to the Department of Veterans' Affairs during the six month period which will commence on the date this section commences.

350. Sub-section 4BA(3) specifies that once an election is submitted to the Secretary to the Department of Veterans' Affairs it cannot be withdrawn and will take effect on the day it is submitted.

351. Sub-section 4BA(4) specifies that once the election takes effect the person involved will cease to be an eligible person for the purposes of the Defence Service Homes Act.

352. Sub-section 4BA(5) requires the Secretary to the Department of Veterans' Affairs to forward a copy of each election made under this section to the Secretary to the Department of Defence. This will enable the Secretary to the Department of Defence to verify that a person is a "non-DSH member" who may be eligible for assistance under the provisions of this Bill.

353. Sub-section 4BA(6) defines the period in which a person must make the election under this section. This will be a 6 month period immediately following the commencement of this schedule - expected to be 1 January 1991 to 30 June 1991.

Section 38

354. This amendment provides authority for Defence Service Homes insurance to be available for purposes described in the new section 38CA.

Sub-section 38A(2)

355. This amendment means that the powers of the Commonwealth, which the Secretary to the Department of Veterans' Affairs is required to exercise in accordance with sub-section 38A(2) of the Defence Service Homes Act, are to include the powers to insure which are described in the new section 38CA.

Sub-section 38C(3)

356. This sub-section has been deleted because its contents have been incorporated in the new section 38CB.

Sections 38C and 38CB

357. This amendment includes new sections 38CA and 38CB.

358. Section 38CA - 'Insurance of certain other houses etc.' - describes the circumstances in which persons who receive a subsidised loan under this Bill may be able to utilise the Defence Service Homes insurance on their dwelling.

359. Section 38CB - 'Powers of Commonwealth under this Part' - ensures that the powers of the Commonwealth in relation to undertaking the insurance apply in respect of loans taken out under both the Defence Service Homes Act and this Bill. Section 38BC incorporates section 38C(3) which is to be omitted.

Paragraph 38E(1)(a)

360. This amendment ensures that the termination of insurance provisions (section 38E) only relate to insurance taken out in respect of loans made under the Defence Service Homes scheme. Loans made under this Bill will be subject to the termination of insurance provisions contained in the new section 38EA.

Section 38EA - Termination of insurance under section 38CA

361. This amendment specifies the insurance termination processes in relation to insurance taken out in respect of a loan made under the Defence Force (Home Loans Assistance) scheme. Although the intent of sections 38E and 38EA is the same, it is necessary to have separate termination clauses because of the different terminology used in the two schemes.

362. Sub-section 38EA(1) identifies the circumstances where insurance is to be terminated.

363. Sub-section 38EA(2) specifies that where the insurance is to be terminated under sub-section 38EA(1), the Secretary to the Department of Veterans' Affairs must give the insured person reasonable written notice that the insurance is to be ceased with effect from the day specified in the notice. The insurance does not cease to be effective at the time of the occurrence of any of the circumstances specified in sub-section 38EA(1); the insurance can only cease to have effect on or after the day the cessation notice is issued.

364. Sub-section 38EA(3) gives authority for the insurance to cease to have effect on the day specified in the cessation notice.

365. Sub-section 38EA(4) requires that where the insured person dies, the Secretary cannot issue a notice of cessation unless satisfied that the widow or widower of the deceased insured person will not be eligible for the deceased person's remaining entitlement under this Bill.



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