

1993

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

HOUSING ASSISTANCE ACT 1987

**VARIATION OF EXISTING
HOUSING ASSISTANCE PROGRAMS**

**DETERMINATION NO. 136 OF 1993
DETERMINATION NO. 137 OF 1993
DETERMINATION NO. 138 OF 1993**

EXPLANATORY STATEMENT

**(Circulated by authority of
Terry Connolly MLA
Minister for Housing
and Community Services)**

VARIATION OF HOUSING ASSISTANCE PROGRAMS

AUTHORITY

Section 12 of the Housing Assistance Act 1987 empowers the Commissioner for Housing to prepare in the form of an instrument in writing, a housing assistance program or a variation of a program.

Such a program or variation may not be implemented without the approval of the responsible Minister. Following approval, the program or variation requires notification in the Gazette and is laid before the Legislative Assembly in accordance with Section 6 of the Subordinate Laws Act 1989, where it may be disallowed.

BACKGROUND

The accompanying Instruments were prepared by the ACT Government Solicitor on the instructions of the ACT Housing Trust and include a:

- Variation To HomeBuyer Housing Assistance Program (known as HomeBuyer);
- Variation To Scheme For Providing Concessional Home Loans (known as the 1983 Scheme); and
- Variation To Scheme For Providing Or Assisting In Providing Dwelling Houses (known as the 1986 Scheme).

These were notified in ACT Gazette No.

These are existing programs operating under the Housing Assistance Act 1987 and are subject to the principles of the Commonwealth State Housing Agreement (CSHA). The proposed changes to the programs do not conflict with those principles.

PURPOSE AND CONSEQUENCES

This is the first review of the HomeBuyer Housing Assistance Program since its introduction in April 1991. The program flexibility created by the variations will serve the next several years in terms of:

- products currently under development;
- possible new home lending schemes;
- maintaining uniform administrative arrangements across the mortgage portfolio; and
- utilising off budget funding arrangements.

The purpose of the variations is to give effect to the Government's decision to extend HomeBuyer and provide greater program flexibility through broader provisions for determining Classes of Loan. The HomeBuyer Plus Class of Loan has already been implemented through an administrative arrangement, as recommended by the ACT Government Solicitor, and the variations formalise that arrangement.

Existing mortgagors are neither advantaged nor disadvantaged by the variations and new borrowers do not receive entitlements beyond those available to existing mortgagors experiencing similar circumstances.

The net effect of the variations is that loan products can be customised to suit the circumstances of each target group. Prior to this arrangement, applicants were required to comply with the program's generic eligibility criteria and repayment terms and conditions.

The original provisions for determining Classes of Loan under HomeBuyer were limited to interest rate considerations only. The extension to the provisions will give the flexibility to utilise HomeBuyer as a generic financing mechanism for a range of Classes of Loan. This is a significant program variation as the new provisions, under Clause 5, enable Classes of Loan to be determined for any number of defined socio-economic criteria and/or administrative arrangements. Under this arrangement, a set of unique loan parameters, that reflect the needs and circumstances of the target group, can be independently determined for each Class of Loan.

The instruments varying the 1986 and 1983 Schemes do not include a number of provisions that relate solely to the grant of loans as these are no longer issued under the earlier schemes. However, in the interest of maintaining consistency between programs, Clause 2 (Definitions and Interpretations) in both the 1983 and 1986 Schemes is aligned with the new provisions under the HomeBuyer Program. This is in keeping with the approach taken in 1991, when the HomeBuyer Program was first drafted and the 1983 and 1986 Schemes were varied to align them with the HomeBuyer provisions.

As a result of the variations, a number of definitions relating to eligibility and grant of loans will not be applicable under the 1983 and 1986 Schemes. However, this has no detrimental affect on the operation of the schemes.

An ongoing benefit of these arrangements is that they will continue to provide the effect of a single uniform program for the on going administration of home purchase assistance provided to residents of the Australian Capital Territory.

The revised program includes provision for:

- eligibility criteria and fees to be determined for each Class of Loan;
- separate wait lists for each Class of Loan and mobility between lists. A person now registers and is assessed in respect of a Class of Loan. This arrangement enables client interviews to be conducted in order of registration under each Class of Loan. Applicants will be able to move between wait lists if their needs and circumstances change over time. At the same time, relevant registration fees can be waived; and
- review (appeal) entitlements to be extended to include eligibility under a Class of Loan and no longer linked to the provisions of the overall program.

A new facility has been introduced to enable loans to be advanced by way of progress payments during construction of the dwelling. This facility extends client options, provides cost savings to the mortgagor through the builder not having to pass on the high cost of bridging finance, and access to HomeBuyer financing arrangements for a number of proposed assistance initiatives.

The variations to the programs comprise:

(i) Scheme for Providing Concessional Home Loans -

by implementing HomeBuyer Program changes to Clauses 2, 5 (except for Subclauses 5.2.1, 5.2.2, 5.2.3 and 5.2.5), 7 and 9 (except for Subclause 9.10).

(ii) Scheme for Providing or Assisting in Providing Dwelling Houses -

by implementing HomeBuyer Program changes to Clauses 2, 5 (except for Subclauses 5.2.1, 5.2.2, 5.2.3 and 5.2.5), 7 and 9 (except for Subclause 9.10).

(iii) HomeBuyer Housing Assistance Program, -

by changes to Clauses 2, 3, 4, 5, 6, 7, 9 and 11.

A SUMMARY EXPLANATION FOLLOWS:

Clause 2 (Definitions and Interpretation)

Subclause 2.1 is varied by:

amending the definition of "Class of Loan" to extend the provisions, subject to the new subclause 5.1 for determining Classes of Loan, to include a range of socio-economic and administrative parameters. The original provision was inflexible as it limited the determination of Classes of Loan to interest rates only;

amending the definition of "Drawdown Date" to include commencement provisions under a progress payment facility;

amending the definition of "Eligible Person" to link eligibility to a Class of Loan;

amending the definition of "Income" to update the reference to the current Social Security Act 1991 (Commonwealth);

adding a new definition - "Maximum Repayment Percentage" as a composition of elements of the original subclause 9.4 and the definition of "Percentage". This variation complements the structure of the new subclause 5.2 and provides flexibility to determine a Maximum Repayment Percentage for each Class of Loan to reflect the specific circumstances and assistance needs of the target group. Prior to this variation, only the one rate could be determined across the mortgage portfolio;

- deleting reference to the definition of "Percentage" due to the inclusion of a definition of "Maximum Repayment Percentage" and the revision of subclause 9.4;
- amending the definition of "Property" to include reference to a part share in a property. This variation will provide program flexibility to utilise HomeBuyer as a generic financial vehicle under a number of proposed schemes that will target groups with particular needs; and
- adding a new definition - "Required Deposit Sum" to provide greater flexibility and replace the fixed deposit requirements at paragraphs 3.4.5 and 3.4.6. This variation complements the structure of the new subclause 5.2 and provides flexibility to determine a minimum deposit requirement, for each Class of Loan, to reflect the specific circumstances of the target group.

Clause 3 (Eligibility)

● Subclause 3.3 is varied by:

extending the discretionary provisions under paragraph 3.3.3, for the waiver of an eligibility criterion relating to the ownership of other property. In the past, applicants were required to liquidate equity in any real property interests. However, for a number of genuine reasons, applicants are unable to comply with this criterion rendering them ineligible under the program.

Examples of such circumstances include inheritance of a part share in the family home or interest in a property that, because of its location or condition, cannot be readily sold or occupied and divorced parents awaiting property settlement. Applicants are required to reduce their HomeBuyer debt when they realise proceeds from the disposal of the other property.

● Subclause 3.4 is varied by:

deleting paragraphs 3.4.5 and 3.4.6 which set fixed and inflexible minimum deposit requirements (5% and 10% of contact price). A new paragraph 3.4.5 expands the minimum deposit provisions to improve access by enabling the setting of lower entry provisions/deposit requirements for a Class of Loan, to reflect the circumstances and needs of the target group.

Subclause 3.5 is:

a new provision that comes into effect when HomeBuyer is used as a funding mechanism under other programs that make reference to HomeBuyer financing arrangements. Situations may occur where one or more of the mandatory or discretionary eligibility criteria, which apply to normal HomeBuyer borrowers, may contradict or conflict with the provisions and intentions of other programs.

An example includes:

- aged persons seeking, under a new program, to trade their home for more appropriate accommodation (such as aged persons' units, or units in a retirement village) would by definition, own property other than the property being purchased using a HomeBuyer loan.
- this provision eliminates this inter-program conflict/contradiction by enabling eligibility criteria under other programs to take priority over HomeBuyer and render the conflicting HomeBuyer criteria non-applicable. There is also scope for this provision to be triggered, by necessary implication, in cases where the other programs are drafted without express reference to HomeBuyer.

Clause 4 (Application)

Subclauses 4.1 and 4.2 are varied by:

- deleting both subclauses. A new subclause 4.1 incorporates the deleted provisions (for determining and varying a registration fee) and extends these provisions in respect of Classes of Loan. This arrangement has the effect of establishing separate wait lists and registration fees for each Class of Loan.
- A new subclause 4.2 provides for mobility (without loss of wait time) between program wait lists as client circumstances and needs change. There is provision to limit the payment of registration fees as clients transfer between lists.

Subclause 4.3 is varied by:

- simply requiring applications to be lodged for a Class of Loan and not the overall program.

Subclause 4.5 is varied by:

- requiring an application to be accompanied by an application fee as determined from time to time for each Class of Loan. This arrangement enables different fee structures to be implemented to reflect the circumstances of target groups.

Subclause 4.7 is varied by:

- simply requiring eligibility to be determined for the relevant Class of Loan and not the overall program.

Clause 5 (Level of Loan) which includes;

- Subclause 5.1 (determination of Maximum Purchase Price), Subclause 5.2 (determination of the maximum loan amount), and Subclause 5.3 (no provision for progress payment facilities), is deleted.

A new Clause 5 (Classes of Loan) is incorporated and includes:

- a schedule of variable eligibility parameters including those that existed under deleted subclauses 5.1 and 5.2;
- a new subclause 5.1 with provision to establish a range of Classes of Loan, based on administrative arrangements and/or target group socio-economic parameters;
- a new subclause 5.2 with provision to set a number of parameters (such as income, loan, property value, minimum deposit and repayment-to-income ratio limits) for each Class of Loan. This has the effect of customising a loan product to suit a specific target group;
- a new subclause 5.3, with provision to charge different rates of interest for each Class of Loan. This provision was originally included under the now redundant subclause 7.5;
- a new subclause 5.4, with provision to vary/revoke any of the above determinations. This provision gives flexibility to vary program parameters as industry and community circumstances change; and
- a new subclause 5.5 that extends the provisions of the now redundant subclause 7.5 to include determinations under the new Clause 5. The provisions are a client protection measure, to ensure that determinations, made under Clauses 5 and 7 (interest charging guidelines), are not for the purposes of discriminating against, or solely in relation to, an individual. Determinations under the two clauses are made in relation to client target groups that meet specific eligibility criteria.

Clause 6 (Mortgage to Secure Loan) is varied by:

- simply amending the clause heading to "Conditions of Loan" to better reflect the provisions of the clause;

Subclauses 6.2 and 6.3 are:

- new subclauses that make provision for a progress payment facility and setting of terms and conditions for the operation of that facility. This issue has already been covered above.

Clause 7 (Interest)

Subclause 7.5 is deleted:

- The provisions of this redundant subclause are incorporated under the new subclauses 5.3 and 5.5.

Clause 9 (Assistance)

Subclause 9.4, including paragraphs 9.4.1 and 9.4.2, is deleted:

- A new subclause 9.4 incorporates the provisions of the deleted subclause for setting and varying repayment levels, as a percentage of income. The original provision was limited to the overall program. Under the new provisions of Clause 5, repayment levels can be set for each Class of Loan.

Subclause 9.5 is varied by:

- deleting reference to the deleted paragraph 9.4.1 and substituting subclause 9.4 as the cross reference.

Subclause 9.10 is:

- a new subclause with a new provision for determining a Class of Loan in the form of a credit foncier product. Such a loan product has no provision for deferred assistance and monthly repayments are set at the interest rate of the day (currently that rate set by the Commonwealth Bank of Australia for standard variable interest rate housing loans).

Credit foncier loans are the main stream, variable interest rate home loan product offered by all major private sector lending institutions. This product does not include any 'low start' or income geared repayment provisions. This provision gives access to an additional and useful financing option that can be incorporated into future new home purchase assistance initiatives.

Clause 11 (Review)

Paragraph 11.1.1 is varied by:

- linking review applications from clients, in respect of a determination of non-eligibility for assistance, to the relevant Class of Loan and not the overall program.