

HOMEBUYER HOUSING ASSISTANCE PROGRAM

No 7 of 1991

The Housing Agreement defined in Section 3 of the Housing Assistance Act 1987 shall apply to this Program.

This Program is published in accordance with Section 6 of the Subordinate Laws Act 1989.

Under Section 12 of the Housing Assistance Act 1987 I make a housing assistance program as follows:

HomeBuyer Housing Assistance Program.

This Program may be cited as the HomeBuyer Housing Assistance Program.

1 Object

The Commissioner has the function of administering on behalf of the Territory, programs and funding arrangements for the delivery of housing assistance in the Territory in relation to home ownership and income-related assistance to home owners and is responsible for allocating funds within the community having regard to the needs of individuals and the benefit of the community as a whole.

2. **Definitions and Interpretation**

2.1 In this Program except where the contrary intention appears:

"Applicant" includes joint applicants.

"Assistance" means the assistance that may be given to a Mortgagor by the Commissioner at the request of the Mortgagor whereby the date for payment of instalments or parts of instalments under a mortgage may be deferred.

"Class of Loan" means all those loans or advances granted by the Commissioner during any period or periods nominated by the Commissioner.

"Commissioner" means the Commissioner for Housing for the Australian Capital Territory appointed under the Housing Assistance Act 1987.

"Deferred Amount" means an amount equal to the aggregate of instalments or parts of instalments under a mortgage that the Commissioner has agreed to defer and any interest thereon.

"Dependant" means:

- (a) a child under the age of sixteen years who resides on the Applicant's Property;
- (b) an aged or invalid person who resides on the Applicant's Property and is dependent upon the Applicant for accommodation; and
- (c) any person who the Commissioner may in its discretion determine to be a dependant of the Applicant;

"Draw Down Date" means the last day on which a loan under this Program may be drawn down.

"Eligible Person" means a person who the Commissioner determines is eligible for a loan under this Program

"Housing Loans" means the loans made by the Commonwealth Bank of Australia for owner-occupied dwellings.

"Income" means income as defined from time to time in the Social Security Act 1947 (Commonwealth) but does not include such categories of income as the Commissioner in its discretion may exclude.

"Income Limit" means an amount of Income the exceeding of which disentitles an Applicant to a loan under this Program and which amount is determined by the Commissioner from time to time.

"Leased Rate" means the interest rate charged from time to time by the Commonwealth Bank of Australia for dwellings not occupied by an owner.

"Maximum Price" means the highest price which an Applicant may pay for a Property with a loan under this Program.

"Mortgagor" means a person who grants a mortgage to the Commissioner under this Program and includes a person who has granted a mortgage to the Commissioner under the 1930 Scheme, the 1983 Scheme or the 1986 Scheme.

"Percentage" means the percentage referred to in paragraph 9.4.

"Property" means all that piece or parcel of land described by a Certificate of Title that the Applicant seeks to purchase, refinance, modify or extend for use as his principal place of residence.

"Recognised Valuer" means a member of the Australian Institute of Valuers (Australian Capital Territory Division) who has practised as a valuer in the Australian Capital Territory for at least twelve months.

"1930 Scheme" means the 1930 Scheme for Providing and Assisting in Providing Dwelling Houses as gazetted in the Commonwealth Gazette on 31 July 1930 and as amended.

"1983 Scheme" means the 1983 Scheme for Providing Concessional Home Loans gazetted in the Commonwealth Gazette No. S229 on 30 September 1983 and as amended.

"1986 Scheme" means the 1986 Scheme for Providing or Assisting in Providing Dwelling Houses gazetted in the Commonwealth Gazette No. S13 on 21 January 1986 and as amended; and

"Tribunal" means the Australian Capital Territory Administrative Appeals Tribunal established by the Administrative Appeals Tribunal Act 1989

- 2.2 In this Program unless the contrary intention appears:
- 2.2.1 a word importing the singular includes the plural and vice versa;
 - 2.2.2 a word importing one gender includes any other gender;
 - 2.2.3 a reference to a clause, sub-clause or paragraph is a reference to a clause, sub-clause or paragraph of this Program; and
 - 2.2.4 a reference to an Act includes that Act as amended from time to time and any Act by which it is replaced.
- 2.3 The Commissioner may make any determination under this Program by reference to any scale, rate, formula or other criterion published in any document or writing by any person, firm, corporation, body or agency whether governmental or non-governmental.
- 3 Eligibility
- 3.1 The Commissioner shall grant a loan for the purchase, refinance, modification or extension of a Property under this Program only if it determines that an Applicant is an Eligible Person.
- 3.2 Notwithstanding sub-clause 3.1, the Commissioner shall not grant a loan under this Program if:
- 3.2.1 the application for a loan submitted by the Applicant is false or misleading in any material respect; or
 - 3.2.2 further information is requested by the Commissioner under sub-clause 4.8 and is not received by the Commissioner within 28 days from the date of that request.
- 3.3 The Commissioner shall determine that the Applicant is an Eligible Person only if it is satisfied that:

- 3.3.1 the Applicant is a permanent resident of Australia;
- 3.3.2 the Applicant has attained the age of 18 years;
- 3.3.3 the Applicant has no interest in any real property in Australia other than the Property;
- 3.3.4 the Applicant has not changed his or her Income or arranged his or her financial affairs by or as a result of any artificial or contrived scheme or arrangement for the purpose of (or including the purpose of) or which has the effect of:
 - 3.3.4.1 qualifying for assistance under this Program or any government or welfare assistance of any kind (whether State, Territory or Commonwealth), and/or
 - 3.3.4.2 obtaining a taxation benefit or other advantage;
- 3.3.5 the Applicant has sufficient funds from his or her own resources, in addition to any deposit or other monies required, to pay all costs, fees, stamp duties and other disbursements relating to the purchase, refinancing, modification or extension of the Property as the case may be; and
- 3.3.6 the Applicant's Income does not exceed the Income Limit In assessing the Income of an Applicant and notwithstanding the definition of Income in clause 2, the Commissioner may take into account such other amounts that the Commissioner may reasonably believe in the circumstances should be or be deemed to be part of the Income of the Applicant.

3.4 In addition to the criteria set out in sub-clause 3.3 the Commissioner shall in determining that the Applicant is an Eligible Person have regard to whether:

- 3.4.1 the Applicant is able to qualify for or be eligible for financial assistance for the purchase, refinancing, modification or extension of the Property from any other source;

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- 3.4.2 where a Property is being acquired, the price of the Property exceeds the Maximum Price;
- 3.4.3 any proposed extensions or modifications to the Property are necessary because of the physical or medical condition of the Applicant or a Dependant;
- 3.4.4 through circumstances beyond his or her control as determined by the Commissioner, the Applicant is suffering hardship in meeting an obligation to repay a housing loan obtained from other sources;
- 3.4.5 where a Property is being acquired, and the Applicant is executing a first mortgage in favour of the Commissioner, the Applicant has a deposit of not less than 5% of the contract price from his or her own resources;
- 3.4.6 where a Property is being acquired, and the Applicant is executing a second mortgage in favour of the Commissioner, the Applicant has a deposit of not less than 10% of the contract price from his or her own resources;
- 3.4.7 it is likely that the Applicant will need to apply for Assistance under clause 9;
- 3.4.8 the Applicant has the capacity, taking into account future capacity, to repay
- (a) any loan; and
 - (b) any Assistance that may be given by the Commissioner under clause 9;
- 3.4.9 the Applicant has any other choices available to him or her, such choices not being limited to the purchasing or refinancing of a Property or the financing of modifications or extensions to a Property or the obtaining of finance from other sources;

3.4.10 the Applicant has made efforts to obtain finance from other sources; and

3.4.11 the needs of other applicants can be met taking into account the funds and facilities available to the Commissioner to fulfil the objectives of this Program.

4. Application

4.1 An Applicant may, on payment of a registration fee (which is not refundable), register for assessment as an Eligible Person.

4.2 The registration fee shall be as determined from time to time by the Commissioner.

4.3 Applicants will be invited to lodge an application for a loan in order of registration.

4.4 An application for a loan under this Program shall be in writing in the form and contain such information as the Commissioner may reasonably require.

4.5 The application shall be accompanied by an application fee as determined by the Commissioner from time to time.

4.6 Applicants purchasing a Property jointly must submit a joint application

4.7 The Commissioner will examine each application for a loan to determine whether the Applicant is an Eligible Person.

4.8 The Commissioner may require further information from the Applicant including an assessment of the market value of the Property from a Recognised Valuer before approving an application under this clause

4.9 The Commissioner shall advise the Applicant of the last day on which the loan may be drawn down ("the Draw Down Date").

- 4.10 If the Applicant does not draw down the loan on or before the Draw Down Date the loan shall be withdrawn.
- 4.11 The Commissioner may grant priority assistance to an Eligible Person in such circumstances as the Commissioner thinks fit. In considering whether to grant priority assistance, the Commissioner shall have regard to whether the Applicant or a Dependant of the Applicant is suffering hardship because of the following circumstances:
- 4.11.1 a property settlement under the Family Law Act 1975;
 - 4.11.2 loss of the family home or the ability to finance the family home;
 - 4.11.3 the Applicant is or becomes a sole custodial parent;
 - 4.11.4 domestic violence;
 - 4.11.5 disability or severe medical disorders;
 - 4.11.6 overcrowding or sub-standard accommodation;
 - 4.11.7 loss of income; or
 - 4.11.8 any other circumstances which the Commissioner in its discretion may consider appropriate to take into account.
- 4.12 for the purposes of sub-clause 4.11 the Commissioner may seek such information or further information as the Commissioner thinks fit. If such information or further information is not provided within the time required by the Commissioner the Commissioner shall refuse the application for priority assistance.
5. Level of Loan
- 5.1 The Maximum Price shall be as determined from time to time by the Commissioner.

5.2 The maximum amount which the Commissioner may lend to any Eligible Person under this Program shall be as determined from time to time by the Commissioner.

5.3 The Commissioner shall not make a loan available by way of progress payments.

6. Mortgage to Secure Loan

The Eligible Person shall execute a mortgage and agreement in favour of the Commissioner.

7 Interest

7.1 The Commissioner may charge interest on the amount of any loan to a Mortgagor at a rate not exceeding 1% higher than the rate charged from time to time by the Commonwealth Bank of Australia for Housing Loans.

7.2 The Commissioner may charge interest on any instalments or payments not made on the date prescribed for the making of a payment or payment of an instalment at a rate not exceeding 1% higher than the rate charged from time to time by the Commonwealth Bank of Australia for Housing Loans.

7.3 The Commissioner may increase or decrease the interest rate charged on loans from time to time provided that the rate as so increased does not exceed 1% above the rate charged from time to time by the Commonwealth Bank of Australia for Housing Loans.

7.4 The Commissioner may charge interest on Deferred Amounts at a rate not greater than the percentage increase in the Consumer Price Index (All Groups) for the Australian Capital Territory issued by the Australian Statistician, in respect of the four quarters immediately preceding the date the interest is chargeable for which figures are available

- 7.5 In charging, increasing or decreasing a rate of interest the Commissioner may charge or impose different rates of interest in relation to different Classes of Loans, provided that the Commissioner shall not charge a rate of interest that relates solely to or discriminates against an individual Mortgagor.
- 7.6 Where the Commissioner charges, increases or decreases a rate or rates of interest in accordance with this clause, the Commissioner shall where appropriate vary the instalments or the term.
- 7.7 Without limiting the generality of this Clause, the Commissioner may charge, increase or decrease any interest rate (other than interest on Deferred Amounts) by reference to the rate charged at any time and from time to time by the Commonwealth Bank of Australia for Housing Loans.
8. Letting and Sub-letting
- 8.1 Except with the consent in writing of the Commissioner the Mortgagor shall not cease to occupy the whole of the Property.
- 8.2 As a condition of such consent and notwithstanding the provisions of clause 7 the Commissioner may charge interest from the date of ceasing to occupy at a rate of interest not exceeding the Leased Rate charged from time to time by the Commonwealth Bank of Australia.
9. Assistance
- 9.1 The Commissioner may give Assistance to a Mortgagor
- 9.2 In giving Assistance the Commissioner shall have regard to the present and future capacity of the Mortgagor to repay the Deferred Amount and the value of the Mortgagor's equity in the Property.
- 9.3 The Mortgagor shall execute an agreement and a first or second mortgage in favour of the Commissioner as a condition of obtaining Assistance from the Commissioner.

- 9.4 The Deferred Amount shall be paid to the Commissioner by instalments provided that:
- 9.4.1 the aggregate of any repayment of the Deferred Amount and any instalment to repay a loan shall not exceed that Percentage of the Mortgagor's Income which the Commissioner shall determine from time to time; and
- 9.4.2 the Commissioner in its discretion may from time to time vary the Percentage, or vary the Percentage in relation to a particular Class of Loan, provided that the Commissioner shall not vary the Percentage so as to discriminate against any individual Mortgagor.
- 9.5 Notwithstanding paragraph 9.4.1, any part of the Deferred Amount not previously paid to the Commissioner shall be paid to the Commissioner on the last day of the term of the loan or upon discharge of the mortgage whichever is the earlier.
- 9.6 An application for Assistance shall be in such form and contain such details as the Commissioner may reasonably require.
- 9.7 The Commissioner may require further information from the Mortgagor before approving an application under this clause.
- 9.8 If further information is requested and is not received by the Commissioner within 28 days from the date of that request, the Commissioner shall refuse the application.
- 9.9 If at any time the value of the amount owing under any mortgage together with the Deferred Amount is greater than the value of the Property at that time as assessed by a Recognised Valuer, the Commissioner shall require repayment of all monies owing by the Mortgagor.

10 Secrecy

The Commissioner shall not disclose information obtained in connection with this Program other than:

- 10.1 in the performance of its duties or functions under this Program;
- 10.2 in accordance with the Freedom of Information Act 1989;
- 10.3 in accordance with the Privacy Act 1988 (Commonwealth); or
- 10.4 where the person who is the subject of the information consents to its release.

11. Review

11.1 Where the Commissioner makes:

- 11.1.1 a determination under clause 3 that a person is not an Eligible Person;
- 11.1.2 a decision under sub-clause 4.11 not to grant priority assistance to an Applicant; or
- 11.1.3 a decision under sub-clause 9.1 not to give Assistance to a Mortgagor:

it shall, within 28 days after the date of the decision or determination cause notice in writing of the decision to be given to such person.

- 11.2 Such notice must include a statement to the effect that the person may, within 28 days of receiving a notice under sub-clause 11.1 lodge an objection in writing against the decision or determination with the Commissioner.
- 11.3 The validity of a determination or decision referred to in sub-clause 11.1 is not affected by a failure to comply with sub-clause 11.2
- 11.4 A person may, within 28 days of receiving a notice under sub-clause 11.1, lodge an objection in writing against the decision or determination with the Commissioner.
- 11.5 The objection must state fully and in detail the grounds on which it is made.

- 11.6 The Commissioner shall consider the objection and may either affirm or reverse the determination or decision.
- 11.7 Where the Commissioner makes a decision under sub-clause 11.6, to affirm a determination or decision the Commissioner shall, within 28 days after the date of that decision, cause written notice of the decision to be given to the person.
- 11.8 A notice under sub-clause 11.7 shall include:
- 11.8.1 a statement to the effect that, an application may be made to the Tribunal for a review of the determination or decision affirmed within 28 days; and
- 11.8.2 a statement to the effect that the person who lodged the objection may request a statement of reasons for the determination or decision.
- 11.9 The validity of a decision referred to in sub-clause 11.6 is not affected by a failure to comply with sub-clause 11.8.
- 11.10 A person may apply to the Tribunal for review of a determination or decision affirmed under sub-clause 11.6.

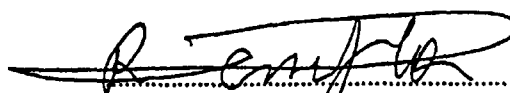
12. **Transition**

- 12.1 Any application for a loan or for Assistance received by the Commissioner and which is not approved prior to the date of gazettal of this Program shall be deemed to have been lodged under this Program.
- 12.2 Any person whose application for a loan has been approved under the 1930 Scheme, the 1983 Scheme or the 1986 Scheme, and is not a Mortgagor shall be deemed to be an Eligible Person.
- 12.3 The 1983 Scheme is hereby varied by deleting clauses 2–21 inclusive and inserting clauses 2,7,8,9,10 and 11 (except for paragraphs 11.1.1 and 11.1.2) of this Program.

- 12.4 The 1986 Scheme is hereby varied by deleting clauses 2-23 inclusive and inserting clauses 2,7,8,9,10 and 11 (except for paragraphs 11.1.1 and 11.1.2) of this Program.

Date:

20/3/91



Rodney David Templar
Acting Commissioner for Housing

APPROVAL

Under Section 12 of the Housing Assistance Act 1987, I APPROVE the HomeBuyer Housing Assistance Program made by the Acting Commissioner for Housing by instrument dated *20th March* 1991.

Date:

20th March 1991



Bernard Joseph Edward Collaery
Minister for Housing and
Community Services