

HOUSING LOAN GUARANTEE.

6° Elizabeth II., No. LXXV.

No. 75 of 1957.

AN ACT to authorise the Treasurer to give Guarantees to Encourage the Building and Purchase of New Houses and for other and incidental purposes.

[Assented to 16th December, 1957.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. This Act may be cited as the *Housing Loan Guarantee Act, 1957.*

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

3. In this Act unless the context requires otherwise—

Interpre-
tations.

“approved institution” means an institution, body, or person, approved under this Act by the Minister;

“borrower” includes, without prejudice to section twenty-six of the Interpretation Act, 1918, joint tenants, and tenants in common;

“Fund Account” means The Housing Loan Guarantee Fund Account established under this Act;

“guarantee” means a guarantee given by the Treasurer to an approved institution;

“instrument of constitution” means the Act or other instrument, if any, by which an approved institution is constituted and by authority of, or subject to, which, the approved institution carries on its business, and includes rules, by-laws, regulations, and other subordinate authorisations effective under the Act or other instrument;

“loan” includes part of a loan;

“Minister” means the Minister of the Crown to whom the administration of the State Housing Act, 1946, is for the time being committed by the Governor, and includes any Minister of the Crown for the time being discharging the duties of the office of the Minister;

Cf. No. 30 of
1918, s. 4.
“Minister.”

“new house” means a dwelling-house which, since its completion, has not been occupied at all, or which, since its completion, has been occupied but for a period not exceeding six months and then only by the borrower and his dependants, if any, or by the purchaser and his dependants, if any, and includes the land on which a dwelling-house is erected and all appurtenances of the dwelling-house, including outbuildings, fences, and permanent provision for lighting, water supply, drainage, and sewerage;

“part of any loan” means that part of the loan which is nominated by an institution as being in excess of the maximum loan which it would normally advance on the relevant security; and “part of any purchase money” has a corresponding meaning;

“purchase money” includes part of purchase money;

“purchaser” includes, without prejudice to section twenty-six of the Interpretation Act, 1918, persons purchasing as joint tenants or as tenants in common;

“quarter” means each of the periods of three months expiring on the respective last days of March, June, September, and December, in each year;

“Treasurer” means the Minister of the Crown who is Treasurer of the State for the time being and includes any Minister of the Crown for the time being discharging the duties of the office of the Treasurer.

Cf. 52 Vict.,
No. 23, s.
75 (9).

Objects.

4. The purposes of this Act are to encourage the building and the purchasing of new houses by enabling building societies and other institutions concerned with advancing loans for the purposes of building new houses or with making financial assistance available for the purposes of purchasing new houses, or with both, to increase amounts of advances and financial assistance for those purposes.

Power
to approve
institutions.

5. (1) Any institution, body, or person, which is, or desires to be, concerned with advancing loans for the purposes of building new houses, or with making financial assistance available for purchasing new houses, or with both, including any institution

(a) being a society registered under the Building Societies Act, 1920, or under the Co-operative and Provident Societies Act, 1903, or under the Friendly Societies Act, 1894; or

(b) being a bank, or a savings bank; or

- (c) being an assurance company or an insurance company including The State Government Insurance Office established under the State Government Insurance Office Act, 1938; or
- (d) being the Superannuation Board established under the Superannuation and Family Benefits Act, 1938; or
- (e) being any other institution which is, or desires to be, so concerned;

may make written application to the Minister to become and be an approved institution for the purposes of this Act.

(2) If it appears to the Minister that an applicant is suitable to be an approved institution for the purposes of this Act he may, on such terms and conditions as the Minister imposes and is hereby authorised to impose from time to time, appoint the applicant to be an approved institution.

(3) If it appears to the Minister that an approved institution has ceased to be suitable to continue to be an approved institution he may by written notice served on the institution cancel the appointment of the institution as an approved institution and thereupon

- (a) any guarantee given to the institution shall cease to apply to repayment of any loan or part of any loan, and payment of interest on any loan or part of any loan, made by the institution after service of the notice, and to payment of any purchase price or part of any purchase price and interest payable under any contract of sale and purchase entered into by the institution after service of the notice;
- (b) the service of the notice does not affect any liability of the institution under section nine of this Act;

- (c) the liability referred to in paragraph (b) of this subsection is recoverable from the institution in any court of competent jurisdiction at the suit of the Treasurer as a debt due to the Fund Account; and
- (d) the institution shall not be at liberty to, and shall not, because of service of the notice of cancellation, call up or take any action to enforce repayment or accelerated repayment of any loan or part of any loan or payment of interest on any loan or part of any loan made by the institution prior to service of the notice, or payment or acceleration of payment of any purchase price or part of any purchase price, or interest payable under any contract of sale and purchase entered into by the institution prior to service of the notice.

6. In respect of any repayment or payment (as the case may be) which is guaranteed pursuant to the provisions of section seven of this Act, the approved institution may, by written notice served on the Minister during any quarter, elect that the guarantee shall, as from the end of that quarter, cease to apply; and thereafter any such guarantee shall cease to apply to repayment of any such loan and payment of interest on any such loan and to payment of any such purchase money and interest payable on any such purchase money and the provisions of subsection (2) (b) of section nine of this Act shall cease to apply thereto.

Treasurer
empowered
to give
guarantee.

7. (1) Authority is hereby conferred on the Treasurer to execute on behalf of the Crown in right of the State an instrument of guarantee, by which the Treasurer on behalf of the Crown in right of the State, guarantees to an approved institution

- (a) repayment to the institution of any loan or part of any loan advanced after the coming into operation of this Act by the institution on the security of a mortgage of a new house;

- (b) payment of any purchase money or part of any purchase money payable to the institution under any contract made after the coming into operation of this Act for the sale and purchase of a new house; and
- (c) payment of interest on a loan or part of a loan so made, or on purchase money or part of purchase money so payable.

(2) The instrument of guarantee shall contain such provisions as, subject to the provisions of this Act, are agreed between the Minister and the approved institution. Where the instrument of guarantee relates to part of a loan or of purchase money, it shall also contain such formula or other particulars and provisions as are agreed upon between the Minister and the approved institution for determining how or when the part so guaranteed shall be deemed to have been received in full by the approved institution.

(3) The instrument of guarantee shall not include provision by which the Treasurer guarantees the repayment of any loan or part of any loan advanced on the security of a mortgage of a new house, or payment of purchase money or part of any purchase money payable under a contract of sale and purchase of a new house,

- (a) to an amount not exceeding three thousand pounds, exclusive of interest, unless the whole of the amount of the loan, or the purchase money payable under the contract of sale and purchase is not greater than ninety-five per centum of the value of the new house;
- (b) to an amount exceeding three thousand pounds but not exceeding five thousand pounds, exclusive of interest, unless the whole of the amount of the loan, or of the purchase money payable under the contract of sale and purchase is not greater than ninety per centum of the value of the new house;

- (c) to an amount exceeding five thousand pounds, exclusive of interest, unless the whole of the amount of the loan, or of the purchase money payable under the contract of sale and purchase is not greater than eighty per centum of the value of the new house;
- (d) to any amount, unless the mortgage, or as the case may be, the contract of sale and purchase, provides for repayment of the loan, or as the case may be, payment of the purchase money, together in either case with interest adjusted quarterly on the balance of the loan or purchase money then outstanding, by fixed weekly, monthly, or three-monthly instalments of such amounts as will be sufficient to repay the loan, or to pay purchase price, in full before the expiration of forty-five years from the date of the mortgage, or of the contract of sale and purchase;
- (e) to any amount, unless the borrower, or, as the case may be, the purchaser has declared in a manner satisfactory to the Minister that he intends to use the new house as a home for himself and his dependants; or
- (f) to any amount
 - (i) if the borrower, or, as the case may be, the purchaser, or the spouse of the borrower or purchaser, or the spouse of any joint tenant or tenant in common who is a party to the loan or contract of sale and purchase, already owns a dwelling-house; or
 - (ii) if a guarantee under this Act has previously been given in respect of a loan advanced to, or purchase price owing by, the borrower, or, as the case may be, the purchaser, or the spouse of the borrower or purchaser, or the spouse of any joint tenant or

tenant in common who is a party to the loan or contract of sale and purchase;

unless the Minister, as he is hereby authorised to do if he thinks that just cause exists for doing so, exempts the borrower or purchaser from the operation of the provisions of this paragraph.

(4) The foregoing provisions of this section extend to any loan or part of any loan secured by second mortgage of a new house, but unless the Minister consents to a greater rate of interest being payable under second mortgage,

- (a) only if the aggregate of the amounts secured by the first mortgage and the second mortgage does not exceed such of the respective limits prescribed by paragraph (a), (b), or (c), of subsection (3) of this section as are applicable; and
- (b) subject to the provisions of paragraphs (d), (e), and (f), of subsection (3) of this section.

8. (1) The Minister may engage such persons as he considers suitable to be valuers for the purposes of this Act.

Valuers and
valuations.

(2) Where it is proposed that a guarantee be given in respect of repayment of a loan or proposed loan on, or payment of any of the purchase price or proposed purchase price of, a new house, the Minister may require that the value of the new house be determined by a valuer so appointed, or by any other valuer approved by the Minister, and may require the borrower or proposed borrower, or purchaser or proposed purchaser, to pay to the Minister such reasonable valuation fee as the Minister determines and is hereby authorised to determine from time to time.

Fund.

9. (1) (a) The Treasurer shall cause to be established and maintained at the Treasury of the State an account which shall be called The Housing Loan Guarantee Fund Account.

(b) The Fund Account shall be kept and operated upon in such manner as the Treasurer directs and is hereby authorised to direct from time to time.

(c) The Auditor General has and shall exercise in respect of the Fund Account the powers conferred on him by the Audit Act, 1904.

(2) (a) Every approved institution to which a guarantee has been given, shall while the guarantee is in force, comply with the provisions of this subsection.

(b) The institution shall by the last day of each quarter pay into the Fund Account

in respect of any loan repayment of any amount of which is guaranteed to the institution under a guarantee; and

in respect of any purchase money payment of any amount of which is guaranteed to the institution under a guarantee;

an amount assessed at the rate of one-quarter of one per centum per annum on so much of that amount of the loan payment of which is guaranteed and interest, and on so much of that amount of the purchase money repayment of which is guaranteed and interest, as by the last day of the next preceding quarter

was not repaid to the institution by the borrower of the loan secured by mortgage, or, as the case may be, was not paid to the institution by the purchaser under contract of sale and purchase.

(c) The manager, secretary, accountant, or other executive or administrative officer of the approved institution or any bank at which any account, record, or document of the approved institution is kept shall, whenever requested in writing by the Minister to do so, make available to the Minister or a person appointed in writing by the Minister, all documents and records, including records of accounts, which

relate to or are connected with any loan repayment of which, or any purchase money payment of which, is or was guaranteed to the institution under a guarantee, and which are in the custody or under the control of the person so requested, and permit the Minister or person so appointed to examine and take copies or extracts from them.

Penalty: Fifty pounds.

(3) If an approved institution does not duly and punctually make payment of any amount into the Fund Account as required by this Act, the amount is recoverable from the institution in any court of competent jurisdiction at the suit of the Treasurer as a debt due to the Fund Account, and the Treasurer shall cause any amount so recovered, less the expenses incurred in its recovery, to be paid into the Fund Account.

(4) Where a sum is payable under a guarantee to an approved institution, the Treasurer shall cause the sum to be paid to the institution from money represented in the Fund Account.

(5) Where there is, or is likely to be, insufficient money in the Fund Account to meet payments required to be made out of the Fund Account, the Treasurer shall advance to the Fund Account on such terms and conditions as the Treasurer imposes and is hereby authorised to impose, such sum as is necessary to make good or avoid the deficiency, out of money referred to in section four of the Audit Act, 1904 as "Public moneys".

Cr. No. 12 of
1904, s. 4.

(6) The Treasurer may invest any money represented in the Fund Account but not required for immediate use, in investments in which trustees are authorised by law to invest trust funds, and may realise on any investments so made, but shall pay the resulting income or proceeds after deducting the expenses incurred in making the investments or in realisation of the investments into the Fund Account.

(7) The Treasurer shall cause to be paid from the money represented in the Fund Account

- (a) any sum payable pursuant to subsection (4) of this section under a guarantee;

- (b) the expenses incurred in administering this Act; and
- (c) repayment of advances made to the Fund Account by the Treasurer pursuant to subsection (5) of this section, and payment of interest, if any, thereon.

Power for approved institutions to accept guarantees.

10. Power to advance loans and to enter into contracts of sale and purchase in respect of new houses to the extent provided in this Act, and to accept guarantees under this Act, and to do or suffer anything ancillary or incidental thereto, is conferred by this Act on any approved institution, notwithstanding that the power is not conferred by the instrument of constitution of the approved institution, and notwithstanding any provision of the instrument of constitution of the approved institution to the contrary.

Regulations.

11. The Governor may make such regulations as he considers necessary or desirable for giving effect to the purpose of this Act, and may by the regulations prescribe a penalty of not more than fifty pounds for a breach of any regulation so made.

