

HOUSING LOAN GUARANTEE.

10° Elizabeth II., No. XLIII.

No. 43 of 1961.

AN ACT to amend the Housing Loan Guarantee Act, 1957-1959.

[Assented to 16th November, 1961.]

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. (1) This Act may be cited as the *Housing Loan Guarantee Act Amendment Act, 1961.*

(2) In this Act the Housing Loan Guarantee Act, 1957-1959, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the *Housing Loan Guarantee Act, 1957-1961.*

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

3. The long title to the principal Act is amended by adding after the word, "Guarantees" in the second line, the words, "and Indemnities". Long title
amended.

4. Section three of the principal Act is amended— S. 3 amended.

(a) by adding after the word, "Minister", being the last word in the interpretation "approved institution", the words, "for the purpose of lending money to borrowers to enable them to build or purchase new houses for themselves and their dependants";

(b) by adding after the interpretation "approved institution" an interpretation as follows—

"approved lending authority" means an institution, body or person approved under this Act by the Minister for the purpose of making loans to an approved institution to be used by the approved institution for the purposes of this Act; ;

(c) by deleting the interpretation "Fund Account";

(d) by substituting for the interpretation "guarantee" an interpretation as follows—

"guarantee" means a guarantee given, pursuant to this Act, by the Treasurer to an approved lending authority;

(e) by adding after the interpretation "guarantee" an interpretation as follows—

"indemnity" means an indemnity given, pursuant to this Act, by the Treasurer to an approved institution; ;

- (f) by adding after the word, "institution" in line three and again in line five of the interpretation "instrument of constitution", the words, "or an approved lending authority";
- (g) by adding after the word, "months" in line five of the interpretation "new house", the words, "or in relation to any particular dwelling-house such longer period as the Minister determines pursuant to section eight A of this Act";
- (h) by deleting the interpretation "part of any loan"; and
- (i) by deleting the interpretation "quarter".

S. 4 amended. 5. Section four of the principal Act is amended—

- (a) by adding after the word, "guarantees" in line one, the words, "and indemnities"; and
- (b) by adding after the word, "societies" in line one of paragraph (a) and again in line one of paragraph (b), the passage, "registered under the Building Societies Act, 1920".

S. 5 amended. 6. Section five of the principal Act is amended—

- (a) by adding after the word, "institution" in the second last line of subsection (1), the words, "or an approved lending authority";
- (b) by adding after the word "institution" in the second line and again in the last line of subsection (2), the words, "or an approved lending authority";
- (c) by repealing subsection (3) and re-enacting it as follows—

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

authority as an approved institution or approved lending authority and thereupon—

- (a) any guarantee given to the authority and any indemnity given to the institution shall cease to apply to or in respect of repayment of any loan and payment of interest on any loan made by the authority or institution after service of the notice, and to or in respect of payment of any purchase money and interest payable under any contract for sale and purchase entered into by the institution after service of the notice; and
- (b) the authority or 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 payment of interest on any loan to which the guarantee or indemnity relates made by the authority or the institution prior to the notice being served, or payment or acceleration of payment of any purchase money, or interest payable under any contract for sale and purchase entered into by the institution prior to the service of the notice and to which contract the indemnity relates.

7. Section six of the principal Act is repealed. S. 6 repealed.

8. Section seven of the principal Act is repealed and re-enacted as follows— S. 7 repealed and re-enacted.

7. (1) Subject to the provisions of this section authority is hereby conferred on the Treasurer to execute on behalf of the Crown Treasurer empowered to give guarantee to approved lending authority.

in right of the State an instrument of guarantee by which the Treasurer, in that behalf in that right, guarantees to an approved lending authority repayment to the authority of any loans made by it under and for the purposes of this Act to an approved institution, on the institution executing such securities as the Treasurer thinks fit in accordance with section seven A of this Act.

(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 lending authority.

S. 7A
repealed and
re-enacted.

9. Section seven A of the principal Act is repealed and re-enacted as follows—

Treasurer
empowered
to give
guarantee to
approved
lending
authority.

7A: (1) Where an approved lending authority proposes to make a loan under this Act to an approved institution to be used for the purposes of this Act, and requires the Treasurer to guarantee that the institution will repay the loan and interest payable in respect thereof, the approved lending authority shall cause particulars of the proposal to be submitted in writing to the Treasurer.

(2) The Treasurer, if he approves the proposal, may agree to give the guarantee on behalf of the Crown in right of the State, on such conditions as he thinks fit including conditions for—

- (a) the execution by the approved institution of such undertaking as the Treasurer thinks fit that the amount of the loan will be used by the institution under this Act for advancing loans for the purposes of building new houses, or for making financial assistance available for the purposes of purchasing new houses;
- (b) the execution by the approved institution of such securities as the Treasurer thinks fit to secure compliance with the

undertaking referred to in paragraph (a) of this subsection, and to secure the Treasurer against any liability he incurs under the guarantee.

(3) If the approved lending authority complies with this section and the approved institution complies with the conditions imposed by the Treasurer under subsection (2) of this section, the Treasurer may give the guarantee.

(4) Subject to subsection (5) of this section, securities executed under subsection (2) of this section, create, by virtue of this section, a floating charge (having, subject to this section, priority to any other charge created there-after) on the undertaking, all the property and assets both real and personal whatsoever and wheresoever both present and future including all book debts of the approved institution,—

(a) notwithstanding the provisions of any other Act; and

(b) notwithstanding the existence on that undertaking, property or assets, of any other charge or encumbrance, except where there is a floating charge, under the Commonwealth and State Housing Agreement Act, 1956, in which case the securities executed under subsection (2) of this section shall be subject to that floating charge.

(5) Notwithstanding the provisions of subsection (4) of this section, the Treasurer may, on the recommendation of the Minister, require an approved institution to execute under subsection (2) of this section such securities over so much of its property and assets both real and personal as creates a charge thereon and which in the opinion of the Treasurer sufficiently secures the Treasurer against any liability he incurs under the guarantee given by him.

(6) Any securities referred to in subsection (5) of this section shall be, notwithstanding the provisions of any other Act and notwithstanding

the existence on the property and assets of any other charge or encumbrance, by virtue of this subsection, a first charge on so much of the property and assets of the approved institution as is specified in any such securities.

S. 7B added.

10. The principal Act is amended by adding after section seven A a section as follows—

Treasurer
empowered
to give
indemnity
to approved
institution.

7B. (1) Where—

- (a) an approved institution proposes to make a loan to a borrower, whether from its own moneys or from the moneys loaned to it by an approved lending authority, or otherwise under and for the purposes of this Act, or proposes to enter into a contract for the sale and purchase of a new house; and
- (b) the amount of the proposed loan, or the amount of the balance of the purchase price which will remain to be paid under the contract on the execution thereof exceeds the maximum amount which the Treasurer has declared under section seven F of this Act to be the maximum amount which the approved institution shall advance to a borrower on the security of a first mortgage on a new house, or shall permit to remain payable under a contract for sale and purchase of a new house, but does not exceed—
 - (i) ninety-five per centum of the value of the new house where the value does not exceed three thousand pounds;
 - (ii) ninety per centum of the value of the new house where the value exceeds three thousand pounds but does not exceed four thousand five hundred pounds;

- (iii) eighty per centum of the value of the new house where the value exceeds four thousand five hundred pounds but does not exceed six thousand pounds,

the Treasurer may, if he is satisfied with the terms and conditions of the mortgage or contract for sale and purchase, enter into an agreement with the approved institution proposing to make the loan or proposing to enter into the contract.

(2) Under the agreement the Treasurer shall undertake to indemnify the institution against the amount of the loss sustained by the institution in respect of the loan or contract, but only to the amount, and interest thereon, by which the loan or the amount of the purchase money remaining unpaid under the contract exceeds the maximum amount so declared by the Treasurer but does not exceed the relevant percentage of the value of the new house referred to in subparagraph (i), (ii) or (iii) of paragraph (b) of subsection (1) of this section, and the agreement for indemnity shall indemnify the institution to that extent only.

(3) The agreement shall contain such provisions as, subject to the provisions of this Act, are agreed between the Minister and the approved institution and shall operate and have effect until the amount owing to the institution under the mortgage or payable under the contract for sale and purchase does not exceed the maximum amount so declared by the Treasurer.

11. The principal Act is amended by adding a section as follows:—

S. 7C added.

7C. (1) Subject to subsection (2) of this section, the Treasurer shall not execute an agreement for indemnity under this Act—

Conditions under which indemnity to be given.

- (a) unless the mortgage or contract for sale and purchase in respect of which the indemnity is sought 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 the purchase price, in full before the expiration of forty-five years from the date of the mortgage, or of the contract for sale and purchase;

- (b) 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 which is subject to the mortgage or contract for sale and purchase, as a home for himself and his dependants;
- (c) if the borrower, or, as the case may be, the purchaser, or the spouse of the borrower or the purchaser, or the spouse of any joint tenant or tenant in common who is a party to the loan or contract for sale already owns a dwelling-house;
- (d) if an agreement for indemnity under this Act has previously been given in respect of a loan advanced to, or purchase price owed 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 for sale and purchase;
or
- (e) if the interest charged on the loan or the purchase money in respect of any period whilst the agreement for indemnity is in force exceeds the

maximum rate of interest which the Treasurer has declared, under section seven F of this Act, to be the maximum rate of interest which an approved institution may charge a borrower or purchaser on the amount of a loan or purchase money.

(2) The Minister, as he is hereby authorised to do if he thinks that just cause exists for doing so, may exempt the borrower or the purchaser from the operation of the provisions of paragraph (c) or (d) of this section.

12. The principal Act is amended by adding a section as follows— S. 7D added.

7D. (1) The Treasurer shall not execute any guarantee under this Act where the guarantee would involve the State in a liability which when added to the total liabilities, contingent or otherwise, subsisting in respect of other guarantees so executed would in the aggregate exceed the amount declared by the Treasurer under section seven F of this Act.

Aggregate of liabilities under guarantees and indemnities to amounts declared by Treasurer.

(2) The Treasurer shall not enter into any agreement for indemnity under this Act where the agreement would involve the State in a liability, contingent or otherwise, which when added to the total of such liabilities subsisting in respect of other agreements so entered into would in the aggregate exceed the amount declared by the Treasurer under section seven F of this Act.

(3) The failure of the Treasurer to comply with—

- (a) the provisions of section seven D or seven F of this Act or both; or
- (b) any matter or thing required by or under this Act to be complied with by him in respect of a guarantee or indemnity,

does not affect the validity of any guarantee or indemnity.

S. 7E added.

13. The principal Act is amended by adding a section as follows—

Amounts payable by Treasurer under guarantee or indemnity guaranteed by State.

7E. (1) The due payment of money payable by the Treasurer under a guarantee or agreement for indemnity given or entered into by him under the authority of this Act—

- (a) is hereby guaranteed by the State;
- (b) shall be paid out of the money referred to in section four of the Audit Act, 1904, as “Public Moneys”.

(2) This section without any other appropriation is sufficient authority for making any payment referred to in subsection (1) of this section.

S. 7F added.

14. The principal Act is amended by adding a section as follows—

Treasurer empowered to declare aggregate amounts of guarantees and indemnities, rate of interest and advances, etc.

7F. The Treasurer shall, whenever requested by the Minister to do so, from time to time declare by notice published once in the *Government Gazette*—

- (a) the maximum amounts which the Treasurer may guarantee under this Act during any specified period;
- (b) the maximum amounts in respect of which agreements for indemnity may be entered into by the Treasurer during any specified period;
- (c) the maximum rate of interest which an approved institution may charge on a loan to a borrower or on the purchase money to a purchaser in respect of any period whilst an agreement for indemnity is in force in respect of the loan or purchase money; and

- (d) for the purposes of section seven B of this Act, the maximum amount which an approved institution shall advance to a borrower on the giving of a first mortgage of a new house or the maximum amount of the purchase moneys which an approved institution shall permit to remain payable under a contract for sale and purchase of a new house before an indemnity is given by the Treasurer under this Act.

15. Section eight of the principal Act is repealed and re-enacted as follows—

S. 8 repealed and re-enacted.

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

Minister empowered to appoint valuers.

(2) (a) Where an approved institution proposes that an agreement for indemnity be entered into by the Treasurer under the authority of this Act, the Minister may require that the value of the new house which is to be subject to a first mortgage or contract for sale and purchase and in relation to which the indemnity is proposed, be determined by a valuer so appointed.

(b) The Minister may require the approved institution or the proposed borrower or both to pay to him such reasonable fees for a valuation made under this section as the Minister may from time to time determine and where both the institution and the borrower are required to so pay, the Minister may determine the proportion of the total amount of the fees to be paid by each.

16. The principal Act is amended by adding after section eight a section as follows—

S. 8A added.

8A. The Minister may from time to time in relation to any particular dwelling house determine that the period of six months referred to in the interpretation "new house" in section three of this Act be extended to such longer period as he thinks fit.

Power of Minister to determine longer period for purposes of interpretation of "new house".

S. 9 repealed.
and
re-enacted.

17. Section nine of the principal Act is repealed and re-enacted as follows—

Approved institutions and approved lending authorities to submit returns to Minister and to permit inspection of documents, etc.

9. (1) Each approved institution and approved lending authority shall submit or cause to be submitted to the Minister, before the thirty-first day of May in each year, a return in respect of the twelve months ending on the preceding thirtieth day of April, showing as at that date—

- (a) the amount which remains unpaid of any loan that has been made by the approved lending authority to an approved institution under a guarantee given by the Treasurer;
- (b) the amount that remains unpaid of any loan made by the approved institution to a borrower, or the amount that remains unpaid under a contract for the sale and purchase of a new house, where in respect of either of those amounts the Treasurer has given an indemnity.

(2) The manager, secretary, accountant or other executive or administrative officer of an approved institution or an approved lending authority or any bank at which any account, record or document of the institution or authority is kept shall, whenever requested 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 was guaranteed to the approved lending authority under a guarantee, or which relate to or are connected with any loan, or any purchase money, in respect of which an indemnity has been given, 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) Where, immediately prior to the date of the coming into operation of the Housing Loan Guarantee Act Amendment Act, 1961, an approved institution is, pursuant to the provisions of paragraph (b) of subsection (2) of section nine of this Act as those provisions existed immediately prior to that date—

- (a) paying into the Fund Account an amount in respect of a loan payment or purchase money as provided in the paragraph; or
- (b) is obliged on that date to pay into the Fund Account an amount in respect of a loan payment or purchase money as so provided,

the rate of interest on so much of that loan payment or purchase money as from time to time remains owing, and the repayment of which remains guaranteed under this Act, shall, as from that date, by force of this subsection be reduced by the rate of a quarter per centum per annum and the rate of interest payable by the borrower concerned to the approved institution shall be reduced accordingly.

18. Section ten of the principal Act is amended— S. 10
amended.

- (a) by adding after the word, “guarantees” in line four, the words, “or indemnities”;
- (b) by adding after the letter “A” in line five, the passage, “or seven B”;
- (c) by adding after the word, “institution” in line six, line nine and again in the last line the words, “or approved lending authority”;
- and
- (d) by adding after the word, “contrary”, being the last word in the section, the passage, “, but where the approved institution is a society registered under the Building Societies Act, 1920, section twenty-one of that Act shall continue to apply to that approved institution”.

S. 11
amended.

19. Section eleven of the principal Act is amended—

- (a) by adding after the section number, "11", the subsection designation, "(1)"; and
- (b) by adding a new subsection as follows—

(2) Without prejudice to the generality of subsection (1) of this section, regulations may be so made prescribing or relating to the form of application by an institution, body or person to be appointed an approved institution or an approved lending authority, prescribing the fees to be paid on the application and providing for a refund of the fees to be made where an application is refused.
