

HOUSING LOAN GUARANTEE.

6° Elizabeth II., No. LXXV.

No. 75 of 1957.¹

[As amended by Acts

No. 3 of 1958, assented to 19th September, 1958;

No. 37 of 1958, assented to 11th December, 1958;

No. 55 of 1959, assented to 25th November, 1959;

No. 43 of 1961², assented to 16th November, 1961;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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

Long title amended by No. 43 of 1961, s. 3.

[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:—

1. This Act may be cited as the *Housing Loan Guarantee Act, 1957-1961*.

Short title and citation. Amended by No. 43 of 1961, s. 1.

2. This Act shall come into operation on a day to be fixed by proclamation.¹

Commencement.

¹ Came into operation on 19th May, 1958; see *Gazette* 9/5/58.

² Came into operation on 1st January, 1962; see *Gazette* 29/12/61.

Interpre-
tations.

Amended by
No. 37 of 1958,
s. 2,
No. 43 of 1961,
s. 4.

3. In this Act unless the context requires otherwise—

“approved institution” means an institution, body, or person, approved under this Act by the Minister for the purpose of lending money to borrowers to enable them to build or purchase new houses for themselves and their dependants;

“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;

“borrower” includes, without prejudice to section twenty-six of the Interpretation Act, 1918,¹ joint tenants, and tenants in common;

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

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

“instrument of constitution” means the Act or other instrument, if any, by which an approved institution or an approved lending authority is constituted and by authority of, or subject to, which, the approved institution or an approved lending authority 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, 1946,² is for the time being committed by the Governor, and includes

Cf. No. 30 of
1918, s. 4,
“Minister.”

¹ Now Interpretation Act, 1918-1957.

² Now State Housing Act, 1946-1961.

any Minister of the Crown for the time being discharging the duties of the office of the 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 or in relation to any particular dwelling-house such longer period as the Minister determines pursuant to section eight A of this Act 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;

“purchase money” includes part of purchase money;

“purchaser” includes, without prejudice to section twenty-six of the Interpretation Act, 1918,¹ persons purchasing as joint tenants or as tenants in common;

“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).

4. The purposes of this Act are to encourage, through provisions for guarantees and indemnities, the building and the purchasing of new houses

Objects.
Amended by
No. 37 of 1958,
s. 3,
No. 43 of 1961,
s. 5.

(a) by enabling building societies registered under the Building Societies Act, 1920,² 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

¹ Now Interpretation Act, 1918-1957.

² Now Building Societies Act, 1920-1961.

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new houses, or with both, to increase amounts of advances and financial assistance for those purposes; and

- (b) by enabling building societies registered under the Building Societies Act, 1920,¹ and other institutions mentioned in paragraph (a) of this section to borrow money to be applied in the building and purchasing of new houses.

Power
to approve
institutions.
Amended by
No. 43 of 1961,
s. 6.

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, 1920,¹ or under the Co-operative and Provident Societies Act, 1903,² or under the Friendly Societies Act, 1894³; 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, 1938⁴; or
- (d) being the Superannuation Board established under the Superannuation and Family Benefits Act, 1938⁵; 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 or an approved lending authority for the purposes of this Act.

¹ Now Building Societies Act, 1920-1961.

² Now Co-operative and Provident Societies Act, 1903-1947.

³ Now Friendly Societies Act, 1894-1956.

⁴ Now State Government Insurance Office Act, 1938-1958.

⁵ Now Superannuation and Family Benefits Act, 1938-1961.

(2) If it appears to the Minister that an applicant is suitable to be an approved institution or an approved lending authority 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 or an approved lending authority.

(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.

Treasurer empowered to give guarantee to approved lending authority. Amended by No. 3 of 1958, s. 2. Repealed and re-enacted by No. 43 of 1961, s. 8.

7. (1) Subject to the provisions of this section 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, 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.

Treasurer empowered to give guarantee to approved lending authority. Added by No. 37 of 1958, s. 4. Amended by No. 55 of 1959, s. 2. Repealed and re-enacted by No. 43 of 1961, s. 9.

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 thereafter) 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.

Treasurer
empowered
to give
indemnity
to approved
institution.
Added by
No. 43 of 1961,
s. 10.

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.

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.
Added by No. 43 of 1961, s. 11.

- (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.

Aggregate of liabilities under guarantees and indemnities to amounts declared by Treasurer. Added by No. 43 of 1961, s. 12.

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.

(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.

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—

Amounts payable by Treasurer under guarantee or indemnity guaranteed by State. Added by No. 43 of 1961, s. 13.

- (a) is hereby guaranteed by the State;
- (b) shall be paid out of the money referred to in section four of the Audit Act, 1904,¹ 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.

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*—

Treasurer empowered to declare aggregate amounts of guarantees and indemnities, rate of interest and advances, etc. Added by No. 43 of 1961, s. 14.

- (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

¹ Now Audit Act, 1904-1957.

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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.

Minister empowered to appoint valuers.
Repealed and re-enacted by No. 43 of 1961, s. 15.

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

(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 or 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.

Power of Minister to determine longer period for purposes of interpretation of "new house".
Added by No. 43 of 1961, s. 16.

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.

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—

Approved institutions and approved lending authorities to submit returns to Minister and to permit inspection of documents, etc.
Amended by No. 55 of 1959, s. 3.
Repealed and re-enacted by No. 43 of 1961, s. 17.

- (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.

Power for approved institutions to accept guarantees. Amended by No. 37 of 1958, s. 5, No. 43 of 1961, s. 18.

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 or indemnities under this Act, and to do or suffer anything ancillary or incidental thereto, and to do or suffer anything for the purposes of section seven A or seven B of this Act, is conferred by this Act on any approved institution or approved lending authority, notwithstanding that the power is not conferred by the instrument of constitution of the approved institution or approved lending authority, and notwithstanding any provision of the instrument of constitution of the approved institution or approved lending authority to the contrary, but where the approved institution is a society registered under the Building Societies Act, 1920,¹ section twenty-one of that Act shall continue to apply to that approved institution.

Regulations. Amended by No. 43 of 1961, s. 19.

11. (1) The Governor may make such regulations as he considers necessary or desirable for giving effect to the purpose of this Act, and may by

¹ Now Building Societies Act, 1920-1961.

the regulations prescribe a penalty of not more than fifty pounds for a breach of any regulation so made.

(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.

