



New South Wales

# First Home Owner Grant Act 2000 No 21

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New South Wales

## **First Home Owner Grant Act 2000 No 21**

Act No 21, 2000

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An Act to encourage and assist home ownership, and to offset the effect of the Goods and Services Tax on the acquisition of a first home, by establishing a scheme for the payment of grants to first home owners; to amend the *Stamp Duties Act 1920* to exempt such grants from financial institutions duty; and for other purposes. [Assented to 30 May 2000]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *First Home Owner Grant Act 2000*.

### **2 Commencement**

This Act commences on 1 July 2000.

### **3 Definitions**

In this Act:

**administration** of this Act or a corresponding law includes the execution and enforcement of this Act or the corresponding law.

**administration agreement** means an agreement under section 32.

**Australian citizen** means an Australian citizen as defined in the *Australian Citizenship Act 1948* of the Commonwealth.

**authorised investigation**—see section 34.

**authorised officer** means a person referred to in section 33 (1) or a person appointed to be an authorised officer under section 33 (2).

**building** includes part of a building.

**Chief Commissioner** means the Chief Commissioner of State Revenue referred to in section 60 of the *Taxation Administration Act 1996*.

**commencement date** of an eligible transaction—see section 13 (4).

**completed**—for completion of an eligible transaction, see section 13 (5).

**comprehensive home building contract** means a contract under which a builder undertakes to build a home on land from the inception of the building work to the point where the home is ready for occupation and if, for any reason, the work to be carried out under such a contract is not completed, includes any further contract under which the work is to be completed.

**consideration** for an eligible transaction—see section 13 (7).

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**corresponding law** means an Act of another State, or a Territory, corresponding to this Act.

**eligibility criteria** means the criteria for determining whether an applicant for a first home owner grant is eligible for the grant (see Division 2 of Part 2).

**eligible transaction**—see section 13 (1).

**exercise** a function includes perform a duty.

**first home owner grant** means a grant authorised under this Act.

**first home owner grant scheme** means the scheme for payment of first home owner grants established under this Act.

**function** includes a power, authority or duty.

**guardian** of a person under a legal disability includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

**home**—see section 4.

**option** to purchase includes a right of preemption or a right of first refusal.

**owner:**

- (a) in relation to a home, has the meaning given by section 5 (1), and
- (b) in relation to land, means a person who has a relevant interest in the land.

**owner builder** means an owner of land who builds a home, or has a home built, on the land without entering into a comprehensive home building contract.

**permanent resident** means the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth.

**relevant interest**—see section 5 (2), (3) and (4).

**residence requirement** means the requirement that an applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence within 12 months after the completion of the eligible transaction or a longer period approved by the Chief Commissioner (see section 12).

**residential property**—land in Australia is residential property at a particular time if there is, at that time, a building on the land lawfully

occupied as a place of residence or suitable for occupation as a place of residence.

*spouse*—see section 6.

*taxation law* means a law for the assessment or imposition of a tax.

#### 4 Homes

A *home* is a building (affixed to land) that:

- (a) may lawfully be used as a place of residence, and
- (b) is, in the Chief Commissioner's opinion, a suitable building for use as a place of residence.

#### 5 Ownership of land and homes

- (1) A person is an *owner* of a home or a *home owner* if the person has a relevant interest in land on which a home is built.
- (2) Each of the following is, subject to subsection (3), a *relevant interest* in land:
  - (a) an estate in fee simple in the land,
  - (b) a life estate in the land approved by the Chief Commissioner,
  - (c) a perpetual lease of the land granted by the Commonwealth or the State,
  - (d) a leasehold interest in the land granted by the Commonwealth or the State that may be converted under the terms of the lease or by statute into an estate in fee simple,
  - (e) an interest as purchaser under a contract for the purchase from the Commonwealth or the State of an estate in fee simple in the land by instalments,
  - (f) a licence or right of occupancy granted by the Commonwealth or the State in relation to the land that gives, in the Chief Commissioner's opinion, the licensee or the holder of the right reasonable security of tenure,
  - (g) an interest in a company's shares or in units in a unit trust scheme, if the Chief Commissioner is satisfied that:
    - (i) the interest entitles the holder of the interest to exclusive occupation of a specified home situated on the land and owned by the company or trustees, and
    - (ii) the value of the shares is not less than the value of the company's or trustees' interest in the home.

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- (3) Subject to subsection (4):
- (a) an interest is not a relevant interest at a particular time unless the holder of the interest has, or will have within 12 months after that time (or a longer time allowed by the Chief Commissioner), a right to immediate occupation of the land, and
  - (b) an interest is not a relevant interest in the hands of a person who holds it subject to a trust.
- (4) The Chief Commissioner may recognise an interest (a ***non-conforming interest***) as a relevant interest in land even though the interest may not conform with the above provisions (and even though the interest may not be recognised at law or in equity as an interest in land) if there is, in the Chief Commissioner's opinion, good reason to do so.
- (5) If the Chief Commissioner recognises a non-conforming interest as a relevant interest in land and, in consequence, a first home owner grant is to be paid, the Chief Commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if suppositions about future conduct or events made by the Chief Commissioner in recognising the interest later prove to be incorrect.
- (6) If a person holds an interest in land on trust as guardian for a person under a legal disability and that interest would be a relevant interest but for subsection (3) (b), then for the purposes of this Act:
- (a) the person under the legal disability is taken to be the person who holds a relevant interest in the land, and
  - (b) the guardian is taken not to hold that interest.
- (7) In this section:
- unit*** in a unit trust scheme means:
- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme, or
  - (b) a right to any such right or interest.
- unit trust scheme*** means any arrangements made for the purpose, or having the effect, of providing facilities for persons participating in the arrangements, as beneficiaries under a trust, for occupying any property pursuant to the trust.

## 6 Spouses

- (1) A person is the *spouse* of another person if:
  - (a) they are legally married, or
  - (b) they are living together as a couple in a de facto relationship within the meaning of the *Property (Relationships) Act 1984*.
- (2) If the Chief Commissioner is satisfied that, at the time of deciding an application for a first home owner grant, an applicant:
  - (a) is legally married but not cohabiting with the person to whom the applicant is legally married, and
  - (b) has no intention of resuming cohabitation,the person to whom the applicant is legally married is not to be regarded as the applicant's spouse.

## **Part 2 First home owner grant**

### **Division 1 Entitlement to grant**

#### **7 Entitlement to grant**

- (1) A first home owner grant is payable on an application under this Act if:
  - (a) the applicant or, if there are 2 or more of them, each of the applicants complies with the eligibility criteria, and
  - (b) the transaction for which the grant is sought:
    - (i) is an eligible transaction, and
    - (ii) has been completed.
- (2) Despite subsection (1) (a), an applicant need not comply with the eligibility criteria to the extent the applicant is exempted from compliance by section 9 (2) or 12 (2) or both.
- (3) Despite subsection (1) (b), a first home owner grant is payable before completion of the relevant eligible transaction, as authorised by section 20.
- (4) Only one first home owner grant is payable for the same eligible transaction.

### **Division 2 Eligibility criteria (applicants)**

#### **8 Criterion 1—Applicant to be a natural person**

An applicant for a first home owner grant must be a natural person.

#### **9 Criterion 2—Applicant to be Australian citizen or permanent resident**

- (1) Subject to subsection (2), an applicant for a first home owner grant must be an Australian citizen or a permanent resident.
- (2) If an application is made by joint applicants and at least one (but not all) of the applicants complies with the requirement to be an Australian citizen or a permanent resident, the non-complying applicant or applicants are exempted from compliance with the requirement.

**10 Criterion 3—Applicant (or applicant’s spouse) must not have received an earlier grant**

- (1) Subject to subsection (2), an applicant for a first home owner grant is ineligible for the grant if:
  - (a) the applicant or the applicant’s spouse has been a party to an earlier application under this Act or a corresponding law, and
  - (b) a grant was paid on the application.
- (2) An applicant is not ineligible if the grant was paid but later paid back under the conditions on which the grant was made.

**11 Criterion 4—Applicant (or applicant’s spouse) must not have had relevant interest in residential property**

- (1) An applicant for a first home owner grant is ineligible for the grant if the applicant or the applicant’s spouse has, before 1 July 2000, held:
  - (a) a relevant interest in residential property in New South Wales, or
  - (b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.
- (2) In working out for the purposes of subsection (1) whether an applicant held a relevant interest (within the meaning of this Act or a corresponding law) in residential property at a particular time, any deferment of the applicant’s right of occupation (because the property was subject to a lease) is to be disregarded.
- (3) An applicant is ineligible if the applicant or the applicant’s spouse has, on or after 1 July 2000 and before the date on which the application is made, held an interest in property (other than property to which the application relates) used at any time on or after 1 July 2000 as the residence of the applicant or the applicant’s spouse, being:
  - (a) a relevant interest in residential property in New South Wales, or
  - (b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.

## 12 Criterion 5—Residence requirement

- (1) An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence within 12 months after completion of the eligible transaction or a longer period approved by the Chief Commissioner.
- (2) If an application is made by joint applicants and at least one (but not all) of the applicants complies with the residence requirement, the non-complying applicant or applicants are exempted from compliance with the residence requirement.

## Division 3 Eligible transactions

### 13 Eligible transactions

- (1) An *eligible transaction* is:
  - (a) a contract made on or after 1 July 2000 for the purchase of a home in New South Wales, or
  - (b) a comprehensive home building contract made on or after 1 July 2000 by the owner of land in New South Wales, or by a person who will on completion of the contract be the owner of land in New South Wales, to have a home built on the land, or
  - (c) the building of a home in New South Wales by an owner builder if the building work commences on or after 1 July 2000.
- (2) A contract is a contract for the purchase of a home if the contract is a contract for the acquisition of a relevant interest in land on which a home is or is to be built under the contract by or on behalf of the vendor.
- (3) However, a contract made on or after 1 July 2000 is not an eligible transaction if:
  - (a) in the case of a contract to purchase a home—the purchaser had an option to purchase the home granted before that date or the vendor had an option to require the purchaser to purchase the home granted before that date, or
  - (b) in the case of a comprehensive building contract—either party had a right or option granted before that date to require the other party to enter into the contract.

- (4) The **commencement date** of an eligible transaction is:
- (a) in the case of a contract—the date when the contract is made, or
  - (b) in the case of the building of a home by an owner builder:
    - (i) the date when laying the foundations for the home commences, or
    - (ii) another date the Chief Commissioner considers appropriate in the circumstances of the case.
- (5) An eligible transaction is **completed** when:
- (a) in the case of a contract for the purchase of a home—the purchaser becomes entitled to possession of the home under the contract, or
  - (b) in the case of a contract to have a home built—the building is ready for occupation as a place of residence, or
  - (c) in the case of the building of a home by an owner builder—the building is ready for occupation as a place of residence.
- (6) If a person purchases a moveable building and intends to use it as a place of residence on land in which the person has a relevant interest but on which it is not situated at the time of purchase:
- (a) this Act applies as if the person were an owner builder building a home on the land, and
  - (b) the commencement date of the transaction is taken to be the date of the contract to purchase the moveable building, and
  - (c) the transaction is taken to be completed when the moveable building is ready for occupation as a place of residence on land in which the purchaser has a relevant interest.
- (7) The **consideration** for an eligible transaction is:
- (a) in the case of a contract for the purchase of a home—the consideration for the purchase, or
  - (b) in the case of a comprehensive home building contract—the total consideration payable for the building work, or
  - (c) in the case of the building of a home by an owner builder—the actual costs to the owner of carrying out the work (excluding any allowance for the owner builder's own labour).

## Division 4      Application for grant

### 14    Application for grant

- (1) An application for a first home owner grant is to be made to the Chief Commissioner or a financial institution or other person with whom the Chief Commissioner has made an administration agreement.
- (2) An application:
  - (a) must be in a form approved by the Chief Commissioner, and
  - (b) must contain the information required by the Chief Commissioner.
- (3) An applicant must provide the Chief Commissioner with any further information the Chief Commissioner requires to decide the application.
- (4) Information provided by an applicant in or in relation to an application must, if the Chief Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Chief Commissioner.
- (5) An application may only be made within a period (the *application period*):
  - (a) commencing on the commencement date of the eligible transaction to which the application relates, and
  - (b) ending 12 months after the completion of the eligible transaction to which the application relates.
- (6) However, the Chief Commissioner has a discretion to allow an application before or after the application period.
- (7) An applicant may, with the Chief Commissioner's consent, amend an application.

### 15    All interested persons to join in application

- (1) All interested persons must be applicants.
- (2) An *interested person* is a person who is, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home except such a person who is excluded from the application of this section under the regulations.

Section 16            First Home Owner Grant Act 2000 No 21

Part 2                First home owner grant

Division 4            Application for grant

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**16    Application on behalf of person under legal disability**

- (1) An application may be made on behalf of a person under a legal disability by a guardian.
- (2) For the purpose of determining eligibility, the person under the legal disability is to be regarded as the applicant.

**Division 5            Decision on application**

**17    Chief Commissioner to decide applications**

- (1) If the Chief Commissioner is satisfied that a first home owner grant is payable on an application, the Chief Commissioner must authorise the payment of the grant.
- (2) Payment of a first home owner grant may be authorised under section 20 before completion of the relevant eligible transaction or in anticipation of compliance with the residence requirement.

**18    Amount of grant**

The amount of a first home owner grant is the lesser of the following:

- (a) the consideration for the eligible transaction,
- (b) \$7000.

**19    Payment of grant**

- (1) A first home owner grant is to be paid by electronic funds transfer, by cheque or in any other way the Chief Commissioner thinks appropriate.
- (2) A first home owner grant is to be paid:
  - (a) to the applicant, or
  - (b) to some other person to whom the applicant directs in writing that the grant be paid.
- (3) If the applicant requests, the Chief Commissioner may apply the amount of a first home owner grant, or part of the amount, towards a liability for State taxes.

**20 Payment in advance, subject to statutory conditions**

- (1) The Chief Commissioner may authorise payment of a first home owner grant:
- (a) before completion of the relevant eligible transaction, if the Chief Commissioner is satisfied that it is appropriate to do so in particular circumstances, or
  - (b) in anticipation of compliance with the residence requirement, if the Chief Commissioner is satisfied that each applicant who is required to comply, but has not yet complied, with the residence requirement, intends to occupy the home as his or her principal place of residence within 12 months after completion of the eligible transaction or a longer period allowed by the Chief Commissioner,
- or both.
- (2) If a first home owner grant is paid before completion of the relevant eligible transaction, the payment is made on condition that, if the transaction is not completed within 12 months of the commencement of the transaction or a longer period allowed by the Chief Commissioner, the applicant must within 14 days after the end of the period concerned:
- (a) give written notice of that fact to the Chief Commissioner, and
  - (b) repay the amount of the grant.
- (3) If a first home owner grant is paid in anticipation of compliance with the residence requirement, the payment is made on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the end of the period allowed for compliance:
- (a) give written notice of that fact to the Chief Commissioner, and
  - (b) repay the amount of the grant.
- (4) A person who fails to comply with the condition prescribed by this section is guilty of an offence.

Maximum penalty (subsection (4)): 50 penalty units.

**21 Imposition of conditions by Chief Commissioner**

- (1) The Chief Commissioner may authorise the payment of a first home owner grant on conditions the Chief Commissioner considers appropriate.

- (2) A condition imposed by the Chief Commissioner (under this section or any other provision of this Act) may require a person on whose application the first home owner grant is paid:
  - (a) to give notice of non-compliance with the condition within a period stated in the condition, and
  - (b) to repay the grant within a period stated in the condition.
- (3) In the case of a joint application, each applicant is individually liable to comply with a requirement under subsection (2) but compliance by any one or more of them is to be regarded as compliance by both or all.
- (4) A person who fails to comply with a condition imposed by the Chief Commissioner (under this section or any other provision of this Act) is guilty of an offence.

Maximum penalty (subsection (4)): 50 penalty units.

## **22 Death of applicant**

- (1) An application for a first home owner grant does not lapse because an applicant dies before the application is decided.
- (2) If an applicant dies before the application is decided, the following provisions apply:
  - (a) if the deceased was one of 2 or more applicants and one or more applicants survive, the application is to be dealt with as if the surviving applicants were the sole applicants,
  - (b) in any other case, a first home owner grant, if payable on the application, is to be paid to the estate of the deceased.
- (3) If a deceased applicant for a first home owner grant had not, by the date of death, occupied the home to which the application relates as the applicant's principal place of residence but the Chief Commissioner is satisfied that he or she intended to do so within 12 months after completion of the eligible transaction or a longer period allowed by the Chief Commissioner, the residence requirement is satisfied.

## **23 Power to correct decision**

- (1) If the Chief Commissioner decides an application, and is later satisfied (independently of an objection under this Act) that the decision is incorrect, the Chief Commissioner may vary or reverse the decision.

- (2) A decision cannot be varied or reversed under this section more than 5 years after it was made.

#### **24 Notification of decision**

- (1) When the Chief Commissioner decides to refuse an application or to vary or reverse an earlier decision on an application, the Chief Commissioner must give the applicant notice of the decision and must state in the notice the reasons for the decision.
- (2) If the decision is to authorise the payment of a first home owner grant with or without conditions, the payment of the grant is sufficient notice of the decision.

### **Division 6      Objections and reviews**

#### **Subdivision 1   Objections**

#### **25   Objections**

- (1) An applicant who is dissatisfied with the Chief Commissioner's decision on the application may lodge a written objection with the Chief Commissioner.
- (2) The grounds of objection must be stated fully and in detail in the notice of objection.
- (3) The objection must be lodged within 60 days after the date of the notice of the decision.
- (4) If the Chief Commissioner is satisfied that an objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Chief Commissioner may extend the time for lodging the objection.

#### **26   Powers of Chief Commissioner on objection**

- (1) After considering an objection, the Chief Commissioner may:
  - (a) allow the objection in whole or in part or may disallow the objection, and
  - (b) accordingly reverse, vary or confirm the decision (the *original decision*) to which the objection was made.

- (2) The Chief Commissioner must give the objector written notice of the determination of the objection.
- (3) The Chief Commissioner must, in the notice, give the reasons for disallowing the objection or for allowing the objection in part only.
- (4) The reasons for a determination of an objection must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.
- (5) The notice must also inform the objector of the objector's right to make an application for review under Subdivision 2 in the case of a determination to disallow the objection or to allow the objection in part only.

#### **27 Decision not made within 90 days**

For the purposes of Subdivision 2, if an objection has not been determined within 90 days of being lodged, the Chief Commissioner is taken to have made a determination to disallow the objection and to confirm the original decision.

### **Subdivision 2 Reviews**

#### **28 Reviews by Administrative Decisions Tribunal**

- (1) An objector who is dissatisfied with the Chief Commissioner's determination of the objection may apply to the Administrative Decisions Tribunal for a review of the decision (the *original decision*) to which the objection was made.
- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) An application for review:
  - (a) must be made within 60 days after the notice of the determination of the objection is given, or
  - (b) may be made at any time after the 90-day period referred to in section 27.
- (5) The Administrative Decisions Tribunal may extend the time for making an application for review.

- (6) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section:
- (a) Part 2 of Chapter 5,
  - (b) section 55 (1) (b) and (d),
  - (c) Division 2 of Part 3 of Chapter 5.
- (7) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:
- (a) the obligation of the Chief Commissioner under that paragraph to lodge a statement of reasons with the Administrative Decisions Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
  - (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the objector by the Chief Commissioner under section 26 for the determination of the objection in explanation of that part of the original decision.

## **29 Powers of Administrative Decisions Tribunal on review**

- (1) On a review, the Administrative Decisions Tribunal may:
- (a) confirm, vary or reverse the original decision, and
  - (b) make any further orders as to costs or otherwise as it thinks fit.
- (2) Subsection (1) does not limit the generality of Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

## **Part 3 Administration**

### **Division 1 Administration generally**

#### **30 Administration**

The Chief Commissioner is responsible to the Minister for the administration of the first home owner grant scheme.

#### **31 Delegation**

The Chief Commissioner may delegate functions related to the administration of the first home owner grant scheme.

#### **32 Administration agreements**

- (1) Without limiting section 31, the Chief Commissioner may enter into an agreement with a financial institution or other person for exercising functions related to the administration of the first home owner grant scheme.
- (2) An administration agreement is subject to conditions specified in the administration agreement or by subsequent written notice given to the financial institution or other person.
- (3) The conditions may include:
  - (a) conditions as to the means by which applications are to be lodged by the financial institution or other person, and
  - (b) conditions requiring the financial institution or other person to keep specified records, and
  - (c) conditions as to the payment to applicants of money paid to the financial institution or other person, and
  - (d) conditions restricting the financial institution or other person from disclosing information that is identified in the administration agreement as confidential.
- (4) The Chief Commissioner may, at any time, at the Chief Commissioner's discretion, revoke an administration agreement under this section.

**33 Authorised officers**

- (1) A person who is an authorised officer for the purposes of the taxation laws, as referred to in section 68 of the *Taxation Administration Act 1996*, is taken to be an authorised officer for the purposes of this Act.
- (2) Without affecting subsection (1), the Chief Commissioner may appoint persons to be authorised officers for the purposes of this Act.

**Division 2 Investigations****34 Authorised investigations**

An *authorised investigation* is an investigation to determine:

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made, or
- (b) whether an objection to a decision made under this Act or a corresponding law should be upheld, or
- (c) whether an applicant to whom, or for whose benefit, a first home owner grant has been paid under this Act or a corresponding law was eligible for the grant, or
- (d) whether a condition on which a first home owner grant has been paid under this Act or a corresponding law has been complied with, or
- (e) any other matter reasonably related to the administration of this Act or a corresponding law.

**35 Carrying out of authorised investigation**

- (1) The Chief Commissioner may carry out an authorised investigation for the purposes of this Act.
- (2) The Chief Commissioner may, at the request of an authority responsible for administering a corresponding law, carry out an authorised investigation for the purposes of the corresponding law.
- (3) The Chief Commissioner may delegate powers of investigation under this Division to the authority responsible for the administration of a corresponding law, or a person nominated by that authority.

### **36 Power of investigation**

- (1) For the purposes of an authorised investigation, the Chief Commissioner may, by written notice, require a person:
- (a) to give the Chief Commissioner written information specified in the notice, or
  - (b) to attend at a specified time and place before the Chief Commissioner or an authorised officer to answer questions relevant to the investigation, or
  - (c) to produce an instrument or record to the Chief Commissioner at a specified time and place.

(2) The Chief Commissioner may require that information given, or to be given, under this section be verified on oath or by statutory declaration.

(3) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Chief Commissioner under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) A person who, having attended before the Chief Commissioner or an authorised officer in response to a notice under subsection (1) (b), refuses or fails, without reasonable excuse, to answer a question relevant to the investigation is guilty of an offence.

Maximum penalty (subsection (4)): 100 penalty units.

### **37 Access to public records without fee**

The Chief Commissioner is entitled to inspect and take copies of any public record kept under an Act or law of this State without payment of any fee that would be payable but for this section.

### **38 Use and inspection of documents and records provided to Chief Commissioner or authorised officer**

(1) This section applies to a document or record that is provided or produced to the Chief Commissioner or an authorised officer.

(2) The Chief Commissioner or the authorised officer may take and retain possession of the document or record for the purpose of enabling the document or record to be inspected and for copies of, or extracts of and notes from, the document or record to be made or taken by or on behalf of the Chief Commissioner or authorised officer.

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- (3) However, if the document or record was provided or produced to the Chief Commissioner or an authorised officer on the premises where it is normally kept, the Chief Commissioner or authorised officer may remove it from those premises for the purposes referred to in subsection (2) only:
    - (a) with the consent of the owner or occupier of the premises, or
    - (b) if it is not practicable to inspect or copy or take extracts or notes from the document or record on the premises.
  - (4) The Chief Commissioner or authorised officer may retain possession of the document or record for a reasonable period, but not exceeding 28 days without the consent of the person entitled to it.
  - (5) The Chief Commissioner or the authorised officer must permit a person who would be entitled to inspect the document or record if it were not in the possession of the Chief Commissioner or authorised officer to inspect the document or record at any reasonable time.
  - (6) Nothing in this section prejudices a lien a person has on the document or record.
  - (7) Nothing in this section limits or affects section 40.

### **39 Power of entry on premises**

- (1) The Chief Commissioner may enter and remain on premises if the Chief Commissioner has reason to believe or suspect that there are documents or records at the premises that are relevant to the administration of this Act.
- (2) Entry may be made at any reasonable time.
- (3) The power of an authorised officer to enter premises may not be exercised unless the authorised officer has a written delegation covering entry issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises, or a person in physical occupation of the premises.
- (4) Before the Chief Commissioner or an authorised officer enters premises under this Act, the Chief Commissioner or authorised officer must give the owner or occupier of the premises, or a person in physical occupation of the premises, reasonable notice of the intention to enter unless:
  - (a) entry is made with the consent of the owner, occupier or person, or

- (b) the giving of notice would, in the opinion of the Chief Commissioner or authorised officer, defeat the purpose for which it is intended to enter the premises.
- (5) The powers of entry and inspection conferred by this Division are not exercisable in relation to premises or a part of premises used for residential purposes except:
  - (a) with the consent of the owner or occupier of the premises or part, or a person in physical occupation of the premises or part, or
  - (b) under the authority conferred by a search warrant.

#### **40 Functions exercisable on entry**

- (1) The Chief Commissioner or an authorised officer who has entered premises in accordance with this Division may:
  - (a) require any person at those premises to produce any records in the custody or possession or under the control of the person (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process), and
  - (b) require any person at those premises to answer questions or otherwise furnish information, and
  - (c) require the owner or occupier of the premises, or any person physically in occupation of the premises, to provide the Chief Commissioner or authorised officer with such assistance and facilities as is or are reasonably necessary to enable the Chief Commissioner or authorised officer to exercise the functions of the Chief Commissioner or an authorised officer under this Part.
- (2) A receipt is to be issued for anything removed.

#### **41 Search warrant**

- (1) The Chief Commissioner or an authorised officer may apply to an authorised justice for a warrant to search any premises if the Chief Commissioner or the authorised officer has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or authorised officer would have access if they were kept on premises to which the Chief Commissioner or authorised officer has access.

- (2) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or authorised officer to enter and search the premises.
- (3) Nothing in this section limits or restricts any power conferred on the Chief Commissioner or an authorised officer under this Part.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

#### **42 Obstructing Chief Commissioner or authorised officer**

- (1) A person who:
  - (a) prevents the Chief Commissioner or an authorised officer from exercising a function under this Division, or
  - (b) hinders or obstructs the Chief Commissioner or an authorised officer in the exercise of such a function, or
  - (c) without reasonable excuse, refuses or fails to comply with a requirement made by or to answer a question of the Chief Commissioner or an authorised officer asked in accordance with section 40,

is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or an authorised officer onto premises unless it is established that, at the material time, the Chief Commissioner or the authorised officer:
  - (a) identified himself or herself as the Chief Commissioner or an authorised officer, and
  - (b) warned the person that a failure to comply with the requirement may constitute an offence.

Section 43      First Home Owner Grant Act 2000 No 21

Part 3            Administration

Division 2       Investigations

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**43    Defence of reasonable compliance**

A person is not guilty of an offence under this Division if the court hearing the charge is satisfied:

- (a)    that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or
- (b)    that the defendant complied with the requirement to the extent of his or her ability to do so.

## **Part 4 Miscellaneous**

### **44 Knowingly giving false or misleading information**

A person must not:

- (a) make a statement, orally or in writing, to an authorised officer, or
- (b) give information, orally or in writing, to an authorised officer, knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **45 Power to require repayment and impose penalty**

- (1) The Chief Commissioner may, by written notice, require an applicant (or former applicant) for a first home owner grant to repay an amount paid on the application if:
  - (a) the amount was paid in error, or
  - (b) the Chief Commissioner reverses the decision under which the amount was paid for any other reason.
- (2) If, as a result of an applicant's dishonesty, an amount is paid by way of a first home owner grant, the Chief Commissioner may, by the notice in which repayment is required or a separate notice, impose a penalty not exceeding the amount the applicant is required to repay.
- (3) If an applicant (or former applicant) for a first home owner grant fails to make a repayment required under this section or the conditions of the grant, the Chief Commissioner may, by written notice, impose a penalty not exceeding the amount the applicant is required to repay.
- (4) If an amount is paid in error on an application for a first home owner grant to a third party, the Chief Commissioner may, by written notice, require the third party to repay the amount to the Chief Commissioner.

### **46 Power to recover certain amounts**

- (1) This section applies to the following amounts:
  - (a) an amount that an applicant (or former applicant) for a first home owner grant is required to repay under the conditions of the grant or by requirement of the Chief Commissioner under this Act,

- (b) the amount of a penalty imposed on an applicant (or former applicant) for a first home owner grant,
  - (c) the amount that a third party is required to repay under section 45 (4).
- (2) An applicant (or former applicant) for a first home owner grant is liable to pay an amount referred to in subsection (1) (a) or (b) to the Chief Commissioner and, if there are 2 or more applicants, the liability is joint and several.
  - (3) If an applicant (or former applicant) who is liable to pay an amount referred to in subsection (1) (a) or (b) has an interest in the home for which the first home owner grant was sought, the liability is a charge on the applicant's interest in that home.
  - (4) A person referred to in subsection (1) (c) is liable to pay an amount referred to in that paragraph to the Chief Commissioner.
  - (5) The Chief Commissioner may recover an amount to which this section applies as a debt due to the Crown.
  - (6) The Chief Commissioner may enter into an arrangement (which may include provision for the payment of interest) for payment of a liability outstanding under this section by instalments.
  - (7) The Chief Commissioner may write off the whole or part of a liability outstanding under this section if satisfied that action, or further action, to recover the amount outstanding is impracticable or unwarranted.

#### **47 Protection of confidential information**

- (1) In this section:
  - duty of confidentiality*—a person is subject to a duty of confidentiality if:
    - (a) the person is, or has been, engaged in work related to the administration of this Act, or
    - (b) the person has obtained access to protected information (directly or indirectly) from a person who is, or has been, engaged in work related to the administration of this Act.

*protected information* means information obtained in the course of work related to the administration of this Act about an applicant for a first home owner grant or about the applicant's spouse.

- (2) A person who is subject to a duty of confidentiality must not disclose protected information except as permitted by subsection (3).

Maximum penalty: 100 penalty units.

- (3) Protected information may be disclosed:
- (a) at the request or with the consent of the person to whom the information relates or a person acting on that person's behalf, or
  - (b) in connection with the administration of:
    - (i) this Act or a corresponding law, or
    - (ii) a taxation law of the Commonwealth or a State or Territory, or
  - (c) for the purposes of legal proceedings, or
  - (d) as authorised under the regulations.

#### **48 Evidence**

- (1) A certificate signed by the Chief Commissioner stating that a first home owner grant was paid to a person named in the certificate on a specified date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the Chief Commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- (3) A copy of a notice issued by the Chief Commissioner requiring the payment or repayment of a specified amount is admissible in legal proceedings as evidence:
  - (a) that the requirement was made, and
  - (b) that the amount specified in the notice was outstanding at the date of the notice.

#### **49 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence against this Act or the regulations may be commenced at any time within 2 years after the date on which it is alleged the offence was committed.

**50 Standing appropriation**

The Consolidated Fund is appropriated to the extent necessary for the payment of grants under this Act.

**51 Personal liability**

- (1) This section applies to a person who is:
  - (a) the Chief Commissioner or an authorised officer, or
  - (b) a public servant involved in the administration of this Act, or
  - (c) a person to whom the Chief Commissioner has delegated functions under this Act.
- (2) A matter or thing done or omitted to be done by a person to whom this section applies does not, if the matter or thing was done or omitted in good faith for the purpose of administering this Act, subject the person so acting personally to any action, liability, claim or demand.

**52 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**53 Amendment of Stamp Duties Act 1920 No 47**

The *Stamp Duties Act 1920* is amended by inserting after section 98A

(1) (z):

, or

- (za) a receipt by a financial institution comprising a direct credit of a payment under the *First Home Owner Grant Act 2000* or under a corresponding law, being:
  - (i) a payment of a grant by the Chief Commissioner (or corresponding officer or authority under a corresponding law) to an account as directed by the applicant for the grant, or
  - (ii) a payment of a grant by the Chief Commissioner to a party to an administration agreement entered into by the Chief Commissioner under section 32 of that Act, or

- (iii) a payment by such a party to an account as directed by the applicant for the grant.

**54 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

[Minister's second reading speech made in—

Legislative Assembly on 4 April 2000

Legislative Council on 24 May 2000]