

[Act 2000 No 21]



New South Wales

First Home Owner Grant Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to set up the first home owner grant scheme for New South Wales, under the general administration of the Chief Commissioner of State Revenue. The scheme is designed to encourage and assist home ownership and to offset the effect of the Goods and Services Tax (GST) on first home buyers. The core principles are as agreed to by the Commonwealth, States and Territories in the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations in June 1999.

The Bill provides for a maximum payment of \$7000 to first home owners on and after 1 July 2000, if they satisfy certain criteria and other requirements set out in the Bill and described below.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2000.

Clause 3 contains definitions used in the proposed Act.

Clause 4 defines a “home” as a building (affixed to land) that may lawfully be used as a place of residence and is suitable for use as a place of residence. A “building” is defined in the proposed Act as including a part of a building.

Clause 5 defines who is an “owner” of a home, by reference to whether a person has a “relevant interest” in land on which the home is built. Subclause (2) provides a list of relevant interests, which includes the usual interest that a person has as owner of land. Subclause (3) excludes certain interests, and subclause (6) provides that an interest held by a guardian for a person under a legal disability is to be regarded as that person’s interest. Subclause (4) permits the Chief Commissioner of State Revenue to recognise certain interests as relevant interests, and subclause (5) enables the Chief Commissioner to impose conditions on payment of a grant in these circumstances. Subclause (7) contains definitions of “unit” and “unit trust scheme”.

Clause 6 deals with who is a “spouse” for the purposes of the Act. Subclause (1) defines “spouses” as persons legally married or living together as a couple in a de facto relationship. Subclause (2) enables the Chief Commissioner to determine that a person is not a spouse if they are not cohabiting together though they are legally married.

Part 2 First home owner grant

This Part deals with the general entitlement to the first home owner grant, the eligibility criteria to be satisfied by applicants, what constitutes an eligible transaction, how an application is to be made, and how an application is to be dealt with. The Part also deals with objections to and reviews of decisions of the Chief Commissioner.

Division 1 Entitlement to grant

Clause 7 deals with the general entitlement to a grant. Subclause (1) provides that a grant is payable on application if the applicant (or each applicant) satisfies the eligibility criteria, the transaction involved is an “eligible transaction”, and the transaction has been completed. Subclauses (2) and (3) refer to the circumstances in which a grant can be paid if an applicant does not satisfy all the eligibility criteria or if the relevant transaction has not been completed. Subclause (4) provides that only one grant is payable for the same transaction.

Division 2 Eligibility criteria (applicants)

Clause 8 (criterion 1) provides that an applicant must be a natural person.

Clause 9 (criterion 2) provides that the applicant, or at least one of two or more applicants, must be an Australian citizen or a permanent resident in Australia.

Clause 10 (criterion 3) provides that the applicant (or the applicant’s spouse) must not have received an earlier grant under the proposed Act or the corresponding law of another State or Territory.

Clause 11 (criterion 4) provides that the applicant (or the applicant’s spouse) must not have had a relevant interest in residential property anywhere in Australia before 1 July 2000. Additionally, the applicant (or the applicant’s spouse) must not have had a relevant interest in residential property anywhere in Australia used as the residence of the applicant (or the applicant’s spouse) on or after 1 July 2000 and before the date of the application, but this requirement does not apply to the property that is the subject of the current application.

Clause 12 (criterion 5) provides that the applicant, or at least one of two or more applicants, must occupy the home 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.

Division 3 Eligible transactions

Clause 13 defines an “eligible transaction”, the “commencement date” of an eligible transaction and when it is “completed”, and what constitutes the “consideration” for an eligible transaction.

The clause defines an eligible transaction as:

- (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 that date involving the building of a home, or
- (c) the building of a home in New South Wales by an owner builder where the building work commences on or after that date.

Division 4 Application for grant

Clause 14 provides for the manner of making an application for a grant. An application must be made within the period starting with the commencement date of the eligible transaction and ending 12 months after completion of the transaction. However, the Chief Commissioner will have a discretion to allow an application to be made before or after that period.

Clause 15 requires all interested persons to be parties to an application. An “interested person” is a person who will be an owner of the relevant home, unless excluded by the regulations.

Clause 16 authorises an application to be made by a guardian on behalf of a person under a legal disability.

Division 5 Decision on application

Clause 17 requires the Chief Commissioner to authorise payment of a grant to an applicant if satisfied that the grant is payable.

Clause 18 provides that the amount of grant is the lesser of:

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

Clause 19 provides for payment of the grant by electronic funds transfer, cheque or any other appropriate way. The grant may be paid towards a liability for State taxes, if the applicant so requests and the Chief Commissioner agrees.

Clause 20 empowers the Chief Commissioner to authorise payment of a grant in advance of completion of the relevant eligible transaction or in advance of compliance with the residence requirement. Such a payment is made on statutory conditions that require repayment if the transaction is not completed or the residence requirement is not satisfied within a specified period.

Clause 21 authorises the Chief Commissioner to authorise payment of a grant on conditions determined by the Chief Commissioner.

Clause 22 provides that an application for a grant does not lapse with the death of an applicant.

Clause 23 permits the Chief Commissioner to correct a decision on an application for a grant. Such a correction cannot be made more than 5 years after the decision was made.

Clause 24 requires the Chief Commissioner to notify the applicant of a decision to refuse an application or to correct a decision on an application, and to give reasons.

Division 6 Objections and reviews

Subdivision 1 Objections

Clause 25 enables an applicant dissatisfied with the Chief Commissioner's decision on an application for a grant to lodge an objection with the Chief Commissioner.

Clause 26 provides for the Chief Commissioner to confirm, vary or reverse the original decision following an objection.

Clause 27 provides that the Chief Commissioner is taken to have confirmed the original decision if the objection has not been determined within 90 days.

Subdivision 2 Reviews

Clause 28 permits an objector who is dissatisfied with the Chief Commissioner's determination of the objection to apply to the Administrative Decisions Tribunal for a review of the original decision.

Clause 29 authorises the Administrative Decisions Tribunal to confirm, vary or reverse the original decision, and make further orders as to costs or otherwise.

Part 3 Administration

Division 1 Administration generally

Clause 30 provides that the Chief Commissioner is responsible to the Minister for the administration of the scheme.

Clause 31 authorises the Chief Commissioner to delegate functions related to the administration of the scheme.

Clause 32 empowers the Chief Commissioner to enter into administration agreements with financial institutions or other persons for exercising functions related to the administration of the scheme.

Clause 33 provides for the appointment of authorised officers for the proposed Act. Persons who are authorised officers under the *Taxation Administration Act 1996* are automatically authorised officers for the purposes of the proposed Act.

Division 2 Investigations

Clause 34 defines “authorised investigations”. The term includes an investigation as to whether an application under the proposed Act or the corresponding law of another State or Territory for a grant has been properly made, and other investigations for the purposes of the proposed Act or such a corresponding law.

Clause 35 authorises the Chief Commissioner to carry out an authorised investigation for the purposes of the proposed Act or a corresponding law of another State or Territory, and to delegate powers of investigation to the appropriate authority under such a corresponding law.

Clause 36 empowers the Chief Commissioner to exercise certain powers in connection with an authorised investigation. These powers can require a person to give written information, to attend to answer questions, and to produce documents and records.

Clause 37 gives the Chief Commissioner access to public documents without payment of fees.

Clause 38 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes of it.

Clause 39 empowers the Chief Commissioner to enter premises where the Chief Commissioner has reason to believe or suspect that there are records relevant to the administration of the proposed Act. Entry cannot be made to residential premises without either consent or a search warrant.

Clause 40 provides that a person who has entered premises under the Division may require records to be produced, ask questions, and require reasonable assistance and facilities to be provided.

Clause 41 deals with applications for search warrants for the purposes of the Division.

Clause 42 makes it an offence to hinder the Chief Commissioner or an authorised officer from exercising functions under the Division or to refuse or fail to comply with a requirement made, or to answer a question asked, in accordance with proposed section 40.

Clause 43 provides a defence for a prosecution of an offence under the Division if the court is satisfied that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement concerned or that the defendant complied with the requirement to the extent of his or her ability to do so.

Part 4 Miscellaneous

Clause 44 makes it an offence to make a statement or give information to an authorised officer knowing it to be false or misleading in a material particular.

Clause 45 empowers the Chief Commissioner to require an applicant to repay a grant if it was paid in error or if the Chief Commissioner reverses the decision to pay the grant. If dishonesty was involved, or if a person fails to make a repayment, the Chief Commissioner is authorised to impose a penalty.

Clause 46 authorises the Chief Commissioner to recover amounts required to be repaid or the amount of a penalty.

Clause 47 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.

Clause 48 enables evidence to be given by certificate concerning the payment of a grant and the imposition of a penalty.

Clause 49 provides for the manner in which proceedings for an offence against the proposed Act are to be taken.

Clause 50 effects a standing appropriation of the Consolidated Fund for the payment of grants.

Clause 51 protects persons involved in the administration of the proposed Act from personal liability.

Clause 52 enables regulations to be made for the purposes of the proposed Act.

Clause 53 amends the *Stamp Duties Act 1920* to exempt the payment of grants from liability to financial institutions duty.

Clause 54 provides that the proposed Act is to be reviewed as soon as possible after the period of 5 years after the proposed Act is assented to. A report on the outcome of the review is to be tabled in both Houses of Parliament.