

# First Home Owner Grant Act 2000 No 21

[2000-21]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)

### Authorisation

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New South Wales

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# First Home Owner Grant Act 2000 No 21



New South Wales

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.

## 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** has the same meaning as in the *Australian Citizenship Act 2007* 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).

**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 cap**—see section 13A.

**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.

**multiple occupancy contract**—see section 6A.

**multiple occupancy land**—see section 6B.

**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:

- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth, or
- (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

**property** means:

- (a) a home, or
- (b) land, or
- (c) a relevant interest in land.

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

**residence requirement**—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.

**terms contract** means a contract for the sale or purchase of land under which the purchaser:

- (a) is obliged to make 2 or more payments to the vendor after the execution of the contract and before becoming entitled to a conveyance or transfer of the land, and
- (b) is entitled to possession or occupation of the land before becoming entitled to a conveyance or transfer of the land.

**total value** of a transaction—see section 13B.

#### 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,
  - (e1) an interest as purchaser of an estate in fee simple under a terms contract,
  - (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.
- (3) Subject to sections 6C and 6D:
- (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), (5) (Repealed)
- (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, on the commencement date of the eligible transaction:
  - (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) A person to whom an applicant for a first home owner grant is legally married is not to be regarded as the applicant's spouse if the Chief Commissioner is satisfied that:
  - (a) the applicant was not cohabiting with the person on the commencement date of the eligible transaction, and
  - (b) at the time of deciding the application, the applicant is not cohabiting with the person and has no intention of resuming cohabitation.

### 6A Multiple occupancy contract

- (1) For the purposes of this Act:
  - (a) a contract made on or after 1 July 2002 for the purchase of a home is a **multiple occupancy contract** if 2 or more homes are purchased under the contract and the homes are on the same parcel of land, and
  - (b) a comprehensive home building contract made on or after 1 July 2002 is a **multiple occupancy contract** if 2 or more homes are to be built under the contract and the homes are on the same parcel of land.
- (2) The provisions of this Act apply in respect of a multiple occupancy contract as if a

separate contract had been made in respect of each home purchased or built under the contract that is an exclusive occupancy.

- (3) Accordingly, each of those contracts may, subject to the requirements of section 13, be treated as a separate eligible transaction under this Act and section 7 (4) does not prevent the payment of a grant in respect of each such eligible transaction.
- (4) A home is an **exclusive occupancy** only if the Chief Commissioner is satisfied that the purchaser of the home or the party to the contract for whom the home is built is, on the completion of the contract, entitled to occupy that home as a place of residence to the exclusion of the persons who purchase the other homes, or for whom the other homes are built, under the contract.

#### **6B Multiple occupancy land**

- (1) For the purposes of this Act, a parcel of land is **multiple occupancy land** if there are 2 or more homes, built or being built, on the parcel.
- (2) The provisions of this Act apply in respect of the purchase or building of a home on multiple occupancy land as if the home purchased or built is an exclusive occupancy.
- (3) A home is an **exclusive occupancy** only if the Chief Commissioner is satisfied that the persons who occupy the home as a place of residence are entitled to do so to the exclusion of the persons who occupy the other home or homes on the parcel of land.

#### **6C Building of home on land owned by another**

- (1) If a person enters into a comprehensive building contract to build, or builds or has built, a free-standing home on land in which the person does not have a relevant interest, the provisions of this Act apply in respect of the building of the free-standing home as if the person did have such a relevant interest.
- (2) If a person enters into a comprehensive building contract to build, or builds or has built, at the person's own expense, an attached home on land in which the person does not have a relevant interest, the provisions of this Act apply in respect of the building of the attached home as if the person did have such a relevant interest.
- (3) Accordingly, a person may apply for a first home owner grant in respect of the building of such an attached home or free-standing home.
- (4) This section applies in respect of the building of a home only if the owner of the estate in fee simple in the land on which the home is built has consented to the occupation of the home by the applicant for the first home owner grant on completion of the home or the applicant has a right, under a lease, licence or other arrangement, to occupy the home on completion.
- (5) In this section:

**attached home** means a home which includes a kitchen, a bathroom, a living area and a bedroom or a combined bedroom living area and which is part of, or connected to, a building that contains another home.

**free-standing home** means a home that is not part of, or connected to, a building that contains another home.

#### **6D Purchase of manufactured home**

- (1) If a person purchases a manufactured home and intends to use it as a place of residence on land which the person has a right to occupy under a lease, licence or other arrangement but in which the person does not have a relevant interest:
  - (a) this Act applies as if the person had a relevant interest in the land and 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 manufactured home, and
  - (c) the transaction is taken to be completed when the manufactured home is ready for occupation as a place of residence on land that the person has a right to occupy.
- (2) In this section:

**manufactured home** has the same meaning as it has in the [Local Government Act 1993](#).

## **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.
- (1A) If the first home owner grant cap applies to the eligible transaction for which the grant is sought, a first home owner grant is payable in respect of the eligible transaction only if the total value of the transaction does not exceed the amount of the first home owner grant cap.

- (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 8A (2), 9 (2) or 12 (2).
- (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.

#### **8A Criterion 1A—Applicant to be at least 18 years of age**

- (1) An applicant for a first home owner grant must be at least 18 years of age.
- (2) The Chief Commissioner may exempt an applicant from the requirement to be at least 18 years of age if the Chief Commissioner is satisfied that:
  - (a) the home to which the application relates will be occupied by the applicant as his or her principal place of residence within 12 months after completion of the eligible transaction or a longer period approved by the Chief Commissioner, and
  - (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility for or entitlement to a first home owner grant.

### **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 on the commencement date of the eligible transaction.
- (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, together with any penalty payable under section 45.

**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 also ineligible if the applicant or the applicant’s spouse has, at any time before the commencement date of the eligible transaction to which the application relates:
- (a) held a relevant interest in residential property in New South Wales or 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, and
  - (b) occupied the property as a place of residence for a continuous period of at least 6 months.

**12 Criterion 5—Residence requirement**

- (1) An applicant for a first home owner grant must:
- (a) commence occupation of 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 the period approved by the Chief Commissioner under this section, and
  - (b) occupy the home as a principal place of residence for a continuous period of at least 6 months or the period approved by the Chief Commissioner under this section.
- (2) This requirement is referred to in this Act as the ***residence requirement***.
- (3) The Chief Commissioner may, if satisfied there are good reasons to do so, do either or both of the following:
- (a) approve the commencement of occupation by the applicant of the home to which

the application relates as a principal place of residence more than 12 months after completion of the eligible transaction,

- (b) approve the occupation of the home as a principal place of residence for a period of less than 6 months.
- (4) The Chief Commissioner may, if satisfied there are good reasons to do so, exempt an applicant from the residence requirement.
- (5) An approval or exemption under this section may be given by the Chief Commissioner at any time, even if the period of 12 months after completion of the eligible transaction has already expired or the applicant's occupation of the home as a principal place of residence has already ceased.
- (6) 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:
    - (i) the purchaser becomes entitled to possession of the home under the contract, and
    - (ii) except in the case of a terms contract, if the purchaser acquires an interest in land under the contract that is registrable under a law of the State—the purchaser’s interest is registered under that law, 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).

### **13A First home owner grant cap**

- (1) A first home owner grant cap applies to any eligible transaction with a commencement date on or after 1 January 2010.

**Note—**

The first home owner grant cap does not apply to an eligible transaction that qualifies for the first home owner boost for new homes or established homes. The first home owner boost is available for eligible transactions until 31 December 2009.

- (2) For the purposes of this Act, the amount of the first home owner grant cap is:
  - (a) \$750,000, or
  - (b) if another amount is prescribed by the regulations for the purposes of this section—that other amount.
- (3) The question of whether the total value of a transaction exceeds the amount of the first home owner grant cap is determined by reference to the total value of the transaction as at:
  - (a) in the case of a contract—the commencement date, or
  - (b) in the case of the building of a home by an owner builder—the date the transaction is completed.

**Note—**

Section 20 authorises the grant to be paid before completion of an eligible transaction if the Chief Commissioner considers it appropriate.

- (4) If another amount for the first home owner grant cap is prescribed, the regulations may include provisions of a savings or transitional nature as a consequence of the change to the amount.

### **13B Calculation of total value of transaction for purposes of first home owner grant cap**

- (1) For the purposes of this Act, the **total value** of a transaction is:
  - (a) in the case of a contract for the purchase of a home—the greater of the following:
    - (i) the consideration for the eligible transaction,
    - (ii) the unencumbered value, at the commencement date, of the property the subject of the transaction, or
  - (b) in the case of a comprehensive home building contract—the amount calculated by

adding together:

- (i) the consideration for the eligible transaction, and
  - (ii) the value, at the commencement date, of the relevant interest in the land on which the home is to be built, or
- (c) in the case of the building of a home by an owner builder—the amount calculated by adding together:
- (i) the unencumbered value, at the date the transaction is completed, of the home, and
  - (ii) the value, at the date the transaction is completed, of the relevant interest in the land on which the home is built.
- (2) The **value of the relevant interest in land** on which a home is to be built is the greater of the following:
- (a) the consideration paid or payable for the interest,
  - (b) the unencumbered value of the interest.
- (3) The **unencumbered value** of the property is the value of the property determined without regard to:
- (a) any encumbrance to which the property is subject, whether contingently or otherwise, or
  - (b) any arrangement that results in the reduction of the value of the property, if the parties to the arrangement are not dealing with each other at arm's length, or
  - (c) any scheme or arrangement that, in the opinion of the Chief Commissioner, was entered into, made or carried out by a party to the scheme or arrangement for the sole or dominant purpose of reducing the value of the property, or
  - (d) if the property is held by a person on trust as guardian for another person who is under a legal disability—any liabilities of the trust, including the liability to indemnify the trustee.
- (4) For the purposes of subsection (3) (c), the Chief Commissioner may have regard to:
- (a) the duration of the scheme or arrangement before the commencement date of the transaction to which the property relates, and
  - (b) whether there is any commercial efficacy to the making of the scheme or arrangement other than to reduce the value of the property, and
  - (c) any other matters the Chief Commissioner considers relevant.

## 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 the completion of the eligible transaction to which the application relates, an owner of the relevant home but does not include the following persons:
  - (a) in a case to which section 6C or 6D applies—a person who is the owner of the estate in fee simple in the land on which the home is built or situated,
  - (b) in the case of a home being purchased or built under a multiple occupancy contract, a purchaser of another home under the contract or party to the contract for whom another home is being built under the contract, and who does not, on the completion of the contract, acquire any entitlement to occupy the home that is

the subject of the application,

- (c) in the case of a contract to purchase or build a home on multiple occupancy land, a person who has an exclusive occupancy of another home on the multiple occupancy land and who does not, on completion of the contract, acquire any entitlement to occupy the home that is the subject of the application,
- (d) the New South Wales Land and Housing Corporation,
- (e) a person whose ownership share in the relevant home does not exceed 5% (a ***small interest holder***), but only if, in a case where there is more than one small interest holder, the total ownership share of all small interest holders in the relevant home does not exceed 5%.

#### **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**

- (1) The amount of the first home owner grant is \$7,000 plus the following amounts (if applicable):
  - (a) if the eligible transaction concerned qualifies for the first home owner boost for new homes, the new homes boost amount,
  - (b) if the eligible transaction concerned qualifies for the first home owner boost for established homes, the established homes boost amount,
  - (c) if the eligible transaction concerned qualifies for the NSW new home buyers supplement, an additional \$3,000.
- (2) The maximum amount of the first home owner grant is the consideration for the eligible transaction. Accordingly, if the amount calculated under subsection (1)

exceeds the consideration for the eligible transaction, the amount of the first home owner grant is the consideration for the eligible transaction.

(3) In this section:

**established homes boost amount** means:

- (a) if the commencement date of the eligible transaction is on or before 30 September 2009, \$7,000, or
- (b) if the commencement date of the eligible transaction is after 30 September 2009 and on or before 31 December 2009, \$3,500.

**new homes boost amount** means:

- (a) if the commencement date of the eligible transaction is on or before 30 September 2009, \$14,000, or
- (b) if the commencement date of the eligible transaction is after 30 September 2009 and on or before 31 December 2009, \$7,000.

#### **18A First home owner boost for new homes**

- (1) For the purposes of this Act, an eligible transaction qualifies for the first home owner boost for new homes if it qualifies for the first home owner boost for new homes under this section.
- (2) An eligible transaction that is a contract for the purchase of a new home (other than a contract for an “off-the-plan” purchase of a new home) qualifies for the first home owner boost for new homes if the contract is made on or after 14 October 2008 and on or before 31 December 2009.
- (3) An eligible transaction that is a contract for an “off-the-plan” purchase of a new home qualifies for the first home owner boost for new homes if:
  - (a) the contract is made on or after 14 October 2008 and on or before 31 December 2009, and
  - (b) the contract states that the eligible transaction must be completed before the required completion date or, in any other case, the eligible transaction is completed before the required completion date or by such later date as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (4) An eligible transaction that is a comprehensive home building contract to have a home built qualifies for the first home owner boost for new homes if:
  - (a) the contract is made on or after 14 October 2008 and on or before 31 December 2009, and

- (b) the laying of the foundations for the home begins within 26 weeks after the contract is made, or any longer period the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties, and
  - (c) the building work is completed within 18 months after the date the laying of the foundations for the home begins, or is completed within such longer period as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (5) An eligible transaction that is the building of a home by an owner builder qualifies for the first home owner boost for new homes if:
- (a) the commencement date of the eligible transaction is on or after 14 October 2008 and on or before 31 December 2009, and
  - (b) the transaction is completed within 18 months of the commencement date, or is completed within such longer period as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the owner builder.
- (6) However, an eligible transaction that is a contract does not qualify for the first home owner boost for new homes if the Chief Commissioner is satisfied that:
- (a) the contract replaces a contract made before 14 October 2008, and
  - (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.
- (7) In this section:

**contract for an “off-the-plan” purchase**, of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of subdivision of land.

**new home** means a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises.

**required completion date** means:

- (a) for a contract made on or after 14 October 2008 and on or before 30 June 2009, 1 January 2011, or
- (b) for a contract made after 30 June 2009 and on or before 30 September 2009, 31 March 2011, or
- (c) for a contract made after 30 September 2009 and on or before 31 December 2009, 30 June 2011.

- (8) For the purposes of this section, a home is a **substantially renovated home** if:

- (a) the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40-75 (1) (b) of that Act, and
  - (b) the home, as renovated, has not been previously occupied or sold as a place of residence.
- (9) For the purposes of this section, a home is a **home built to replace demolished premises** if:
- (a) for an eligible transaction that is a contract for the purchase of a home—the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40-75 (1) (c) of that Act, and
  - (b) for an eligible transaction that is a comprehensive home building contract to have a home built or the building of a home by an owner builder—the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, new residential premises within the meaning of section 40-75 (1) (c) of that Act, and
  - (c) the home, as built to replace the demolished premises, has not been previously occupied or sold as a place of residence, and
  - (d) the owner of the home did not occupy the demolished premises as a place of residence before they were demolished.

### **18B First home owner boost for established homes**

- (1) For the purposes of this Act, an eligible transaction qualifies for the first home owner boost for established homes if:
- (a) the eligible transaction is a contract for the purchase of a home, and
  - (b) the home is not a new home (within the meaning of section 18A), and
  - (c) the contract is made on or after 14 October 2008 and on or before 31 December 2009.
- (2) However, an eligible transaction that is a contract for the purchase of a home does not qualify for the first home owner boost for established homes if the Chief Commissioner is satisfied that:
- (a) the contract replaces a contract made before 14 October 2008, and
  - (b) the replaced contract was a contract for the purchase of the same home.

**18C NSW new home buyers supplement**

- (1) For the purposes of this Act, an eligible transaction qualifies for the NSW new home buyers supplement if it qualifies for the NSW new home buyers supplement under this section.
- (2) An eligible transaction that is a contract for the purchase of a new home (other than a contract for an “off-the-plan” purchase of a new home) qualifies for the NSW new home buyers supplement if the contract is made on or after 11 November 2008 and on or before 30 June 2010.
- (3) An eligible transaction that is a contract for an “off-the-plan” purchase of a new home qualifies for the NSW new home buyers supplement if:
  - (a) the contract is made on or after 11 November 2008 and on or before 30 June 2010, and
  - (b) the contract states that the eligible transaction must be completed on or before the required completion date or, in any other case, the eligible transaction is completed on or before the required completion date or by such later date as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (4) An eligible transaction that is a comprehensive home building contract to have a home built qualifies for the NSW new home buyers supplement if:
  - (a) the contract is made on or after 11 November 2008 and on or before 30 June 2010, and
  - (b) the laying of the foundations for the home begins within 26 weeks after the contract is made, or any longer period the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties, and
  - (c) the building work is completed within 18 months after the date the laying of the foundations for the home begins, or is completed within such longer period as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (5) An eligible transaction that is the building of a home by an owner builder qualifies for the NSW new home buyers supplement if:
  - (a) the commencement date of the eligible transaction is on or after 11 November 2008 and on or before 30 June 2010, and
  - (b) the transaction is completed within 18 months of the commencement date, or is completed within such longer period as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the owner builder.



- (6) However, an eligible transaction that is a contract does not qualify for the NSW new home buyers supplement if the Chief Commissioner is satisfied that:
- (a) the contract replaces a contract made before 11 November 2008, and
  - (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.
- (7) In this section:

**contract for an “off-the-plan” purchase**, of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of subdivision of land.

**new home** has the same meaning as it has in section 18A.

**required completion date** means:

- (a) for a contract made on or after 11 November 2008 and on or before 10 November 2009, 10 May 2011, or
- (b) for a contract made after 10 November 2009 and on or before 30 June 2010, 31 December 2011.

## **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 for a continuous period of at least 6 months

commencing 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.
- (2A) If the first home owner grant is paid in anticipation of compliance with the first home owner grant cap, the payment is made on condition that, if the applicant becomes aware that the total value of the transaction exceeds or will exceed the first home owner grant cap, the applicant must within 14 days after the day on which the applicant becomes so aware:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) repay the amount of the grant.
- (2B) The first home owner grant is paid in anticipation of compliance with the first home owner grant cap if the grant is paid in respect of an eligible transaction that involves the building of a home by an owner builder before completion of the eligible transaction and the first home owner grant cap applies to the eligible transaction.
- (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 or a part of 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.
- (3) The 5-year time limit on varying or reversing a decision does not apply to a decision that was made on the basis of false or misleading information provided by an

applicant for a first home owner grant, or by a person on behalf of the applicant.

## **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 (or former applicant) for a first home owner grant who is dissatisfied with any of the following decisions of the Chief Commissioner may lodge a written objection to the decision with the Chief Commissioner:
  - (a) a decision on the person's application for a first home owner grant (including a decision to vary or reverse an earlier decision made independently of an objection under this Act),
  - (b) a decision to require the person to repay an amount under section 45,
  - (c) a decision to require the person to pay a penalty under section 45.
- (1A) A person who is dissatisfied with a decision of the Chief Commissioner to require the person, instead of a grant recipient, to pay a recoverable amount under section 46A may lodge a written objection to the decision 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 (Repealed)**

## **Subdivision 2 Reviews**

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

- (1) An objector may apply to the Administrative Decisions Tribunal for a review of the decision (the **original decision**) to which the objection was made if:
  - (a) the objector is dissatisfied with the Chief Commissioner's determination of the objection, or
  - (b) 90 days have passed since the objection was lodged with the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (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) following a determination by the Chief Commissioner of an objection—must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
  - (b) following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period—may be made at any time after the end of that period (but must be made as required by paragraph (a) following a subsequent determination of the objection by the Chief Commissioner).
- (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.



### **36A Power to require valuation**

- (1) For the purposes of determining the total value of a transaction, the Chief Commissioner may do any one or more of the following:
  - (a) require, by written notice, an applicant (or former applicant) for a first home owner grant to provide to the Chief Commissioner:
    - (i) a valuation by a registered valuer of any property or consideration, or
    - (ii) other evidence of the value of the property or consideration the Chief Commissioner considers appropriate,
  - (b) have a valuation made of any property or consideration,
  - (c) adopt any available valuation of the property or consideration by a registered valuer (or other person the Chief Commissioner considers suitably qualified).
- (2) In this section, a **registered valuer** has the same meaning as it has in the [Valuers Act 2003](#).

### **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.
- (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 under this Act may apply to an authorised officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* for a warrant to search any premises if the Chief Commissioner or the authorised officer under this Act has reasonable grounds to believe that any records are to be found there, being records to which the Chief Commissioner or authorised officer under this Act would have access if they were kept on premises to which the Chief Commissioner or authorised officer under this Act has access.
- (2) An authorised officer under the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 under this Act 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) (Repealed)

#### **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.

### **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**

- (1) 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.

- (2) A person must not, in or in relation to an application for a first home owner grant, make a statement or give any information 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.
- (3A) The charge created by subsection (3) gives the Chief Commissioner an interest in the land and, accordingly, the Chief Commissioner may lodge a caveat in respect of the land under the *Real Property Act 1900* to protect that interest.
- (3B) The caveat must be withdrawn when the amount that the applicant is liable to pay has been paid.
- (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.

#### **46A Recovery from third parties**

- (1) The Chief Commissioner may require any of the following persons, instead of the grant recipient, to pay any recoverable amount that is payable but remains unpaid:
  - (a) a person by whom any money is due or accruing or may become due to the grant recipient,
  - (b) a person who holds or may subsequently hold money for or on account of the grant recipient,
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the grant recipient,
  - (d) a person having authority from some other person to pay money to the grant recipient.
- (2) The Chief Commissioner's requirement is to be made by notice in writing.
- (3) A copy of the notice must be served on the grant recipient.
- (4) The amount of money required to be paid to the Chief Commissioner is:
  - (a) if the amount of the money so held or due or authorised to be paid does not exceed the amount payable by the grant recipient to the Chief Commissioner—all the money, or
  - (b) if the amount of the money exceeds the amount so payable—sufficient money to pay the amount so payable.
- (5) The money must be paid to the Chief Commissioner on receipt of the notice, or when the money is held by the person and becomes due to the grant recipient, or by the end of such period (if any) as may be specified by the Chief Commissioner, whichever is the later.
- (6) A person subject to a requirement of the Chief Commissioner under this section must comply with the requirement.

Maximum penalty: 100 penalty units.

- (7) A person who makes a payment in accordance with this section is taken to be acting under the authority of the grant recipient and of all other persons concerned and is indemnified by this section in respect of the payment.
- (8) If, after a person is given a notice under this section by the Chief Commissioner, the whole or a part of the amount is paid by another person, the Chief Commissioner must promptly notify the person to whom the notice is given of the payment and the notice is taken to be amended accordingly.
- (9) In this section:

**grant recipient** means:

- (a) an applicant (or former applicant) for a first home owner grant to whom an amount is paid under this Act, or
- (b) any other person to whom an amount is paid under this Act.

**recoverable amount** means:

- (a) in relation to an applicant (or former applicant) for a first home owner grant, the following amounts:
- (i) an amount that the applicant (or former applicant) is required to repay under the conditions of the grant or by a requirement of the Chief Commissioner under this Act,
- (ii) the amount of any penalty imposed on the applicant (or former applicant) by the Chief Commissioner under this Act, or
- (b) in relation to any other person—an amount the person is required to repay under section 45 (4).

#### **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 the following laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):
- (i) this Act or a corresponding law,
  - (ii) a taxation law of the Commonwealth or a State or Territory,
  - (iii) the *First Home Saver Accounts Act 2008* of the Commonwealth, or
- (c) (Repealed)
- (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 3 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.

## **52A Savings, transitional and other provisions**

Schedule 1 has effect.

## **53 (Repealed)**

## **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.

## Schedule 1 Savings, transitional and other provisions

(Section 52A)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*First Home Owner Grant Amendment Act 2001*

*First Home Owner Grant Amendment Act 2002*

*State Revenue Legislation Further Amendment Act 2003* (to the extent that it amends this Act)

*State Revenue Legislation Further Amendment Act 2005*

*State Revenue Legislation Amendment Act 2008*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*

*State Revenue Legislation Amendment Act 2009*

*State Revenue Legislation Further Amendment Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **First Home Owner Grant Amendment Act 2001**

#### 2 Completion date for eligible transactions

The amendment made to section 13 by the *First Home Owner Grant Amendment Act 2001* extends to eligible transactions entered into before the commencement of that amendment if a first home owner grant has not been paid in respect of the transaction

concerned.

### 3 Applicants to be at least 16 years of age

Section 8A extends to an application under this Act made before the commencement of that section but only if:

- (a) the application was made on or after the day on which the Bill for the *First Home Owner Grant Amendment Act 2001* was first introduced into Parliament (whether or not that Act was enacted in the form of the Bill as introduced), and

**Editorial note—**

Date of introduction: 11.4.2001.

- (b) a first home owner grant had not been paid in respect of the application before the commencement of section 8A.

### 4 Validation of payment of increased grants

The payment of an amount as a first home owner grant before the commencement of section 13A is validated to the extent that the payment would have been valid had section 13A been in force at the time it was made.

## Part 3 Provisions consequent on enactment of *First Home Owner Grant Amendment Act 2002*

### 5 Validation of payment of grants

The payment of an amount as a first home owner grant before the commencement of this clause, and anything done under this Act, is validated to the extent that it would have been valid if this Act (as amended by Schedule 1 [1]-[3] to the *First Home Owner Grant Amendment Act 2002*) had been in force when the payment was made or the thing was done.

## Part 4 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 2003*

### 6 Definition

In this Part:

**amending Act** means the *State Revenue Legislation Further Amendment Act 2003*.

### 7 Some amendments operate from 1 July 2002

- (1) The amendments made to this Act by Schedule 3 [1], [2], [3], [7] and [8] to the amending Act are taken to have operated from 1 July 2002 and, subject to subclause (2), apply from 1 July 2002 in respect of contracts made before, on or after that date.

- (2) The multiple occupancy contract amendments apply only to contracts made on or after 1 July 2002.
- (3) For the purposes of this clause, **the multiple occupancy contract amendments** are:
  - (a) Schedule 3 [3] to the amending Act, and
  - (b) Schedule 3 [1] and [8] to the amending Act, insofar as they relate to multiple occupancy contracts.

#### **8 Criterion 5—residence requirement**

The amendments made to section 12 by Schedule 3 [5] and [6] to the amending Act apply to applications made on or after 1 January 2004.

### **Part 5 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2005](#)**

#### **9 Application of amendments**

- (1) The amendments to this Act made by the [State Revenue Legislation Further Amendment Act 2005](#) in relation to the eligibility criteria for a first home owner grant apply in respect of applications for a first home owner grant that are made on or after the commencement of the amendments.
- (2) The amendment to section 25 made by the [State Revenue Legislation Further Amendment Act 2005](#) applies in respect of decisions made by the Chief Commissioner referred to in that section of which he or she gives notice on or after the commencement of the amendment.

### **Part 6 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2008](#)**

#### **10 Application of amendments**

- (1) An amendment to this Act made by the [State Revenue Legislation Amendment Act 2008](#) applies in relation to applications for the first home owner grant that are made on or after the commencement of that amendment.
- (2) The amendment made to section 49 by the [State Revenue Legislation Amendment Act 2008](#) does not apply in respect of an offence alleged to have been committed before the commencement of that amendment (and section 49, as in force immediately before that amendment, continues to apply in respect of any such offence).

### **Part 7 Provisions consequent on enactment of [State Revenue and](#)**

## Other Legislation Amendment (Budget Measures) Act 2008

### 11 Effective date of amendments

The amendments made to this Act by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* are taken to have effect from 14 October 2008.

### 12 Saving of effect of repealed provisions

The provisions of this Act with regard to special eligible transactions that had effect immediately before their repeal by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* continue to have effect in respect of anything done or omitted to be done before that repeal, as if they had not been repealed.

## Part 8 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2009

### 13 Definition

In this Part:

**amending Act** means the *State Revenue Legislation Further Amendment Act 2009*.

### 14 Eligibility criteria

An amendment made to section 6 or 9 by the amending Act applies in respect of an application for a first home owner grant that is made on or after the commencement of that amendment.

### 15 Time limit on varying or reversing decisions

The amendment made to section 23 by the amending Act extends to a decision made within 5 years before the commencement of that amendment.