

FIRST HOME OWNER GRANT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objectives of the Bill are—

- (a) To encourage and help home ownership, and to offset the effect of the Goods and Services Tax on home ownership, by implementing a scheme for the payment of grants to first home owners in Queensland.
- (b) To introduce appropriate administrative and enforcement provisions to facilitate effective administration of the grant.

Reasons for the Bill

The Intergovernmental Agreement on the Reform of Commonwealth-State Financial Arrangements (IGA), to which Queensland is a party, provides for the introduction of a First Home Owner Grant Scheme (FHOGS) from 1 July 2000, to assist affordability for persons building or buying their first home upon the introduction of the Goods and Services Tax (GST). It involves a one-off payment of \$7,000 to such persons, and is to be administered by the States and Territories at their own cost.

The IGA prescribes the following principles that are to be included in the FHOGS:

- The States and Territories will make legislative provision for the FHOGS from 1 July 2000.
- Eligible applicants will be entitled to \$7000 assistance per application on eligible homes under the FHOGS.
- Assistance will be available directly as a one off payment. If the recipient expressly consents it may be available as an offset against statutory levies and charges or some combination of these.

- Eligible applicants must be natural persons who are Australian citizens or permanent residents who are buying or building their first home in Australia. An applicant's spouse (or de facto) must be included on the application.
- To qualify for assistance, neither the applicant or the applicant's spouse (or de facto) must have previously owned a home, either jointly, separately or with some other person.
- Entering into a binding contract, or commencement of building in the case of owner builders, must have occurred on or after 1 July 2000.
- An eligible home will be a new or established house, home unit, flat or other type of self contained fixed dwelling that meets local planning standards. This will include demountable dwellings if these meet local planning standards.
- An eligible home must be intended to be a principal place of residence and be occupied within a reasonable period. The home must be in the State or Territory where the application is made. Applicants who have entered into a financing mechanism which involves a shared equity arrangement, will be eligible.
- Assistance will not be means tested.
- The relevant State and Territory legislation will contain adequate administrative review and appeal mechanisms, along with provision to prevent abuse of the FHOGS. The States and Territories will cooperate in the exchange of information to identify eligible first homeowners.

Achievement of the Objectives

The *First Home Owner Grant Bill 2000* provides for a first home owner grant scheme to be administered by the Commissioner of Stamp Duties. It involves a grant of \$7000 to be paid to first home owners. The Bill is consistent with the principles contained in the IGA.

Eligibility criteria under the First Home Owner Grant Bill 2000

An applicant for a first home owner grant must satisfy the eligibility criteria in the *First Home Owner Grant Bill 2000* to be entitled to receive a

grant. As required by the IGA, the *First Home Owner Grant Bill 2000* does not contemplate partial claims for a grant. This means that generally all owners of the home, or applicants, must comply with the eligibility criteria. However it may only be necessary for one joint applicant to comply with the Australian citizenship or permanent residence eligibility criteria and the residence eligibility criteria described below.

Natural Person

To qualify for a first home owner grant, all persons acquiring or building the home must be natural persons. This requirement precludes claims for assistance by companies or trustees. To overcome potential anomalies, an exception has been made for claims by trustees for persons with a legal disability, such as age or mental incapacity.

Australian Citizens or Permanent Residents

The IGA requires that all persons who are acquiring or building the home must be Australian citizens or permanent residents to qualify for a FHOGS payment. However, to overcome anomalies where, for example, a married couple jointly purchases a home and one party to a marriage is a recent arrival in Australia, a FHOGS application will be allowed if at least one of the applicants is a resident or citizen. The definitions of Australian citizen and permanent resident in the *First Home Owner Grant Bill 2000* rely on the definitions in the *Australian Citizenship Act 1948* (Cwth) and the *Migration Act 1958* (Cwth) respectively. A minimum period of residency does not apply, so that applicants will be eligible for assistance as soon as they obtain citizenship or permanent residency status.

Applicant or spouse has not previously obtained FHOGS grant

An applicant will not be entitled to a FHOGS grant if they or their spouse have already obtained such a grant. Ensuring that a person is only ever able to receive the grant once is consistent with the underlying objectives of the scheme, which is to pay grants to people buying or building their first home.

This criteria means that people will not be entitled to more than one FHOGS payment in their lifetime. In accordance with Government policy, spouses are defined as members of legally married and de facto couples, including same sex de facto relationships.

Applicant or spouse have not previously had a relevant interest in

residential property

To qualify for a FHOGS payment, the person acquiring the home or the person's spouse must not have had a relevant interest in a residential property prior to 1 July 2000. This requirement means that if an applicant or an applicant's spouse has owned, or had a relevant interest in, any form of residential property prior to 1 July 2000 the person will not qualify for a FHOGS grant, regardless of whether the property was occupied as their principal residence.

In addition, an applicant will be ineligible if they or their spouse have acquired a relevant interest in a home after 1 July 2000. For example, a grant will not be paid if an applicant or their spouse have already acquired or built a principal residence in Australia after 1 July 2000. An applicant will be disqualified in these circumstances whether or not they were Australian citizens or permanent residents at the time that they acquired such a residence. However, an applicant will not be ineligible for a grant under this criterion if they or their spouse acquired a home after 1 July 2000 that they did not occupy as their principal residence, such as a rental or other investment home.

Relevant interests do not include interests that are held subject to a trust, or equitable interests (other than the interest of a person under a legal disability, for whom a guardian holds the relevant interest on trust). This means that generally only legal ownership of a relevant interest in land on which a home is built will disqualify a subsequent claim for a first home owner grant. For example, child beneficiaries under a discretionary family trust that owns the family home will not be precluded from applying for a grant when they subsequently buy or build their own first home. However relevant interests do include certain forms of tenure in addition to an estate in fee simple. This means that, for example, a person who, prior to 1 July 2000, was granted a specified Crown lease or licence over land on which a home was built, would also be disqualified under this criteria.

Example 1:

A person acquires a home on 1 August 2000 and resides in the home as their principal residence. The person does not make a claim for a FHOGS grant. The same person acquires another home on 1 January 2002 and occupies it as a principal place of residence. The person would not be entitled to make a claim for a FHOGS grant even though the person has not previously received a grant, as they have already acquired a relevant

interest in a home after 1 July 2000.

Example 2:

As in example 1, but the first home was not occupied by the person as a principal place of residence and was used for another purpose such as letting to tenants. A FHOGS grant would be payable in respect of the acquisition of the second home (provided the other eligibility criteria were satisfied).

Example 3:

In 2001, and prior to her marriage to Mr X, Mrs X purchased a home in Victoria and received a FHOGS grant. After their marriage, Mr X acquires a home in Queensland on 2 August 2002 and resides in the home. Mrs X also resides in the home, but does not have an interest in the home. Mr X would not be entitled to make a claim for a FHOGS grant, as his spouse, Mrs X, has previously obtained a first home owner grant in Victoria.

Example 4:

In 1999, and prior to her marriage to Mr Y, Mrs Y built a home in Victoria. Mrs Y rented the home to tenants, without ever having lived in the home. Mrs Y sells the Victorian property in June 2000. After their marriage, Mr Y acquires a home in Queensland on 2 August 2002, and resides in the home with Mrs Y. Mr Y would not be entitled to make a claim for a FHOGS grant, as his spouse, Mrs Y, owned a residential property in Australia prior to 1 July 2000.

Example 5:

In 1997, Mr Z purchases a home. His wife, Mrs Z, does not have an interest in the home. The couple later divorce, and the home is sold in July 2000. In July 2001 Mrs Z marries Mr A, and Mr A purchases a home, in which they will both live. Mr A has never previously owned a home. Subject to compliance with other eligibility criteria, as neither Mr A or his spouse Mrs Z owned a residential property prior to 1 July 2000 or a principal residence after that date, a FHOGS grant will be payable.

Residence Requirement

An applicant must occupy the home as their principal residence within one year or, subject to limited exceptions, any grant received must be repaid. This requirement is necessary to prevent abuse of the FHOGS by applicants who seek to obtain a grant when purchasing or building a home for

investment or other non-residential purposes.

General legal principles, rather than a minimum period of occupancy, will be used to determine whether a home has become the principal residence of an applicant. This will involve consideration of all of the facts surrounding the person's occupation of the home, and will mean that grants will not be repaid in cases where, for example, a home becomes the principal residence of a person but intervening circumstances such as illness mean that occupation is not for a significant continuous period. If the home does become the principal residence of the applicant, it will be irrelevant that the home is also used for a commercial purpose. This recognises that a dwelling may become the home of a person even though the person also uses the dwelling for incidental commercial purposes, such as use of a study in the home to operate a home business.

The residence requirement does not apply to the spouse of an applicant, unless the spouse is also a party to the application. The commissioner is also empowered to exempt a joint applicant from compliance with the residence requirement in certain circumstances if at least one of the applicants has resided in the property as required.

Eligible Transactions

In addition to satisfying the eligibility criteria, a first home owner grant will only be paid for certain eligible transactions. In particular, to qualify for a grant, an applicant must have entered into a binding contract to buy or build a home, or, in the case of an owner builder, commenced construction on or after 1 July 2000 (the commencement date for the GST). To overcome identified avoidance opportunities, the contract to buy or build must not be pursuant to an option to purchase or build granted prior to that date, or generally be part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant.

To minimise opportunities for abuse of the scheme, a first home owner grant will only be paid in cases where the person undertaking the transaction will have security of tenure in the home they are acquiring. For example, security of tenure will exist where the applicant has acquired an estate in fee simple in the land upon which the home is situated. However, a range of other cases will arise where a person has effectively acquired a home and security of tenure exists but an estate in fee simple is not held.

To accommodate this, to be considered a home owner it is sufficient that the applicant has a "relevant interest" in the land upon which the home is

located. The *First Home Owner Grant Bill 2000* defines such relevant interests to include instalment purchases, estates for life and Crown leases and licences. Additional relevant interests may be prescribed by regulation.

To qualify, the home must be able to be lawfully used as a residence. For example, the home must meet local planning standards for a self-contained dwelling designed for human habitation (such as houses, flats, strata title apartments and mobile homes covered by the *Mobile Homes Act 1989*). Provided that these requirements are satisfied, a grant may therefore be payable where such homes are attached to other types of premises, such as factories or shops.

Administrative arrangements for the First Home Owner Grant Scheme

The *First Home Owner Grant Bill 2000* contains administrative measures necessary for the efficient operation of the first home owner grant scheme in Queensland.

Applications for a grant

An application must be made within the period starting on the commencement of the eligible transaction and ending 1 year after completion of the eligible transaction. In the case of a contract to purchase, the transaction is completed at settlement, or in cases when the purchaser's title is to be registered, upon such registration. In the case of a contract to build or construction by an owner builder, completion occurs when the building is ready for occupation as a home. The commissioner has discretion to extend the period to lodge an application, or to allow early applications.

Amount of grant

To overcome scope for abuse of the scheme, where the consideration paid for the home is less than \$7000 (the assistance payable under FHOGS), the FHOGS grant payable will be limited to the amount of consideration paid. A FHOGS grant will not be payable where no consideration has been paid, for example where a home is a gift or bequest to the applicant.

Payment of a grant

Under the *First Home Owner Grant Bill 2000*, a grant will be payable if the applicant or applicants comply with the eligibility criteria and the transaction for which the grant is sought is an eligible transaction and has

been completed.

However, the *First Home Owner Grant Bill 2000* also provides the commissioner with power to authorise the payment of a grant before the relevant eligible transaction is completed if the commissioner considers it appropriate. The commissioner also has a power under the Bill to impose reasonable conditions on the payment of a grant. Where the grant is paid before the completion of an eligible transaction the commissioner is likely to impose conditions to protect the scheme. The conditions imposed may include the requirement to notify the commissioner of failure to comply with a condition and to repay the grant within a specified time of the failure.

Similarly, the commissioner also has power to authorise payment of a grant prior to the satisfaction of the residence requirement. If a grant is paid in these circumstances the applicant will be required to notify the commissioner if they fail to take up residence of the home and to repay the grant.

Avoidance measures

To minimise the scope for abuse of the scheme, the commissioner may impose an administrative penalty of up to the amount of the grant received in certain cases. In particular, such a penalty may be imposed where a grant has not been repaid in accordance with a condition of the payment of the grant or a requirement of the Act, or in any case where a grant has been paid in error because of a false or misleading statement by an applicant. The commissioner has discretion to remit this penalty.

The *First Home Owner Grant Bill 2000* also includes provisions to penalise false and misleading statements, and provisions empowering the commissioner to recover FHOGS payments and charge an applicant's land where an applicant fails to comply with conditions of payment or to repay a FHOGS payment respectively.

Review and Investigations

The *First Home Owner Grant Bill 2000* includes appropriate internal review and appeal processes, in addition to powers of investigation and information collection to facilitate the effective administration of the FHOGS and to monitor compliance with the scheme requirements.

Measures to assist compliance include powers to, by written notice, require production of documents, to attend and give evidence and the creation of offences for making false and misleading statements to the

commissioner or giving a document containing a false or misleading statement to the commissioner. In addition, the Bill provides powers to enter and search premises for the purposes of investigations in the context of the scheme. The Bill also includes reciprocal arrangements with other jurisdictions to enable free exchange of information in relation to FHOGS claims.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

The State is responsible for funding the total cost of the scheme (claims and administration costs). Under the IGA, the State has been provided the GST revenue to, amongst other things, fund the First Home Owner Grant Scheme. The cost of the First Home Owner Grant Scheme will form part of the Guarantee Minimum Amount (based on the actual amount of claims paid). Until the GST revenue exceeds the Guarantee Minimum Amount, the Commonwealth will provide additional revenue assistance to the States.

Administration of FHOGS will necessitate new systems to support the scheme, additional staff, client education programs, and changes to operations to include processing of FHOGS applications, compliance activity and debt recovery. However, wherever possible the scheme will utilise existing Office of State Revenue equipment, networks and software support.

Consistency with Fundamental Legislative Principles

The *First Home Owner Grant Bill 2000* raises a number of fundamental legislative principles.

The Bill makes certain rights of individuals dependent on administrative powers by:

- providing the commissioner with certain discretions to make decisions that will assist applicants. These include a power to extend the time for application for a grant or allow applications prior to the purchase or construction of a home, power to exempt one owner of a home from the requirement to live in the home if

the other owner has resided in the home, and the ability to pay the grant to an applicant in advance of compliance with the residence requirement or the completion of the eligible transaction. These provisions are necessary to ensure the effective operation of the scheme. The commissioner's decisions on an application for a grant are open to challenge on objection and appeal.

- providing the commissioner with a power to impose reasonable conditions upon the payment of the grant, power to impose and remit administrative penalties for failure to comply with the conditions, and a discretion to refuse payment in relation to a transaction if the commissioner is of the view that it is part of a scheme to circumvent the eligibility criteria for the FHOGS. The FHOGS involves a \$7000 payment, in some cases prior to applicants fulfilling all eligibility criteria under the scheme. As such, it is anticipated that there will be the potential for abuse of the scheme. These discretions are essential to discourage abuse of the scheme and are consistent with those proposed in other jurisdictions. The commissioner's decisions are also open to challenge on objection and appeal.

A fundamental legislative principle is that legislation must have sufficient regard to the rights and liberties of individuals. The *First Home Owner Grant Bill 2000* confers power to enter premises, and to search for things on these premises. However in the case of residential premises, this may only occur with the occupier's consent or a warrant. In the case of a place of business, this may only occur without a warrant if the place is open for business or for entry. These powers are permitted in connection with the administration of the Act only. These limitations on the power to enter protect individuals from indiscriminate interference with their rights and liberties. It is anticipated that the nature of the grants provided under the Bill will provide an impetus for certain persons to abuse the scheme to profit from the grants. The powers are necessary for the conduct of effective compliance activities.

A fundamental legislative principal is that legislation must have sufficient regard for the institution of Parliament. The Bill provides for the grant to be provided in cases where a person has security of tenure in the home they are acquiring. Also, where a person or their spouse has already had security of tenure in a home, this will preclude that person from obtaining a grant when they acquire their next home. The Bill defines certain "relevant interests"

that will be sufficient for these purposes, and allows for the class of relevant interests to be extended by way of regulation. The ability to extend the class of relevant interests by regulation may be considered to have insufficient regard to the institution of Parliament. However the ability to prescribe relevant interests is necessary to ensure that potential applicants are not unduly excluded from the scheme where they acquire secure forms of tenure, and conversely to ensure that the scheme is not open to abuse by people who have previously held such interests. The same approach has been adopted by all other jurisdictions. Prescription of additional relevant interests will therefore be necessary to maintain uniformity of the scheme with those being operated in other jurisdictions.

Consultation

The *First Home Owner Grant Bill 2000* has been released for public consultation. Representatives of the accounting and legal professions, the Real Estate Institute of Queensland, the Housing Industry Association, the Property Council of Australia, and representatives of financial institutions and their industry bodies have also been separately consulted as part of this process.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 specifies the commencement date for the Act.

Clause 3 refers to the dictionary that includes terms defined for the Act.

Clause 4 provides a definition of “eligibility criteria”. The eligibility criteria are the criteria that are used to determine whether an applicant for a first home owner grant is eligible for the grant, and are contained in part 3 division 2 of the Act.

Clause 5 provides a definition of “eligible transaction”. For a first home owner grant to be payable under the Act there must be a completed eligible transaction. Eligible transactions are:

- contracts made on or after 1 July 2000 for the purchase of a home in Queensland, or for the acquisition of a relevant interest in land on which such a home is built or is to be built. Contracts to purchase homes that are to be built must provide for the home to

be built before completion of the contract, by or for the vendor and at the expense of the vendor. This is to cater for certain house and land packages.

- comprehensive home building contracts to have a home built in Queensland if the contract is made on or after 1 July 2000 by a person who owns, or who at the completion of the contract will own, the land on which the home is to be built.
- building of a home in Queensland by an owner builder if the building work starts on or after 1 July 2000.
- contracts to purchase a building if the contract is made on or after 1 July 2000 and the contract is entered into by a person who intends to use the building as a place of residence on land in which they have a relevant interest. This caters for situations where a person may purchase a building for removal to their land, where it will be refixed for use as their home.

Clause 5(4) and clause 5(5) provide that these contracts will not be an eligible transaction if the commissioner is satisfied that the contract forms part of a scheme to circumvent the requirements of the Act, and set out some of the circumstances where the commissioner will presume that such a scheme exists. These provisions are necessary to prevent abuse of the first home owner grant scheme. Such abuse may occur, for example, if persons enter into arrangements such as options to purchase or build, with the intention of delaying their contract to purchase or build until after 1 July 2000 so that they will qualify for the grant.

Clause 6 provides that a home is a building affixed to the land that may lawfully be used as a place of residence and is a suitable building for use as a place of residence.

Clause 7 clarifies that a person is considered to be the owner of a home, or a home owner, for the purposes of the Act if they have a relevant interest in the land on which the home is built.

Clause 8 provides a definition of a relevant interest in land.

A relevant interest in land on which a home is or will be built is a prerequisite for an eligible transaction under the Act. In addition, any person who will have a relevant interest in the home is required to be a joint applicant for a grant, and must comply with the eligibility criteria in the Act.

To provide the first home owner grant in cases where a person acquires

some secure form of tenure in the land on which their home is constructed, other than a fee simple estate, the Act defines a relevant interest to encompass life estates in land, certain Crown leases and licences, interests of a purchaser under certain instalment purchase contracts and shares in home unit companies. The clause also provides that additional relevant interests may be prescribed by regulation. It is not necessary for the prescribed relevant interests to be recognised at law or in equity as an interest in land.

However, an interest specified in clause 8 or prescribed by regulation will not be a relevant interest in certain circumstances. In particular, such an interest will not be a relevant interest if the holder of the interest will not have a right to immediate occupation of the land within 1 year of acquiring their interest. This exception is necessary to ensure that in cases where a person has a relevant interest other than a fee simple estate, it is that person, and not the person with the underlying estate in fee simple, who is considered to have the relevant interest for the purposes of determining whether there is an eligible transaction and whether the eligibility criteria are met. Without an exception of this nature, where for example a person has a Crown lease over land on which their home is constructed, the Crown would also be considered the owner of the home and would be required to be a joint applicant (and comply with the eligibility criteria) along with the lessee.

Also excluded from relevant interests are any interests held by a person as trustee. However, if a guardian holds a relevant interest on trust for a person under a legal disability that person, and not the trustee, will be taken to hold a relevant interest for the purposes of the Act. This means that a grant will not be available for trust property, except in the specific case of homes held on a fixed trust for the benefit of a person with a legal disability.

Under the eligibility criteria in the Act, a prior relevant interest in any residential property also disqualifies an applicant from receiving a grant in certain circumstances. When considering prior relevant interests for this purpose, the absence of an immediate right of occupation of the property is disregarded. If this were not the case, then the owners of certain investment or rental properties would not be precluded from receiving a first home owner grant in the required cases.

Clause 9 provides a definition of “spouse” which includes couples (including same sex couples) who have lived together for at least 2 years on a genuine domestic basis in a relationship based on intimacy, trust and

personal commitment. If an applicant is legally married but not cohabiting with his or her spouse, and does not have any intention of doing so, the spouse may be disregarded in deciding an application for the grant.

Under the Act, the fact that an applicant's spouse has previously obtained a first home owner grant, or that the applicant's spouse owned a residential property prior to 1 July 2000 or acquired a home after that date will mean that the applicant is ineligible for a grant. By excluding spouses who are legally married but no longer cohabiting with the applicant, unless the applicant's spouse is also a party to the application, an applicant will not be ineligible because the status of their spouse. This approach reflects that in some cases it would be unduly onerous to preclude a grant to an applicant on the basis of the status of their spouse if, although legally married, the applicant and their spouse are in the process of divorce or, or although not having sought a divorce they no longer live or intend to live as a couple.

Clause 10 clarifies when a first home owner grant will be payable. One grant is payable if all applicants comply with all of the eligibility criteria in the Act, and the transaction for which the grant is sought is a completed eligible transaction. However under clause 19 of the Act, the commissioner does have power to pay a grant prior to completion of an eligible transaction if the commissioner considers this is appropriate in the circumstances.

Clause 11 contains the first eligibility criterion. For a grant to be payable, all applicants must be natural persons. A grant will not be payable if an applicant is a company or a trust.

Clause 12 contains the second eligibility criterion. To qualify for a grant, at least one of the applicants for the grant must be an Australian citizen or permanent resident. The Act relies on meaning of these terms in the *Australian Citizenship Act 1948(Cwth)* and the *Migration Act 1958 (Cwth)* respectively.

Clause 13 contains the third eligibility criterion. A grant will not be paid if an applicant or an applicant's spouse has been party to a successful application for a first home owner grant in Queensland or another State or Territory. This criteria reflects the principle that the applicant and their spouse should be acquiring their first home, and therefore entitlement to the grant will only occur once.

An exception to this criterion is permitted for those cases where the applicant or their spouse have received a grant, but were required to repay the grant because of non-compliance with the conditions that were imposed

on the payment of the grant. This preserves a person's entitlement to receive a grant where, for example, although they entered into a contract to acquire a home, they did not subsequently acquire title to the home, or did not reside in the home.

Clause 14 contains the fourth eligibility criterion. Under this criterion, a grant is precluded in two circumstances.

Firstly, a grant will not be paid if at any time before 1 July 2000, an applicant or their spouse has held a relevant interest in a residential property in Australia. An applicant will be ineligible under this criterion regardless of whether the applicant or their spouse occupied the property as a principal residence, or whether it was used for some other purpose such as rental or commercial activities.

An exception is made for those cases involving instalment purchase contracts where the contract was terminated within 1 year, and prior to the applicant or their spouse acquiring an estate in fee simple under the contract. This is necessary to ensure that purchasers under instalment purchase contracts, who have a relevant interest under the Act, are not precluded from receiving a first home owner grant where that contract was not completed and the purchaser did not acquire title to the home.

Secondly, a grant will not be available if the applicant or their spouse have already acquired or built a home after 1 July 2000 which they occupied as their residence. This will be the case whether or not the applicant or the applicant's spouse were Australian citizens or permanent residents at the time. However, an applicant will not be ineligible for a grant under this criterion if they or their spouse acquired a home after 1 July 2000 that they did not occupy as their principal residence, such as a rental or other investment home.

Clause 15 contains the fifth eligibility criterion. A grant will only be payable if the applicants occupy the home that is the subject of the application as their principal residence within 1 year of completion of the eligible transaction.

The commissioner is empowered to extend the period for compliance with this requirement. This is to assist applicants who have been unable to comply with the residence requirement for good reasons outside of their control, such as illness. In cases where there are joint applicants for a grant, the commissioner is also empowered to exempt an applicant from compliance with this requirement, provided that one of the applicants does

occupy the home as their principal residence within the specified period, and the commissioner is satisfied that there are good reasons for the exemption. This provision is also designed to assist applicants where they have been unable to comply with the residence requirement for good reasons that are outside of their control.

Clause 16 provides the process for application for a grant. The application must be in the approved form and supported by information required by the Commissioner. The application must be made within the period starting on the commencement of the eligible transaction and ending 1 year after completion of the eligible transaction, unless the Commissioner extends the period or allows an earlier application.

Clause 17 provides that all people who will have a relevant interest in the home on completion of the eligible transaction must be applicants for the grant. This clause means that, for example, if a home is purchased by, or the land on which a home will be built is owned by, a number of persons as tenants in common or as joint tenants, all of the owners must be joint applicants for the grant. As applicants, all owners must comply with the eligibility criteria of the Act (except if expressly exempted by the Act).

Clause 18 permits applications by a guardian on behalf of a person with a legal disability. In these cases, although the application is made by the guardian, eligibility is determined according to whether the person with a legal disability satisfies the eligibility criteria. This means, for example, that an application for a grant will be refused if the person with the legal disability has previously owned a home, or if a guardian has previously owned a home on their behalf.

Clause 19 provides that where the commissioner is satisfied that a grant is payable on an application, the commissioner must authorise payment of the grant. For a grant to be payable, clause 10 provides that there must be a completed eligible transaction. However clause 19 also empowers the commissioner to authorise payment of the grant prior to completion of an eligible transaction if the commissioner is satisfied that this is appropriate in the circumstances. This power will permit the commissioner to pay a grant prior to completion of the eligible transaction, for example, if the commissioner is satisfied that the integrity of the scheme may be adequately protected from abuse by imposing conditions requiring repayment of the grant if the eligible transaction is not completed.

Clause 20 provides that the first home owner grant is the lesser of the

consideration for the eligible transaction, or \$7000.

Clause 21 specifies the ways in which the first home owner grant may be paid to an applicant. The commissioner may, upon request by the applicant, apply the amount of the grant, or part of the amount, towards a liability for State taxes, fees or charges.

Clause 22 allows the commissioner to authorise payment of a first home owner grant prior to an applicant occupying the home as their principal residence in certain circumstances. In particular, the commissioner may authorise such a payment if the commissioner is satisfied that each applicant intends to occupy the home as their principal residence within 1 year of completion of the eligible transaction, or a longer period allowed by the commissioner.

If the commissioner authorises such a payment, the applicant is able to receive the benefit of the grant at an earlier time than would otherwise be permitted. To protect the scheme from abuse in these cases, such payments will only be made on the condition that if the applicants do not subsequently occupy the home as their principal residence within the required time, they must notify the commissioner within 14 days of the earlier of the end of the period allowed for compliance with the residence requirement or the date on which it first becomes apparent that the residence requirement will not be met. The applicant must also repay the grant at this time.

Clause 23 permits the commissioner to impose reasonable conditions on the payment of a grant to an applicant. Where a condition is imposed, the commissioner may also require that the applicant advise the commissioner and repay the grant if the condition is not complied with. This will allow the commissioner to impose conditions that will protect the scheme from abuse. For example, if the commissioner authorises payment of a grant prior to completion of an eligible transaction, the commissioner may impose a condition that the eligible transaction must be completed within a specified time, or the grant is to be repaid. If such a condition were not imposed, it would be possible for applicants to obtain the grant without acquiring title to a home.

In the case of joint applicants, each applicant is individually liable to comply with these requirements, but compliance by 1 or more is regarded as compliance by both or all.

Clause 24 clarifies the implications of death of an applicant on an

application for a grant. If the deceased has died before a decision has been made on an application, and the deceased was one of two or more applicants and one or more applicants survive the application, the application will be dealt with as if the surviving applicants were the sole applicants. If the deceased was the only applicant, a grant payable on the application will be paid to the deceased's personal representative. If the deceased applicant had not occupied the home to which the application relates as a principal place of residence, the residence requirement is taken to be satisfied if the commissioner is satisfied that the deceased intended to satisfy the residence requirement.

Clause 25 requires that the commissioner notify an applicant of the commissioner's decision in relation to an application, unless the decision is to authorise payment of the grant without conditions, in which case payment will be sufficient notice.

Clause 26 empowers the commissioner to appoint a public service officer or employee, or an officer or employee of an authority responsible for the administration of a corresponding law as an authorised officer, if the commissioner is satisfied that they have the necessary expertise or experience. Appointment of officers or employees of authorities administering corresponding laws will facilitate the conduct of cross-border investigations.

Clause 27 confirms that an authorised officer has the powers given to an authorised officer under the Act, and provides that an authorised officer is subject to the commissioner's directions when exercising these powers. Limitations on the powers of an authorised officer may be contained in a regulation or a written notice from the commissioner.

Clause 28 states that the conditions of an authorised officer's appointment will be contained in the instrument of appointment, and clarifies when an authorised officer will cease to hold office as an authorised officer.

Clause 29 provides for the issue and return of identity cards for authorised officers.

Clause 30 requires that except in cases where it is not practicable to do so, an authorised officer must produce their authorised officer's identity card for inspection by a person, or display the identity card so that it is clearly visible to the person, prior to exercising a power in relation that person.

Clause 31 empowers the commissioner to carry out an authorised investigation for the purposes of a corresponding Act. This clause facilitates cross-border investigations.

Clause 32 empowers the commissioner to issue a written notice that requires a person to give specified written information stated in the notice, to attend and answer questions relevant to an investigation, or to produce a document. The information may be required to be verified on oath or by statutory declaration. The clause creates an offence where a person fails to comply with such a requirement, or where the person who has attended before the commissioner fails to answer a question relevant to the investigation, without reasonable excuse. To provide appropriate protection against self-incrimination, it is a reasonable excuse for a person to fail to comply with such a requirement or to answer such a question if complying with the requirement or answering the question would tend to incriminate the person.

Clause 33 empowers authorised officers to enter places for carrying out an authorised investigation. For residential premises, the occupier must consent or a warrant must authorise the entry. For a public place or place of business, entry may occur without a warrant if the place is open to the public, or open for the conduct of business or entry respectively. This clause also clarifies the power of authorised officers to enter land to obtain consent to enter.

Clause 34 specifies the procedure to be followed when an authorised officer seeks consent to enter a place.

Clause 35 sets out the procedure for application for a warrant to enter or search a place.

Clause 36 clarifies when a magistrate may issue a warrant, and the matters that must be stated in the warrant.

Clause 37 empowers an authorised officer to apply for a special warrant by any means of communication necessary in urgent or other special circumstances.

Clause 38 clarifies the procedure to be followed when an authorised officer intends to enter a place under the authorisation of a warrant.

Clause 39 empowers an authorised officer to exercise certain powers when the authorised officer has entered a place including, but not limited to, powers to search and inspect and copy documents. An authorised officer

may also require a person to assist the authorised officer to exercise these powers by answering questions or producing documents, or may require a person to answer questions relevant to the investigation. An offence is created where a person fails to comply with such a requirement without reasonable excuse. To provide appropriate protection against self-incrimination, it is a reasonable excuse for a person to fail to comply if doing so would tend to incriminate the person.

Clause 40 requires an authorised officer to provide a specified notice where the authorised officer or a person acting under their direction damages property when exercising their powers under the Act, unless the officer reasonably believes the damage is trivial.

Clause 41 provides for claims of compensation from the commissioner where property is damaged because of the exercise of powers by authorised officers when carrying out investigations for the purposes of the Act. A court may order compensation to be paid only if it is satisfied that it is just to do so in the circumstances.

Clause 42 creates an offence where a person gives the commissioner a document containing information that the person knows is false or misleading in a material particular. The offence does not apply if, when giving the document to the commissioner, the person tells the commissioner, to the best of the person's ability, how the document is false or misleading, and, if the person has or reasonably can get the correct information, gives that information to the commissioner.

Clause 43 creates an offence where a person states anything to the commissioner that the person knows is false or misleading.

Clause 44 creates an offence where a person obstructs an authorised officer from exercising a power, without reasonable excuse.

Clause 45 creates an offence where a person pretends to be an authorised officer.

Clause 46 permits the commissioner to inspect and take copies without fee of any record kept by a public sector unit or local government for the purposes of an authorised investigation.

Clause 47 empowers the commissioner to require, by written notice, repayment of a grant paid in error. A grant will be paid in error whenever it has been paid and, for whatever reason, the person to whom it has been paid was not eligible, or has become ineligible, for a first home owner grant,

having regard to the requirements of the Act.

In cases where a grant has been paid in error due to a false or misleading statement made in or in relation to an application for a grant, clause 47(2) provides that in addition to repayment of the grant, the commissioner may, by written notice, require payment of a penalty amount that is up to the amount of the grant that is to be repaid. Clause 47(3) also allows the commissioner to impose such a penalty amount where an applicant has failed to repay a grant that was required to be repaid, whether under a condition of the payment of the grant or because the grant was paid in error. This will include cases where an applicant has been paid the grant in anticipation of compliance with the residence requirement, but has failed to notify the Commissioner of non-compliance with that requirement or repay the grant. A written notice must be sent to the applicant.

Clause 48 provides that where an applicant is required to repay a grant to the commissioner, or is required to pay a penalty amount to the commissioner, any joint applicant is jointly and severally liable to pay these amounts to the commissioner. The clause provides for recovery of these amounts by the commissioner in a court of competent jurisdiction, and for the commissioner to enter into arrangements for repayment of these liabilities by instalments.

Clause 49 provides that, in cases where an applicant is liable to repay a grant or to pay a penalty amount to the commissioner, and the applicant has an interest in the home that was the subject of the application for the first home owner grant, the liability of the applicant is a charge on the applicant's interest in the land on which the home is built. This ability to impose a charge on an applicant's land protects the State's financial interests by assisting the commissioner to recover amounts owing. To protect the rights of third parties, the clause specifies the procedure for registering and release of such charges.

Clause 50 clarifies that the writing off of an applicant's liability to pay a grant or penalty amount to the commissioner for the purposes of the *Financial Administration and Audit Act 1997* does not extinguish the applicant's liability or the commissioner's rights in respect of such amounts.

Clause 51 provides that if a person is required to pay a penalty amount to the commissioner because of an act or omission of the person, the payment of such penalty amounts is to be an alternative, not in addition to,

prosecution of the person for an offence arising out of that act or omission.

Clause 52 states that in a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is to be evidence of the matter.

Clause 53 states that in a proceeding, a certificate as to specified matters that is signed by the commissioner is to be evidence of those matters.

Clause 54 clarifies that proceedings for an offence against the Act will be by way of summary proceeding.

Clause 55 sets out the time within which a proceeding for an offence against the Act must start.

Clause 56 provides that any applicant or former applicant who is dissatisfied with a decision of the commissioner on an application, or a decision of the commissioner to require repayment of a grant or payment of a penalty amount, may lodge a written objection with the commissioner. The clause also sets out the time limits and process for lodging such an objection.

Clause 57 clarifies the powers of the commissioner in deciding an objection. Where a delegate of the commissioner made the decision that is subject of the objection, the clause prevents that delegate from deciding the objection.

Clause 58 requires that the commissioner notify an objector of the commissioner's decision in relation to the objection and their appeal rights.

Clause 59 provides that an objector who is dissatisfied with the commissioner's decision on their objection may appeal against the commissioner's decision.

Clause 60 sets out the procedure for starting an appeal against the commissioner's decision on an objection. Such appeals will be to the Magistrate's Court.

Clause 61 limits the grounds of appeal to the Magistrates Court to the grounds of the relevant objection, unless the Court orders to the contrary.

Clause 62 prescribes the procedures that apply to the Magistrates Court hearing an appeal against the commissioner's decision on an objection.

Clause 63 sets out the powers of the Magistrates Court in deciding an appeal against the commissioner's decision on an objection.

Clause 64 limits any appeal to the District Court from a decision of the Magistrates Court to questions of law.

Clause 65 permits delegation of the commissioner's powers under the Act to an appropriately qualified officer or employee of the department, or to an authorised officer. The clause also confirms the commissioner's powers to delegate the commissioner's powers in relation to investigations and enforcement to an authority responsible for administering a corresponding law in another State or Territory, or a person nominated by that authority.

Clause 66 allows the commissioner to, on behalf of the State, enter into agreements with a financial institution or other person for administering the scheme for payment of grants under the Act. Any such agreement will be revocable by the commissioner at any time.

Clause 67 provides certain officials with protection from civil liability in respect of an act done or an omission made honestly and without negligence. The clause imports the liability that would otherwise attach to officials in these circumstances to the State.

Clause 68 imposes confidentiality obligations on persons in relation to confidential information, being information contained in an application for a grant, or requested by the commissioner to be provided in support of such an application. The confidentiality obligations extend to any person who has been engaged in the administration of the Act, an employee of an agent of the commissioner, and any person who has directly or indirectly obtained confidential information from such a person. The clause also specifies the circumstances where disclosure of confidential information is permitted.

Clause 69 confirms that the commissioner may use information obtained in the administration or enforcement of taxation laws for the purposes of administration or enforcement of the first home owner grant scheme.

Clause 70 empowers the commissioner to approve forms for use under the Act.

Clause 71 empowers the Governor in Council to make certain regulations under the Act.

Schedule 1 defines terms used in the Act.

