

FIRST HOME OWNER GRANT AND OTHER LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To amend the *First Home Owner Grant Act 2000* to give effect to the temporary extension of the First Home Owner Grant (“FHOG”) Scheme on and from 9 March 2001, and to amend the *Gas Pipelines Access (Queensland) Act 1998* to specify a further date for the lodgement of access principles for the PNG to Queensland gas pipeline.

Reasons for the Bill

The amendments to the *First Home Owner Grant Act 2000* are required to give effect to the Commonwealth extension to the FHOG scheme for new homes, including to ensure that the Office of State Revenue may properly administer and enforce compliance with the eligibility criteria for the scheme.

The amendment to the *Gas Pipelines Access (Queensland) Act 1998* is required to give the applicant for the PNG to Queensland gas pipeline further time to lodge access principles for the pipeline under the process already commenced under the *Petroleum Act 1923*.

Achievement of Objectives

First Home Owner Grant Act 2000

The Extended First Home Owner Grant

Under the *First Home Owner Grant Act 2000*, first home owners that satisfy a number of criteria are entitled to the payment of a grant of \$7,000. The grant is intended to encourage and assist home ownership and offset the effect of the goods and services tax on home ownership.

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On 9 March 2001, the Prime Minister announced that the grant under the FHOG scheme would increase from \$7,000 to \$14,000 for first home buyers who contract for the purchase or construction of a new home, and owner builders who commence construction of a new home, on or after that date, subject to a number of further criteria. The grant will remain at \$7,000 for other first home buyers. The increase in the grant is a short-term measure that will end on 31 December 2001.

What is a new home?

A new home is a home that has not previously been sold or occupied as a residence. This will include, for example, a commercial warehouse that has been converted to residential premises, provided that the building has not been occupied as a residence subsequent to conversion.

A home will also be considered to be a new home where the home is the subject of a contract for its purchase, the sale is a taxable supply under section 40-75(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) on the basis that it is a sale of substantially renovated new residential premises, and the home, in its renovated state, has not been previously sold or occupied as a residence.

Example

A builder purchases an existing home which is then improved by effecting substantial renovations, as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth). After completing the renovations, the builder then sells the home to a first home owner. Provided that the sale of the home is a taxable supply of new residential premises under section 40-75(1)(b) of the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth), the home will be considered a new home. Consequently, the first home owner may be eligible for the additional grant on the purchase of the home, provided that all eligibility criteria are satisfied.

Eligibility for the additional grant

To be eligible for the additional grant, a first home buyer must be eligible for the existing grant and have executed a contract on or between 9 March 2001 and 31 December 2001 for the purchase or construction of a new home. An applicant who does not satisfy the extended criteria may still be eligible for the existing \$7,000 grant.

Where a first home buyer contracts for the construction of a new home, construction must commence within 16 weeks of the contract's execution and the contract must specify that construction will be completed within 12

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months of the building work commencing. The Commissioner of Stamp Duties may, however, extend the 16 weeks where appropriate and may pay the grant where the contract does not specify a construction completion date but construction is completed within the 12 months.

Owner builders eligible for the existing grant will be eligible for the additional grant where constructing a new home and construction is commenced on or between 9 March 2001 and 31 December 2001 and is completed before 1 May 2003.

Contracts for the purchase of new homes “off the plan” will be eligible for the additional grant where the contract is executed on or between 9 March 2001 and 31 December 2001 and it provides for completion of construction before 1 May 2003. If the contract does not specify a completion date, the grant may still be payable if construction is completed within the required period.

However, where the purchase price of a home or the value of the construction contract is less than \$14,000, the applicant will be entitled to a total grant equal to the value of the consideration. In the case of owner builders, the consideration includes the purchase price of materials and the value of any subcontracts for work but does not include the value of the owner builder’s labour.

There are cases where, following the announcement of the new scheme, some home buyers cancelled contracts that had been entered into before 9 March 2001 and executed new contracts on the same or substantially similar terms on or after 9 March 2001. In some cases, these home buyers took advantage of “cooling off” arrangements under the original contracts to cancel them in an attempt to qualify for the additional grant. As such arrangements are contrary to the intention that the extended grant encourage new home purchases from the announcement date, the *First Home Owner Grant and Other Legislation Amendment Bill 2001* will ensure that these contracts are ineligible for the additional \$7,000 grant.

Example

Mary and John Smith executed a contract on 8 March 2001 to have the “Tuscan” home built on their land by XYZ Builders. Under the contract, Mary and John have a “cooling off” period where they may reconsider whether or not to proceed with the contract.

On 12 March 2001, Mary and John decide that they would rather build the slightly more expensive “Morocco” house that XYZ Builders also offers. This home is similar to the “Tuscan” home but has some enhanced design features. They therefore cancel their original contract and execute

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a new contract on that date, intending to use the recently announced additional \$7,000 FHOG grant that is available for new home building contracts executed on or after 9 March 2001.

However, as the contract in respect of which the FHOG application will be made is one that has replaced a contract to build the same or a substantially similar home and the original contract was made before 9 March 2001, Mary and John will be unable to make the necessary declarations on the FHOG application form and will be ineligible for the \$14,000 grant. However, where the eligibility criteria for the current FHOG grant are satisfied, they will be eligible for the \$7,000 FHOG grant.

Gas Pipelines Access (Queensland) Act 1998

The *Gas Pipelines Access (Queensland) Act 1998* provides for the introduction of a national pipeline access regime administered by the Australian Competition and Consumer Commission (“ACCC”). During the formulation of this regime, applicants for the PNG to Queensland gas pipeline commenced the procedure for the determination of access principles under the *Petroleum Act 1923*. The procedure was similar to that adopted under the national regime. Specific provisions were inserted in the *Gas Pipelines Access (Queensland) Act 1998* to recognise the procedure undertaken under the *Petroleum Act 1923*. Once access principles are approved under this procedure they are deemed to be approved under the national regime.

The time for lodgement of the access principles is currently specified as being 1 year after the commencement of the *Gas Pipelines Access (Queensland) Act 1998*. This requires lodgement by 18 May 2001. Due to a number of uncertainties with the PNG to Queensland gas project, the pipeline applicants are unable to lodge final access principles for consideration by the Minister by this date.

Alternatives to the Bill

First Home Owner Grant Act 2000

Eligibility for the extended FHOG scheme is dependent on eligibility for the current grant. Further, the administrative arrangements for paying the grant and ensuring compliance with scheme requirements will be the same for both schemes. Although the scheme is being administered under an administrative arrangement temporarily, enactment of legislation to give proper effect to the scheme is required.

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Gas Pipelines Access (Queensland) Act 1998

If the pipeline applicant does not lodge access principles by 18 May 2001, the access principles would need to be approved under the national regime. The process would therefore need to re-commence. It is estimated that this would put the PNG to Queensland Gas pipeline back a further 2 years.

Estimated Cost for Government Implementation

First Home Owner Grant Act 2000

There will be additional costs involved in administering the additional grant, including the cost of system upgrades, form redevelopment and providing education on the additional grant to both financial institutions and the public. However, these costs are not expected to be significant.

Gas Pipelines Access (Queensland) Act 1998

There will be no additional cost to the State associated with this amendment.

Consistency with Fundamental Legislative Principles

Retrospective commencement of the legislation for the extended FHOG scheme

The Prime Minister announced the proposal for extension of the FHOG scheme on 9 March 2001, with the extension to take effect on and from that date. As the legislation to give effect to the change could not be introduced until later, the legislation will need to be retrospective.

The effect of the retrospectivity has been somewhat limited by the Prime Minister's announcement on 9 March 2001 and the publication on 23 March 2001 of the key criteria for the additional grant by the Commonwealth. There has also been media coverage of the new scheme and applications have been lodged with, and processed by, the Office of State Revenue on the basis of the new scheme requirements.

The Commonwealth has advised that the same rights and obligations are to apply to the additional grant as for the existing grant. For this reason, the same rights and obligations will be retrospectively applied to payments of the additional grant made prior to enactment of the *First Home Owner Grant and Other Legislation Amendment Bill 2001*.

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For example, where the additional grant has been paid to a first home buyer in respect of a contract for the construction of a new home in contemplation of the applicant taking up residence within 12 months of completion of the transaction, the additional grant must be repaid where the residence requirement is not satisfied.

Nevertheless, the provision of the additional grant is beneficial for new home buyers and is not, therefore, considered to raise fundamental legislative principle issues.

Other provisions

The remaining provisions of the *First Home Owner Grant and Other Legislation Amendment Bill 2001* are not considered to raise fundamental legislative principle issues.

Consultation

First Home Owner Grant Act 2000

The proposal for temporary extension to the FHOG scheme was announced by the Commonwealth. The key eligibility criteria for the additional grant were developed by the Commonwealth in conjunction with the States and Territories, following the Prime Minister's announcement on 9 March 2001. These criteria were published by the Commonwealth on 23 March 2001 and have been included on the Office of State Revenue's website. In addition, brochures have been issued explaining the changes.

The assistance of financial institutions will be integral to the efficient administration of the extended scheme. The Office of State Revenue is working with these institutions to facilitate the administration of the new scheme.

Gas Pipelines Access (Queensland) Act 1998

Consultation on the proposed amendment has been had with the applicant for the PNG to Queensland gas pipeline, the participating jurisdictions in the national gas pipeline access scheme and the ACCC.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

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Clause 2 provides that Parts 1 and 2, and the Schedule of the Act are taken to have commenced on 9 March 2001.

Clause 3 provides that Part 2 of the Act amends the *First Home Owner Grant Act 2000*.

Clause 4 inserts a new Division 5 in Part 3 of the Act, as follows.

Section 25A contains a definition of *new home*.

- *Section 25B*, in the form of a new definition of a *special eligible transaction*, outlines the requirements that must be satisfied for a first home owner grant applicant to be eligible for the \$7,000 grant increase for new homes. While the eligibility criteria for an eligible transaction will continue to apply, further requirements will need to be satisfied for an eligible transaction to be a special eligible transaction.

Contracts to purchase a new home “off the plan”, as addressed in new section 25B(2), are purchases of a new home prior to registration of a plan of subdivision of the land on which the home is to be situated. For example, this will include the purchase of a unit prior to construction of the unit block but will not include a comprehensive home building contract for the construction of a “spec home” according to a predetermined standard plan. There are specific construction completion requirements for these contracts.

In the case of contracts to build a new home, there are construction commencement and completion requirements. Construction completion requirements also apply to owner builders.

If the Commissioner is satisfied that a contract is part of a scheme to avoid any limitations or requirements relating to the eligibility requirements for a special eligible transaction, it will not be a special eligible transaction. This does not preclude it being an eligible transaction if the requirements for such a transaction are satisfied.

Unless satisfied to the contrary, a scheme will be presumed if a contract which is made on or after 9 March 2001 replaces one made before 9 March 2001 and the contract is one to purchase or build the same or a substantially similar home.

- *Section 25C* specifies the amount of the grant for a special eligible transaction. The section also ensures that, where the consideration for a special eligible transaction is less than \$14,000, the amount of the first home owner grant for that transaction will be equal to the amount of the consideration for the transaction. Section 20 will continue to apply if an eligible transaction is not a special eligible transaction.

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For example, if the means by which a first home owner acquires a new home constitutes a special eligible transaction, the maximum amount of the first home owner grant that may be received by the first home owner is \$14,000. If the transaction is an eligible transaction but not a special eligible transaction, the maximum amount the first home owner may receive under section 20 is \$7,000.

- *Section 25D* provides that the new Division 5 will expire on 31 December 2001.

Clause 5 inserts a new Part 7 in the Act. Part 7 contains new section 72, which ensures that any rights, privileges or liabilities that would have arisen under the new Part 3, Division 5 but for its repeal are not affected by the repeal. For example, where an owner builder who is eligible for the existing first home owner grant commences construction of a new home on or between 9 March 2001 and 31 December 2001, the owner builder will still be eligible for the additional \$7,000 grant on completion, provided that completion occurs before 1 May 2003. Similarly, rights of recovery and investigation may be exercised by the Commissioner after the repeal date.

Clause 6 provides that Part 3 of the Act amends the *Gas Pipelines Access (Queensland) Act 1998*.

Clause 7 amends section 59 of the *Gas Pipelines Access (Queensland) Act 1998* to specify the date for lodgement with the local Minister for approval of access principles for the PNG to Queensland gas pipeline to be 1 December 2002.

The *Schedule* makes a minor amendment to section 3 and Schedule 1 of the *First Home Owner Grant Act 2000*.