

FIRST HOME OWNER GRANT AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To amend the *First Home Owner Grant Act 2000* to –

- restrict the circumstances in which the first home owner grant may be paid to applicants who are under 18 years of age;
- include a six month residency period which applicants must satisfy for entitlement to the grant; and
- include a general anti-avoidance provision.

Reasons for the Bill

The policy settings for the first home owner grant scheme were developed by the Commonwealth as part of National Tax Reform and in accordance with the Intergovernmental Agreement on Commonwealth-State Financial Relations. The scheme is a national scheme administered by the States and Territories under their own legislation enacted in accordance with Commonwealth policy. However, the Commonwealth's eligibility criteria for the scheme impose no minimum occupation period of the home as a principal place of residence and no age limit on applicants.

Without an age limit imposed on applicants, minors may be eligible for the grant. The potential for abuse of the first home owner grant scheme may arise where minors may be used in transactions to obtain grants where the real purchaser, such as their parents, would be ineligible for the grant or had already received the grant.

The absence of a requirement that applicants reside in the home for a minimum period gives rise to uncertainty about how long applicants must reside in the home to qualify for the grant. Also, there is the potential for abuse by an applicant residing in a home for only a short period of time, before renting or selling the home.

Amendments to the *First Home Owner Grant Act 2000* are required to provide that an applicant must be at least 18 years of age at the time at which the eligible transaction commences, subject to a discretion which the Commissioner of State Revenue may exercise to pay the grant to applicants under 18 years of age in genuine cases. A further amendment is required to impose a six month continuous period of residence of the home, subject to a discretion which the Commissioner of State Revenue may exercise to accept a lesser period or to waive the condition where there are good reasons.

Amendment is also required to include a general anti-avoidance provision to minimise the risk of exploitation of the eligibility criteria by enabling the Commissioner to refuse a grant or require repayment of the grant in certain circumstances.

Achievement of Objectives

Restriction on applicants under 18 years of age

Applicants for the grant must satisfy various eligibility criteria. In particular, they must be a natural person who is either an Australian citizen or permanent resident. At present, the age of the applicant is not relevant for eligibility purposes as there is no age limit specified in the legislation. As a result, minors may apply for the grant whether they acquire a home directly or through guardian/trustee arrangements.

When the first home owner grant scheme was developed, it was identified that there would be instances where an applicant under a legal disability, for example an applicant under the age of 18 years, or a person suffering a mental incapacity, would apply for the grant. In these cases it was considered the legal disability should not preclude an applicant from receiving the grant provided they satisfied the eligibility criteria.

Consistent with the Commonwealth policy settings for the scheme, the *First Home Owner Grant Act 2000* allows a guardian (which includes a trustee who holds property on trust for a person under a trust instrument or court order) to apply on behalf of a person under a legal disability (including minors). A parent can be a guardian or a trustee. Eligibility is then determined by reference to the person and not the guardian or trustee.

It is also possible for minors with legal capacity to personally enter into contracts and to hold title to land.

However, the absence of an age limit on applicants gives rise to the potential for abuse where the name of a minor may be used in transactions

to obtain grants where the real purchaser, such as their parents, would be ineligible for the grant or had already received the grant.

The *First Home Owner Grant Act 2000* is therefore to be amended to require that applicants for the grant be at least 18 years of age at the commencement date of the eligible transaction.

On the other hand, there are many genuine instances where a minor may acquire a home. In recognition of these genuine instances, a discretion for the Commissioner of State Revenue to approve payment of the grant to a person under the minimum age is to be provided. In exercising this discretion, the Commissioner will be required to be satisfied the applicant will comply with any residence eligibility criteria as required by the legislation and the application is not part of a scheme to circumvent limitations on, or requirements affecting, eligibility for or entitlement to the grant.

Examples of where the discretion is likely to be exercised are:

- where a paraplegic child who has obtained funds from a compensation payment builds a home modified for their medical needs and lives in the home with their parents (who act as the child's carers); and
- a 17 year old child who has used funds from an inheritance to purchase a home in which they will live with their partner.

An example of where the discretion may not be exercised is where parents acquire a home unit as the family home and do so as trustee for one of their young children and the parents fund the purchase and the costs of owning and maintaining the home.

Six month residency requirement

Applicants seeking to qualify for a grant currently must satisfy a residency eligibility condition, being that the property the subject of the grant is used as their principal place of residence within one year of acquiring the property, or such longer period as the Commissioner of State Revenue approves.

Although case law provides guidance as to whether a home is used as a principal place of residence, compliance difficulties can sometimes arise in determining when a principal place of residence has been established, especially in cases where an applicant has occupied the home for a short period of time. There is also the risk of abuse of the scheme by an applicant moving in for a short period before leasing or selling the home.

The *First Home Owner Grant Act 2000* is to be amended to provide, as an eligibility condition, a minimum six month period for which an applicant is required to reside in the property as their principal place of residence. The six month residency requirement must commence within one year of completion of an eligible transaction which entitles an applicant to the grant.

As is currently the case with the existing residency requirement, a discretion will be conferred on the Commissioner to reduce or waive the residency requirement. However, there must be good reason preventing the applicant from complying with the six month residency requirement eg. because of ill health of the applicant or destruction of the home.

Unlike the other amendments in the Bill, the amendment to the residency conditions will commence on 1 January 2004 so that it applies to eligible transactions commencing after 1 January 2004, to allow sufficient time for applicants and financial institutions to prepare for the change.

Anti-avoidance provision

The *First Home Owner Grant Act 2000* is to be amended to include a further general anti-avoidance provision, which will enable refusal of an application for the grant or require an applicant to repay the grant in certain circumstances. These circumstances are called disqualifying arrangements.

The first type of disqualifying arrangement arises where a related person such as a parent, who themselves are not entitled to the grant, provides financial help to the applicant to complete an eligible transaction and uses or will use the home to which the application relates to a significant extent or frequently. To cater for genuine cases, the Commissioner of State Revenue will have a discretion not to apply the provision.

The grant will also be refused, or recovered, where the Commissioner is satisfied there is an arrangement, the sole or main purpose of which is to obtain the grant, rather than acquiring the home. The Commissioner will be required to consider all relevant factors, including those listed in the Bill.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Any additional administrative costs are not expected to be significant.

Consistency with Fundamental Legislative Principles

The Bill confers on the Commissioner of State Revenue the following discretions:

- (a) to approve payment of a grant to an applicant under the age of 18 years in certain circumstances;
- (b) to exempt an applicant either fully or partly from the six month residency requirement; and
- (c) to refuse payment, or require repayment, of a grant where there is a disqualifying arrangement.

In the case of the amendment to impose a discretion on the Commissioner to approve the grant to an applicant under the age of 18 years, this discretion may only be exercised where the Commissioner is satisfied that the applicant will meet the residency eligibility criteria and 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. This will enable the grant to continue to be paid in genuine cases of applications involving minors.

The amendment to confer on the Commissioner the discretion to either partly or fully exempt an applicant from complying with the residency eligibility criteria may only be exercised where the Commissioner considers that there are good reasons to do so. There can be genuine cases where an applicant may be prevented from complying with the residence requirements. For example, the applicant may be unable to occupy the home for the 6 month period or at all due to ill health or the destruction of the home.

The amendment allowing the Commissioner to refuse an application or require repayment of the grant where there is a disqualifying arrangement is designed to overcome arrangements exploiting the eligibility criteria.

The provision details two instances where disqualifying arrangements may exist. Specifically, where there is an arrangement involving a related person and generally where the Commissioner is satisfied there is an arrangement, the sole or main purpose of which is to obtain the grant, rather than acquire the home.

In the first instance, the Commissioner is required to be satisfied of the matters set out in section 69A(1) before determining a disqualifying arrangement exists. Those matters include consideration by the Commissioner as to whether or not there are genuine family reasons for the arrangement. This will ensure that the grant will not be denied in genuine cases.

In the second instance the Commissioner will have regard to all relevant factors, and must have regard to the factors listed in section 69A(4) in determining whether a disqualifying arrangement exists.

The anti-avoidance provisions will assist to ensure the effective operation and integrity of the *First Home Owner Grant Act 2000*. Where the Commissioner decides that there is a disqualifying arrangement, the applicant may seek a review of the decision through the objection and appeal provisions in the *First Home Owner Grant Act 2000*.

Consultation

Consultation on the amendments was not considered appropriate as the amendments are designed to minimise any potential abuse of the first home owner grant scheme.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Bill.

Clause 2 states the date on which the Bill is taken to have commenced.

Clause 3 states that the Bill amends the *First Home Owner Grant Act 2000*.

Clause 4 replaces section 11 which deals with criterion 1 of the eligibility criteria. This amendment adds to the existing criteria the requirement that the applicant for the grant must be at least 18 years of age at the commencement date for the eligible transaction. Section 11(2) provides the Commissioner may exempt an applicant from this requirement if satisfied the residence requirements will be met and 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.

Clause 5 amends section 13(2) by clarifying that an applicant who has repaid the grant and any associated penalty for failing to satisfy section 10(1) is not ineligible to apply for the grant for a later home.

Clause 6 amends section 14 by inserting new section 14(5). This subsection deals with the case where, relying on section 13(2), an applicant is making an application for a grant on a later home after they failed to comply with the residence requirements for an earlier home which they owned on or after 1 July 2000. Section 14(5) enables the prior occupation of the earlier home to be disregarded in applying section 14(4).

Clause 7 amends section 15 to insert an additional residence requirement that the applicant occupy the home as their principal place of residence for at least 6 months. However, the Commissioner will have a discretion to approve a shorter period or exempt an applicant from this requirement if there are good reasons.

Clause 8 amends section 22 consequential to the amendment of section 15.

Clause 9 amends section 24 consequential to the amendment of section 15.

Clause 10 inserts a new section 69A which enables the Commissioner to refuse a grant or recover a grant and penalties where there is a disqualifying arrangement.

A disqualifying arrangement arises where a related person, who is ineligible for the grant, provides financial help to the applicant to help them to acquire the home and that person has or will use the home frequently or to a significant extent. In addition, the Commissioner must not be satisfied there are genuine family reasons for the arrangement. Financial help includes gifts of money and property as well as contributions towards the cost of acquiring, maintaining and owning the home. For example, the sale of the relevant home at an undervalue by the related person to the applicant would constitute financial help. Related person is defined in section 69A(8).

The other type of disqualifying arrangement is where the sole or dominant purpose of the arrangement is to obtain the grant rather than acquiring a home. Section 69A(4) sets out some of the circumstances to which the Commissioner must have regard in forming his decision about the purpose.

Clause 11 inserts a new Part 7 containing transitional provisions for the Bill. This clause ensures that the amendments to the residence

requirements, which commence on 1 January 2004, apply to eligible transactions commencing on or after that date.

Clause 12 amends the Dictionary by replacing the definition of residence requirement. This amendment is consequential on the amendment to section 15.