

Building Boost Grant Bill 2011

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Andrew Fraser MP

Title of the Bill

The short title of the Bill is the *Building Boost Grant Bill 2011*.

Objectives of the Amendments

To stimulate the Queensland housing market by assisting housing affordability, increasing the supply of housing and supporting employment in the housing construction industry, the 2011-12 State Budget announced the availability of a Queensland Building Boost Grant (building boost grant) of \$10,000 for the purchase or construction of a new home in Queensland valued at less than \$600,000 (including land). The building boost grant is available for eligible transactions undertaken between 1 August 2011 and 31 January 2012.

The building boost grant is being paid under an administrative arrangement pending passage of the *Building Boost Grant Bill 2011* (the Bill), which will give retrospective legislative effect to the building boost grant scheme.

The Bill requires amendment to ensure its effective operation and consistency with the administrative arrangement.

Achievement of the Objectives

Replacement contracts

Section 18 of the Bill specifies the transactions that are not eligible transactions. Subsection 18(d) is intended to address opportunities for abuse of the scheme, including where contracts are entered into on or after 1 August 2011, being the date the building boost scheme commenced, and those contracts replace ineligible contracts entered into before 1 August 2011.

The administrative arrangement gives effect to this intention.

Section 18(d)(i) of the Bill, as drafted, applies only where the first contract is terminated before 1 August 2011 rather than at any time on or after 14 June 2011. Section 18(d) of the Bill is therefore being amended to clarify its operation for replacement contracts, consistent with the administrative arrangement.

Notification and repayment obligations

Under section 35(3) of the Bill, an applicant is required to notify the Commissioner of State Revenue (the Commissioner) and repay the building boost grant if the applicant receives the grant before a transaction is completed and the unencumbered value of, or the consideration for, the home is \$600,000 or more on completion.

Under section 36(2) of the Bill, an applicant is required to notify the Commissioner and repay the building boost grant if the applicant does not comply with the occupancy requirement for the home after receiving the grant.

Section 37 of the Bill applies where an applicant has contravened a repayment requirement under a condition of the building boost grant.

Where a person contravenes sections 35(3), 36(2) or 37(2), the Commissioner may issue a repayment notice under section 38 requiring an applicant to repay the overpaid grant. Having issued a repayment notice, the Commissioner may then impose an administrative penalty under section 84 of the Bill if the building boost grant is not then repaid.

Sections 110, 111 and 112 of the Bill are transitional provisions which are intended to ensure that, where an applicant did not notify the Commissioner of an overpaid grant or repay the amount before Assent as required by sections 35(3), 36(2) or 37(2), the applicant will not commit an offence. However, the applicant must give the required notice and repay the overpaid grant within 28 days after Assent. The Commissioner may issue a repayment notice under section 115 where an applicant contravenes sections 110(3), 111(3) or 112(3).

These transitional provisions ensure that an applicant is not detrimentally affected by the retrospective operation of the Bill while ensuring that an overpaid building boost grant is repaid after Assent.

Sections 38, 110 and 111 of the Bill depend for their operation on an applicant having contravened section 35(3) or 36(2). However, sections 35(3) and 36(2) provide that an applicant must give the Commissioner the required notice and repay the grant unless the applicant has a reasonable

excuse. Section 37(2) is worded differently and relates to the commission of an offence where a repayment requirement, as defined in section 37(1), is contravened without reasonable excuse.

Whether or not an applicant has a reasonable excuse for the purpose of sections 35 and 36 is intended to be relevant only to a defence for the offence of failing to comply with the notification and repayment obligations, as is the case for section 37. It is not intended that it affect or alter an applicant's obligation to provide the required notification of ineligibility and to repay the grant where it was incorrectly received. Such an outcome is contrary to the intent of the administrative arrangement and would compromise the integrity of the building boost grant scheme.

Sections 35 and 36 are therefore being amended consistently with the administrative arrangement to:

- clarify the notification and repayment obligations in sections 35(3) and 36(2), respectively;
- separately provide for an offence in relation to contravention of these notification and repayment obligations; and
- provide a defence of reasonable excuse under the new offence provisions.

As a consequence, sections 38, 110 and 111 may apply where a person contravenes the requirements in sections 35(3) or 36(2), regardless of whether or not the person has a defence for the contravention under the relevant offence provision.

The transitional provisions of sections 110, 111, 112 and 113 are also being amended to clarify that applicants will commit an offence if they contravene the requirements under sections 110(3), 111(3), 112(3) or 113(2) unless they have a reasonable excuse.

In addition, consequential and clarifying amendments are being made to sections 38, 84, 85 and 93 of the Bill.

Alternative Ways of Achieving Policy Objectives

Amendment of the Bill is required to properly give effect to the relevant policy objectives.

Estimated Cost for Government Implementation

There are no additional implementation costs.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Consultation was unnecessary as the amendments reflect the administrative arrangement for the building boost grant scheme which is currently in effect.

Notes on Provisions

Clause 1 amends clause 18(d) to clarify its operation for legally binding arrangements entered into on or after 14 June 2011 where the sole or main purpose is to defer the transaction commencement day for a home purchase or home building contract to on or after 1 August 2011.

Clause 2 amends clause 18(d)(i) of the Bill to clarify that it applies where a home purchase or building contract is terminated on or after 14 June 2011 and another home purchase or building contract for the same or a substantially similar home is made on or after 1 August 2011.

Clause 3 amends clause 18(d)(ii) of the Bill to change a reference, consequent on the amendment of clause 18(d).

Clause 4 amends clause 35(3) of the Bill to clarify its operation in relation to the obligations imposed under the subclause. The reference to *reasonable excuse* is omitted.

Clause 5 inserts new clause 35(4) to provide for the commission of an offence where an applicant contravenes clause 35(3), unless the applicant has a reasonable excuse.

Clause 6 renumbers subclause (4).

Clause 7 amends clause 36(2) of the Bill to clarify its operation in relation to the obligations imposed under the subclause. The reference to *reasonable excuse* is omitted.

Clause 8 inserts new clause 36(3) to provide for the commission of an offence where an applicant contravenes clause 36(2), unless the applicant has a reasonable excuse.

Clause 9 renumbers subclause (3).

Clause 10 renumbers subclause (4).

Clause 11 amends clause 38 to clarify that the contravention of section 37 referred to in subclause (1)(a) relates to contravention of a repayment requirement.

Clause 12 amends clause 84 to clarify that the contravention of section 37 referred to in subclause (1)(a)(i) relates to contravention of a repayment requirement.

Clause 13 amends clause 85 to clarify that the reference in subclause (1)(a)(i) to a person being required to repay an amount under clause 37 relates to a repayment requirement.

Clause 14 makes a consequential amendment to clause 93 to change references to conviction by a court for contravention of clauses 35(4) and 36(3).

Clause 15 amends clause 93(3) to clarify its application for an offence.

Clause 16 makes a consequential amendment to clause 110 following the amendment of clause 35.

Clause 17 amends clause 110(3) to clarify the obligations imposed.

Clause 18 inserts new clause 110(4) to provide for the commission of an offence where an applicant contravenes clause 110(3), unless the applicant has a reasonable excuse.

Clause 19 renumbers subclause (4).

Clause 20 makes a consequential amendment to clause 111 following the amendment of clause 36.

Clause 21 amends clause 111(3) to clarify the obligations imposed.

Clause 22 inserts new clause 111(4) to provide for the commission of an offence where an applicant contravenes clause 111(3), unless the applicant has a reasonable excuse.

Clause 23 renumbers subclause (4).

Clause 24 amends clause 112(3) to clarify the obligations imposed.

Clause 25 inserts new clause 112(4) to provide for the commission of an offence where an applicant contravenes clause 112(3), unless the applicant has a reasonable excuse.

Clause 26 renumbers subclause (4).

Clause 27 amends clause 113(2) to clarify the obligations imposed.

Clause 28 inserts new clause 113(3) to provide for the commission of an offence where an applicant contravenes clause 113(2), unless the applicant has a reasonable excuse.