

REVENUE LAWS AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

Background

The Revenue Laws Amendment Bill 2015 amends:

- the *First Home Owner Grant Act 2000* to abolish the \$3,000 first home owner grant on established homes, as announced in the 2015-16 Budget;
- the *Duties Act 2008* to continue the first home owner duty concession on established homes, which was previously linked to the eligibility for the first home owner grant; and
- the *Rates and Charges (Rebates and Deferments) Act 1992*, to provide a mechanism to cap the 50 per cent rebate provided to pensioners on their local government rates and water service charges. These are to be capped to \$550 and \$600 respectively from the 2016-17 rating year, as announced in the 2015-16 Budget.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Revenue Laws Amendment Act 2015*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1, which contains the short title and commencement provisions, commences on the day on which the Royal Assent is received (***assent day***).

Paragraph (b) provides that the rest of the Act comes into operation on the day after assent day.

Part 2 – Amendments about first home owners

Division 1 – *First Home Owner Grant Act 2000* amended

Clause 3: Act amended

This clause provides that the amendments in this Division are to the *First Home Owner Grant Act 2000*.

Clause 4: Section 3 amended

Section 3 of the *First Home Owner Grant Act* (FHOG Act) provides the meaning of terms used in the Act.

The term ***eligible transaction*** is defined in section 3(1) by reference to the meaning given in section 14(1).

Although section 14(1) explains the meaning of the term, it is necessary to have regard to the exceptions and qualifications set out in the rest of that section in order to properly determine the meaning in particular cases.

This clause replaces the reference to '14(1)' with '14' thereby indicating that it is necessary to have regard to the whole of that section in order to ascertain the meaning.

Clause 5: Section 14 amended

Section 14 of the FHOG Act defines transactions that are eligible transactions. Under section 8 of the FHOG Act, a first home owner grant is payable in respect of an eligible transaction where the applicant complies with the eligibility criteria (set out in Part 2, Division 2).

This clause inserts new subsection (5A) in section 14.

Subsection (5A) provides that a contract is not an eligible transaction if it is for the purchase of an established home and it has a commencement date on or after this Division comes into operation.

The amendment is necessary in order to qualify the application of new section 19(2CA), inserted by clause 7(4), so that a contract for the purchase of an established home does not qualify for a grant once these amendments commence.

Clause 6: Section 14AA amended

Section 14AA of the FHOG Act sets out the meanings of **commencement date** and **completed** for the purposes of the Act.

Section 14AA(2)(a) provides that a contract for the purchase of a home is completed when –

- the purchaser becomes entitled to possession of the home under the contract; and
- steps to obtain registration of the purchaser's title have been taken.

Under the FHOG Act, a person is an owner of a home if they have a relevant interest in the land on which the home is built. Section 6(1) defines a relevant interest, in paragraph (e), as an interest as purchaser under a contract for the purchase of land by instalments from the Commonwealth or the State.

Transfer of title for these properties will typically not occur until after the final purchase instalment has been paid, which may be many years after occupancy commences. This lengthy delay in completion affects the calculation of the take-up period within which a person is required to begin residing in the home.

Furthermore, purchasers who have sold the home prior to making the final instalment would be required to repay the grant as they cannot satisfy the residency requirements, despite having occupied the home for a period considerably longer than the six month residency period required.

While these transactions are not common, this clause amends section 14AA(2)(a)(ii) by providing that completion occurs upon taking possession of the property, therefore allowing the purchaser to satisfy the residency requirements.

Clause 7: Section 19 amended

Section 19 of the FHOG Act provides the current and historical amount of the grant payable in respect of an eligible transaction.

Section 19(1) defines the term **amendment day** as the day on which section 43 of the *Revenue Laws Amendment Act 2013* comes into operation (being 25 September 2013). This definition is linked to the variation of the original \$7,000 grant for all homes to one of \$3,000 for established homes and \$10,000 for new homes (which includes substantially renovated homes).

Subclause (1) inserts a definition of **second amendment day**, being the day on which this Division of the Bill comes into operation. This definition creates the commencement date for the abolition of the \$3,000 grant for established homes.

Subclause (2) contains a minor punctuation amendment necessitated by the amendment contained in subclause (1).

Section 19(2A) provides that where the commencement date is before amendment day, the amount of the grant is limited to a maximum of \$7,000.

Section 19(2B) provides that where the commencement date is on or after amendment day, the amount of the grant is limited to a maximum of \$3,000 for established homes and \$10,000 for new homes.

Subclause (3) amends section 19(2B) by inserting an additional qualification that the commencement date must also be before second amendment day. The effect of this amendment is to quarantine the \$3,000 grant for established homes to the period ending immediately before second amendment day.

Subclause (4) inserts new subsection (2CA) after section 19(2B).

Subsection (2CA) provides that where the commencement date is on or after second amendment day, the amount of the grant is limited to a maximum of \$10,000.

Although subsection (2CA) does not qualify the nature of the eligible transactions to which it applies, section 14(5A) (inserted by clause 5) provides that a contract for the purchase of an established home is not an eligible transaction from the commencement date of these amendments, thereby limiting the grant to new homes.

In the case of a transaction that is a contract to purchase a home, the commencement date is the date when the contract is made. This means that, providing a person enters into a contract to purchase an established home before these amendments come into effect on second amendment day they will, subject to satisfying all the necessary requirements, remain eligible to receive a \$3,000 grant.

Section 19(2C) is an anti-avoidance provision that was primarily aimed at preventing a person from receiving the benefit of the increased grant for new homes that applied after the amendment day, by entering into a replacement contract where that person had previously entered into a contract to purchase or build a new home prior to the increase.

Subclause (5) amends section 19(2C) for consistency reasons by providing that it also applies despite subsection (2CA). Although this is unlikely to apply in practice, as there is no advantage in entering into to a replacement contract after the grant for established homes is abolished, the amendment is considered necessary to ensure continuity of operation.

Section 19(2) provides that the temporary boosts to the grant that were provided under section 14B continue to take precedence over the amounts of the grant otherwise set out in section 19. Although the boosted grants are no longer available, the legislative structure remains in place in the event that a temporary boost is reintroduced.

Subclause (6) amends section 19(2) by extending its application to grants specified in section 19 generally without reference to specific subsections. This will have the effect of including a reference to new subsection (2CA).

Division 2 – *Duties Act 2008* amended

Clause 8: Act amended

This clause provides that the amendments in this Division are to the *Duties Act 2008*.

Clause 9: Section 141 amended

Part 6 Division 3 of the Duties Act provides for first home owner concessions. Section 141 sets out the meaning of terms used in this Division.

Subclause (1) deletes the definition of ***FHOG concessional transaction*** from section 141(1).

Subclause (2) inserts self-explanatory definitions of the terms ***concessional first home owner***; ***deposit***; ***first home owner concessional rate***; ***first home owner concessional transaction*** and ***terms contract*** in section 141(1).

The definitions of ***terms contract*** and ***deposit*** are taken from the *Sale of Land Act 1970*.

Subclause (3) deletes the reference to '***FHOG***' in the definitions of ***first FHOG concessional transaction*** and ***further FHOG concessional transaction*** in section 141(1). This change recognises that the first home owner grant no longer applies to established homes.

Clause 10: Section 142A inserted

This clause inserts section 142A of the Duties Act.

142A. Concessional first home owners

Subsection (1) provides that a concessional first home owner means –

- (a) a transferee who is or will be paid a first home owner grant;
or
- (b) a transferee to whom a grant would have been payable had the requirements of either, or both, of the paragraphs of subsection (2) applied.

Subsection (1)(a) reflects current section 142(1)(a)(i) in that it relates to purchasers of new homes who will remain eligible to receive a first home owner grant.

Subsection (1)(b) replaces current section 142(1)(a)(ii), which extended the concession to transactions for which no consideration is given. The new subsection relates to persons acquiring an established home or were gifted their first home, neither of which are eligible to receive a grant.

Subsection (2) provides that the requirements referred subsection (1)(b) are –

- (a) consideration had been given for the transfer;
- (b) if the transaction is a contract for the purchase of an established home, the transaction would have been an eligible transaction had the grant for established homes not been abolished.

Subsections (1)(b) and (2)(a) together have the same effect as current section 142(1)(a)(ii) and allow a concession where a grant would have been payable if consideration had been given.

Subsections (1)(b) and (2)(b) together allow a concession where a grant would have been payable if a contract for the purchase of an established home had been an eligible transaction after these amendments came into effect.

Subsections (2)(a) and (b) will apply concurrently where there is a contract for the acquisition of an established home for no consideration.

Subsection (3) provides that if a contract for the purchase of an established home (which would have been an eligible transaction had the grant not been abolished) is a terms contract, then –

- (a) the purchaser's interest under the contract is taken to be a relevant interest; and
- (b) the transaction will be taken to be completed when the purchaser becomes entitled to possession of the home under the contract.

The relevance of paragraph (a) is that in order to obtain a first home owner grant an applicant must have, on completion of the transaction, a relevant interest in the land upon which the home is built.

The relevance of paragraph (b) is that completion will now be taken to occur when the purchaser becomes entitled to possession of the property. Transfer of title for these properties will typically not occur until after the final purchase instalment has been paid, which may be many years after occupancy commences. This lengthy delay in completion affects the calculation of the take-up period within which a person is required to begin residing in the home.

Furthermore, purchasers who have sold the home prior to making the final instalment would be required to repay the grant as they cannot satisfy the residency requirements, despite having occupied the home for a period considerably longer than the six month residency period required.

Clause 11: Section 142 amended

Subclause (1) replaces the reference to 'FHOG' in section 142(1) with 'first home owner'. This has the effect of changing the reference from the former defined term FHOG concessional transaction (deleted by clause 9(1)) to the term first home owner concessional transaction (inserted by clause 9(2)).

Subclause (2) deletes section 142(1)(a) and inserts an abbreviated provision. The effect of this amendment is that a first home owner concessional transaction is now a transfer, or agreement for transfer, where each transferee is a concessional first home owner as defined in new section 142A (inserted by clause 10).

Subclause (3) amends section 142(1)(b) by replacing the reference to an 'eligible transaction to which the first home owner grant relates' with a reference to a 'transaction'.

This amendment recognises that both a contract for the purchase of an established home and a gift of a home are not transactions that will be eligible for a grant under the FHOG Act.

Subclause (4) amends section 142(2) by deleting the references to 'FHOG' where they appear and, where necessary, inserting 'first home owner'. These amendments are to ensure consistency with the changes to defined terms in section 141 made by clause 9.

The heading to section 142 is also amended.

Clause 12: Section 143 amended

Subclause (1) amends section 143(1) by replacing the reference to 'FHOG' with 'first home owner'.

Subclause (2) amends section 143(2), (3) and (4) by deleting each occurrence of the reference to 'FHOG'.

These amendments are to ensure consistency with the changes to defined terms in section 141 made by clause 9.

The heading to section 143 is also amended.

Clause 13: Section 144 amended

Subclause (1) amends section 144(2)(a) by replacing each occurrence of the reference to 'FHOG' with 'first home owner'.

Subclause (2) amends section 144(2)(b) by deleting the reference to 'FHOG'.

Subclause (3) amends section 144(2)(b)(ii) by replacing the reference to 'FHOG' with 'first home owner'.

These amendments are to ensure consistency with the changes to defined terms in section 141 made by clause 9.

The heading to section 144 is also amended.

Clause 14: Section 145 amended

A person who receives a first home owner grant may be required to repay the grant in certain circumstances, for example, where they subsequently fail to satisfy the residency requirements associated with the grant.

Eligibility for the concession is currently linked to the requirements of the First Home Owner Grant Act.

This section provides that a person is not entitled to the concession where, after receiving a grant, they subsequently do not satisfy the aforementioned requirements noted above. In these circumstances the Commissioner will reassess the duty liability of the purchaser.

This clause deletes section 145(1) and inserts new section 145(1), (2A) and (2B).

Subsection (1) provides that, despite a concession having been applied, the concessional rate does not apply if –

- (a) a transferee described in section 142A(1)(a) (i.e. a person who is or will be paid a grant) is required to repay an amount under section 21(2) or 51 of the FHOG Act; or
- (b) a transferee described in section 142A(1)(b) (i.e. a person to whom a grant would have been payable if consideration had been given and/or a contract to purchase an established home had been an eligible transaction), would be required to repay an amount under section 21(2) or 51 of the FHOG Act.

Section 21(1) of the FHOG Act authorises the Commissioner to pay a grant in anticipation of compliance with the residence requirements. Section 21(2) requires repayment of a grant where it is paid in anticipation of compliance with the residence requirements and the applicant does not satisfy those requirements.

Section 51 of the FHOG Act requires repayment of a grant in various circumstances, including where it was paid in error or was paid subject to a condition which was not complied with.

New subsection (1) fulfils the same function as the deleted subsection.

Subsection (2A) clarifies that for the purposes of subsection (1)(b)(i), a grant would have been authorised under section 21(1) if the transaction was assessed in anticipation of compliance by the transferee with –

- (a) both residence requirements, i.e. to begin residence within the take-up period and occupy the home for the required residence period; or

(b) if the transferee has already taken up residence, to occupy the home for the required residence period.

Section 21(2) of the FHOG Act provides that payment of a grant is made on condition that, if an applicant does not comply with the residence requirements, they are to give written notice of that fact to the Commissioner and repay, or make an arrangement for the repayment of the grant.

Subsection (2B) applies in circumstances where no grant is paid, but would have been payable if consideration had been given and/or the purchase of an established home had been an eligible transaction. In essence, it provides that if a transferee would have been required to repay a grant (because the residence requirements were not complied with), had it been authorised to be paid, then they are to give written notice of that fact to the Commissioner.

Clause 15: Schedule 3 amended

This clause removes the references to ‘FHOG’ in transitional clause 10 so as to be consistent with the changes to defined terms made by clause 9(3) of this Bill and has no material effect.

**Part 3 – Rates and Charges (Rebates and Deferments)
Act 1992 amended**

Clause 16: Act amended

This clause provides that the amendments in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

Clause 17: Section 40 amended

Section 40 of the Rates and Charges (Rebates and Deferments) Act sets out the rebates available to eligible pensioners and seniors.

Section 40(9)(b) provides that eligible pensioners are entitled to a rebate of 50 per cent of the emergency services levy, local government rates, and water supply, sewerage and drainage charges.

The amendments provide that these rebates may be capped to a limit that is prescribed by regulation.

As announced in the 2015-16 Budget, the application of rebate caps of \$550 for local government rates and \$600 for water service charges for eligible pensioners will commence in the 2016-17 rating year.

Examples of the effect of these caps are as follows.

An eligible pensioner who has local government rates of \$1,000 will continue to receive a rebate of 50 per cent or \$500, as the rebate is below the capped amount of \$550.

If an eligible pensioner has local government rates of \$1,300, they will receive a rebate of the capped amount of \$550 as a full 50 per cent rebate of \$650 would exceed the capped amount.

Following the passage of this Bill the capped amounts for the 2016-17 rating year will be prescribed in the *Rates and Charges (Rebates and Deferments) Regulations 1992*.

It is anticipated that there will be an annual review of the capped amounts for eligible pensioners in the same manner as occurs for eligible seniors.