

EXPLANATORY MEMORANDUM

FIRST HOME OWNER GRANT AMENDMENT BILL 2009

This Bill seeks to make a number of changes to the *First Home Owner Grant Act 2000* to:

- give legislative effect to the First Home Owners Boost scheme which was announced by the Commonwealth Government on 14 October 2008;
- limit the availability of the first home owner grant in the future to transactions involving a property value of \$750,000 or less, or if the home is located north of the 26th parallel, \$1,000,000 or less; and
- make a number of minor amendments to improve the administrative arrangements applying under the Act.

Part 2 of the Bill proposes amendments relating to the new First Home Owners Boost scheme that is a temporary measure designed to stimulate housing activity and which is funded by the Commonwealth.

These amendments seek to legislatively authorise the payment of an additional \$7,000 grant to first home owners who purchase established homes, taking the total grant payable under the Act to \$14,000.

To be eligible for the additional \$7,000, an applicant must enter into the contract to purchase the established home between 14 October 2008 and 30 June 2009.

The Bill also provides for an additional \$14,000 grant to first home owners who enter into a contract to purchase or build a new home, or owner-build a new home, taking the total grant payable under the Act in these circumstances to \$21,000.

In the case of a contract to purchase or build a new home, to be eligible for the additional \$14,000 grant, an applicant must enter into the contract between 14 October 2008 and 30 June 2009.

In the case of an owner builder, to be eligible for the additional \$14,000 grant, an applicant must commence construction of a new home between 14 October 2008 and 30 June 2009.

It is intended that the grant will revert to the existing \$7,000 after 30 June 2009, although the Bill contains a provision to prescribe a new end date should the Commonwealth decide to extend the scheme beyond that date.

First home owners who apply for the additional grant amount during the specified dates will not only need to satisfy all existing first home owner grant eligibility requirements, but will also be subject to additional eligibility requirements, the nature of which depend on whether the first home is being purchased or built.

Where a first home buyer enters into a contract for the construction of a new home, the building work must start within 26 weeks after the date of entering into the contract. Where the contract specifies a completion date, that date

must be within 18 months of the date of commencement of the building work. Where no completion date is specified, the construction must be completed within 18 months of the commencement of the building work.

Off-the-plan sales contracts do not have a construction commencement date requirement, but must be completed within 18 months of the cut-off date of 30 June 2009 (or such later prescribed cut-off date).

An owner builder must also complete construction of the home within 18 months of the cut-off date of 30 June 2009 (or such later prescribed cut-off date).

The Bill contains provision for the Commissioner to allow a longer period for the beginning or completion of the building work if he is satisfied that there is a delay caused by circumstances beyond the control of the parties to the contract.

In cases where these additional eligibility criteria are not met, the applicant will nonetheless continue to receive the State Government's \$7,000 first home owner grant.

It is acknowledged that some people will miss out on the additional grant because they signed a contract before the new scheme was announced on 14 October 2008.

Furthermore, some of these people may seek to cancel their pre-existing contract made prior to 14 October 2008, and to enter into a new contract on the same or substantially similar terms, but dated on or after 14 October 2008.

To discourage such practices, specific provisions have been included in the Bill to ensure the additional grant is not available in these circumstances.

It is estimated that the cost of the additional First Home Owner Boost payments will be \$101 million in 2008-09 and \$31 million in 2009-10.

While the Commonwealth is funding the additional \$7,000 or \$14,000 available to grant applicants, there will also be an increase in State costs to the extent that the scheme encourages more first home buyers into the market, each of whom will also receive the State-funded \$7,000 grant.

The impact on the State budget is estimated to be \$29.7 million in 2008-09, but only \$7.5 million over the four years to 2011-12, reflecting the expected pull-forward effect of the Boost. These estimates were incorporated in the Government's December 2008 Mid-Year Financial Projections Statement.

Furthermore, while the Boost grant is being administered by the States and Territories on behalf of the Commonwealth, no Commonwealth funding has been provided for its administration and these costs are to be met solely by the State.

The amendments to give effect to these arrangements are proposed to apply retrospectively from 14 October 2008.

Notwithstanding the Boost scheme is only temporary, legislation is considered essential to ensure an applicant's objection rights are available and to support compliance and recovery activity, as well as prosecution action where necessary.

The scheme is currently being administered by the Commissioner of State Revenue under administrative arrangements, in accordance with guidelines provided by the Commonwealth.

Part 3 of the Bill contains amendments to limit the future availability of the first home owner grant to properties that are valued at \$750,000 or less, or if the home is located north of the 26th parallel, \$1,000,000 or less.

Members may recall that the 1999 *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* included the principles around which the *First Home Owner Grant Act 2000* was based, including a requirement that the grant was not to be means tested.

The *Intergovernmental Agreement on Federal Financial Relations* which recently replaced the 1999 Agreement also specifically notes that the grant is not to be means tested.

However, Schedule A to the new Agreement contains an additional principle that permits a jurisdiction to set a cap on the value of property purchased in order for an applicant to be eligible for a first home owner grant.

The new Agreement also provides that any cap can only apply from the date of expiry of the Commonwealth's First Home Owner Boost scheme.

Specific provisions apply to the method of determining the cap amount. It must be not less than 1.4 times the capital city median house price as at the quarter immediately preceding the date of the imposition of the cap.

The value is also required to be reviewed annually on the anniversary of its imposition and amended to ensure that it remains no less than 1.4 times the Perth city median house price as at the quarter immediately preceding the date of review. The Bill includes the ability to vary the value limit by prescription. This will provide a ready mechanism to adjust the limit in a timely manner to ensure the requirements of the Intergovernmental Agreement are met.

The cap amount that is proposed by this Bill will be applied in all cases to the value of the home, plus the value of the land upon which the home is situated.

In the case of the purchase of an established home, the value limit will apply on the date the contract to purchase the home is made. The value will be determined, as it is for transfer duty purposes, on the higher of the consideration for the transaction or the unencumbered value of the property.

Similarly, where a first home owner enters into a contract to build a home, the value limit will apply on the date when the contract is made. The value limit will be determined by adding together the consideration for the contract to build, plus the higher of the consideration for the purchase of the land or the unencumbered value of the land.

In the case of owner builders, the value limit will be determined at the date the building is ready for occupation as a residence, based on the unencumbered value of the home and land.

The point at which the value is determined for owner builders is different because of the administrative difficulties that would otherwise be associated with determining the construction costs of the home in the absence of a single contract to build a home.

It should be noted that the Western Australian provisions do not require the value of the property to be retested at completion, but assess eligibility at the time when the contract is made. However, to prevent this situation being exploited, if the consideration paid for the home is varied to an extent that the cap amount is exceeded, the grant will have to be repaid. A requirement to repay the grant also applies where the consideration payable for an established home is increased and as a result, the value limit is exceeded.

The cap of \$750,000 is currently 1.8 times the Perth median house price of \$418,000 for the December quarter 2008, as estimated by the Real Estate Institute of Western Australia. The higher cap of \$1,000,000 is currently 1.63 times the Pilbara median house price and 1.82 times the Kimberley median house price.

Setting the cap amount at these levels will allow for regional differences in property values throughout the State. The limits are consistent with the value limit proposed in New South Wales of \$750,000 and Queensland of \$1 million. Setting two value limits is not expressly precluded under the Intergovernmental Agreement.

The proposed value caps will still enable around 98% of first home buyers in Western Australia to continue to access the grant, while nonetheless improving the targeting of the assistance.

Savings to the State from the proposed cap are estimated to be around \$1 million annually.

Part 4 of the Bill contains minor amendments that seek to improve the fairness and equity of the legislation.

A number of these amendments seek to more closely align the administrative provisions of the *First Home Owner Grant Act 2000* with those of the *Taxation Administration Act 2003*.

Minor differences in the operation of certain provisions of these Acts did not previously cause issues.

However, since the introduction of the first home owner duty exemption in the former Stamp Act that linked qualification for the exemption to eligibility for a first home owner grant, subtle differences in the operation of certain provisions have emerged.

A number of recent objection and review matters dealt with by the Commissioner have caused attention to be focussed on these differences.

This Bill seeks to better align the manner in which interest is applied to objection and review matters, as well as to specify a power to refund any interest paid on a tax payment arrangement and the cost of lodging a memorial in certain cases.

The Bill also seeks to ensure that a memorial can be lodged to secure certain amounts when the Commissioner becomes aware that a first home owner

grant recipient is in the process of selling the home for which a grant was received prior to first residing in the property for the period required by the first home owner grant legislation.

Part 1 - Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *First Home Owner Grant Amendment Act 2009*.

Clause 2: Commencement

This clause provides the commencement dates for the various sections of this Act.

Paragraph (a) provides that sections 1 and 2 come into operation on the day this Act receives the Royal Assent. Sections 1 and 2 relate to the short title and commencement provisions of this Act.

Paragraph (b) provides that section 3 and Part 2 are deemed to have come into operation on 14 October 2008. These provisions relate to the First Home Owners Boost scheme and give effect to the scheme commencing retrospectively from 14 October 2008 as announced by the Commonwealth.

Paragraph (c) provides that Part 3 comes into operation on a day fixed by proclamation. This Part relates to the capping of home values that are eligible to receive the \$7,000 first home owner grant. This is intended to allow the cap to commence when the First Home Owners Boost scheme ceases.

Paragraph (d) provides that Part 4 comes into operation on the day after this Act receives the Royal Assent. This Part contains minor changes to the administrative arrangements applying to the first home owner grant.

Clause 3: Act amended

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

Part 2 – Amendments for first home owners boost

Clause 4: Section 14A replaced

This clause deletes current section 14A, which provides the meaning of a new home, and inserts a new section 14A. New section 14A incorporates the previous definition of a new home,

along with other definitions of terms used in Subdivision 2 relating to special eligible transactions.

A definition of “cut-off date” has been included, which is the date by which certain transactions must be entered into to receive the additional grant under the First Home Owners Boost scheme. The cut-off date in respect of class 4 or class 5 eligible transactions (those that are eligible for the additional grant) is either 30 June 2009 or a later date prescribed by regulations.

This provides for a new cut-off date to be prescribed should the Commonwealth decide to extend the First Home Owners Boost scheme to a later date.

An “established home” is defined to mean a home that is not a new home or a substantially renovated home. Therefore, this definition includes homes that have previously been occupied and sold as a residence. This is relevant for determining the amount of the additional grant. The terms “new home” and “substantially renovated home” used in this Subdivision are also defined in this section.

The meaning of a “new home” is the same as the previous definition contained in deleted section 14A.

This would include, for example, a newly constructed home or a commercial warehouse that has been converted to residential premises, provided it has not been occupied as a residence prior to its conversion. However, it would not include a new home that was occupied by the builder prior to its sale to a first home buyer.

It is also worth noting how this definition interacts with contracts to purchase homes “off-the-plan”. Where a home is purchased off-the-plan, it is considered to be the purchase of a new home (rather than a contract to build a new home) that has not been sold or previously occupied as a place of residence. In the case of the initial purchase of the home from the builder or developer, a first home owner would qualify for a \$21,000 payment, being the first home owner grant of \$7,000 plus the additional boost amount of \$14,000, subject to the other eligibility requirements being met.

However, suppose a purchaser (who was not a first home owner) had already purchased that home from the developer or builder. If that purchaser, prior to completion of the home, on-sold their interest to a first home owner, the first home owner would only qualify for a \$14,000 payment, being the \$7,000 first home owner grant, plus the additional boost amount of \$7,000,

subject to the other eligibility requirements being met. This is because the home has been previously sold (to the original purchaser) and is no longer considered to be a new home. Even though the home may still be under construction, the nature of these types of contracts means that they are treated as contracts for the purchase of a home, rather than contracts to build a new home.

The term “relevant date” has been transferred from current section 14B(6) and has been amended to include the relevant date for class 5 eligible transactions. The relevant date is the date prior to which building work must be completed in respect of certain eligible transactions. The relevant date for a class 5 eligible transaction is 18 months after the cut-off date applicable at the commencement date of the eligible transaction.

A “special eligible transaction” means an eligible transaction of a class included in section 14B. Section 14B currently refers to class 1, class 2 and class 3 eligible transactions, which are transactions that have received additional grants for limited periods in the past. Clause 5 contains amendments to add class 4 and class 5 eligible transactions to section 14B, which are those transactions that will receive additional payments because of the First Home Owners Boost scheme.

A “substantially renovated home” is currently defined in section 14B(3). This meaning has now been transferred to new section 14A and remains unchanged.

Paragraph (a) of the definition provides that a substantially renovated home is a renovated home that is the subject of a contract for purchase, where the sale of the home under the contract for sale is considered to be a taxable supply under section 40-75(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) on the basis that it is the sale of new residential premises created through substantial renovations of a building.

The Commonwealth Act defines “substantial renovations” of a building as renovations in which all, or substantially all, of a building is removed or replaced. However, the renovations need not involve removal or replacement of foundations, external walls, interior supporting walls, floors, roofs or staircases.

For example, where a builder demolishes a house leaving the façade and a first home buyer purchases the rebuilt premises from the builder, the builder would be required to pay GST on the sale of the entire premises as a taxable supply.

Paragraph (b) of the definition requires that in its renovated state, the home has not been previously sold or occupied as a residence.

A home that meets the requirements set out in paragraphs (a) and (b) will therefore not fall within the definition of an established home, and will be eligible for the additional \$14,000 grant, subject to the other eligibility criteria being met.

Clause 5: Section 14B amended

Subclause (1) deletes current subsections (2) to (4) of section 14B and inserts new subsections (2) to (4).

Current subsection (2) contains the definition of a substantially renovated home, which has been moved to section 14A with other relevant definitions.

Current subsection (3) provides that a contract to purchase a home off-the-plan is a special eligible transaction if the contract provides for the building work to be completed before the relevant date or if the contract does not provide a completion date, the home must be completed before the relevant date. This subsection has been moved to new section 14B(6)(a).

Current subsection (4) provides that certain replacement transactions are not special eligible transactions. This subsection has been moved to new section 14B(6)(b).

Subsection (2) as inserted sets out the meaning of a “class 4 eligible transaction”. A class 4 eligible transaction is an eligible transaction that is a contract for the purchase of an established home, with a commencement date between 14 October 2008 and the cut-off date set out in section 14A (inclusive). The cut-off date is 30 June 2009 or a date prescribed by regulation.

Subsection (3) as inserted sets out the meaning of a “class 5 eligible transaction”. A class 5 eligible transaction is an eligible transaction of a type referred to in paragraph (a), (b) or (c) with a commencement date between 14 October 2008 and the cut off date set out in section 14A (inclusive). The cut-off date is 30 June 2009 or a date prescribed by regulation.

The eligible transaction must be either:

- (a) a contract for the purchase of a new home or a substantially renovated home;
- (b) a comprehensive home building contract for a new home where the building work commences within 26 weeks after

the commencement date, and the contract provides for a completion date within 18 months after it begins. If the contract does not provide a completion date, the building work is to be completed within 18 months after it begins; or

- (c) the building of a new home by an owner builder if the eligible transaction is completed before the relevant date. The relevant date is provided in section 14A.

It should be noted that current section 14B(5) specifies when building work begins or is completed. This subsection clarifies that building work begins when laying the foundations for the home begins (unless there is another date the Commissioner considers appropriate in the circumstances of the case). Laying the foundations is considered to be when the actual pouring of the concrete slab occurs. Site works or other similar work prior to this stage is not considered to be the laying of foundations. A home is completed when the building is ready for occupation as a home. Generally, this relies on the definition of a home in section 4 of the First Home Owner Grant Act, which requires that the building may lawfully be used as a place of residence and is a suitable building for use as a place of residence. This would normally require all essential utilities to be connected to the home, that the home contains the usual amenities required in a home, and that the building is functional as place of residence.

Subsection (4) as inserted provides for the Commissioner to extend the period within which the building work is to commence or be completed if the Commissioner is satisfied that the delay in commencing or completing the building work is caused by circumstances beyond the control of the parties to the contract.

Subclause (2) deletes current subsection (6) and inserts a new subsection (6).

Current subsection (6) provides the meaning of “relevant date” and “special eligible transaction”. These terms are now defined in new section 14A.

Subsection (6) as inserted provides that an eligible transaction will not be considered to be a special eligible transaction (and hence not eligible for the additional grant) in the circumstances set out in paragraphs (a) and (b).

Paragraph (a) provides that a contract to purchase a new or substantially renovated home on a proposed lot on a proposed plan of subdivision of land (for example, off-the-plan) will not be considered to be a special eligible transaction unless the

contract provides to the effect that the building work will be completed before the relevant date. Where a contract does not specify a completion date, the building work must be completed before this date. The relevant date is defined in section 14A and is the date that is 18 months after the cut-off date applicable at the commencement date of the eligible transaction.

Paragraph (b) provides that a contract will not be considered to be a special eligible transaction if the Commissioner is satisfied that the parties entered into contractual arrangements prior to 9 March 2001 in respect of a class 1, class 2 or class 3 eligible transaction, or prior to 14 October 2008 in respect of a class 4 or class 5 eligible transaction, and have cancelled their contract and entered into a new contract on the same or substantially similar terms to take advantage of increased grant amounts available for limited time periods from those dates. This provision is based on the existing section 14B(4), but has been expanded to encompass class 4 and class 5 eligible transactions.

This provision is intended to prevent the additional first home owner boost amount from being paid where it is apparent that a person had entered into a contract that was signed before 14 October 2008, and has sought to essentially reproduce that contract on or after 14 October 2008, in order to access the additional boost grant. Examples of how this may occur might include:

- making some minor amendments to conditions that would normally be done by varying the contract, but instead the contract is replaced entirely;
- adding to or varying the home being built by way of a new contract;
- arguing that the original contract was at an end due to conditions not being met, when in the absence of the new contract being made, the original contract would have been enforceable by either party.

Clause 6: Section 19 amended

Section 19 provides that the amount of the grant that is payable to an applicant is the lesser of either the amount of the consideration for the eligible transaction or the relevant amount of the grant. For example, if an applicant for the existing first home owner grant has purchased a home for less than \$7,000, then the amount of the grant available to them is the amount of the consideration paid for the property, as it is less than \$7,000.

Subclause (1) amends section 19(2) by deleting “section 14B” and replacing it with “section 14A”, as the meaning of a “special eligible transaction” has been moved to new section 14A.

Subclause (2) amends section 19(3) so that a class 4 eligible transaction is entitled to a grant of \$14,000, and a class 5 eligible transaction is entitled to a grant of \$21,000.

Clause 7: Section 28 amended

This clause amends section 28, which relates to the time period in which an objection to a decision on an application must be made, by deleting section 28(1) and replacing it with a new subsection (1).

Current section 28(1) requires an objection to be lodged within 60 days after the date on which notice of the decision is given to the objector.

New section 28(1) also incorporates the time period for lodging objections in relation to class 4 and class 5 eligible transactions.

Where the application is in relation to a class 4 or class 5 eligible transaction, an objection may be lodged within 60 days after the date on which notice of the decision is given, or within 60 days after the day on which this Act receives the Royal Assent, whichever is the later. This is necessary because payments of the First Home Owner Boost are being made on an administrative basis. Accordingly, the 60 day period from the date of a decision on an application may have already lapsed by the time this Act receives the Royal Assent. This provision ensures that an applicant’s objection rights are still within time by allowing a further period of 60 days to lodge the objection.

Part 3 – Amendments to cap value of eligible transactions

Clause 8: Section 3 amended

This clause amends section 3 of the First Home Owner Grant Act, which contains definitions of terms used throughout the Act.

Subclause (1) deletes the definitions of the terms “commencement date”, “completed” and “consideration”. New definitions of these terms, along with other new terms, are inserted by subclause (2).

Subclause (2) inserts new definitions of terms used in the Act. Many of these definitions are merely signposts to other sections of the Act and are self explanatory.

Subclause (3) makes a minor grammatical amendment.

Clause 9: Section 14 amended

This clause amends section 14, which sets out the meaning of an “eligible transaction”.

Subclause (1) inserts a replacement definition of an “eligible transaction” to insert a cap on the value of the transaction. It provides that an eligible transaction is a transaction with a commencement date on or after 1 July 2000 (the date the original first home owner grant legislation commenced) that has a total value that is less than any cap amount that applies to contracts to purchase or build a home, or to the building of a home by an owner builder, on specified dates. Definitions of the terms relevant to this provision have been inserted in section 3 by clause 8.

The effect of this provision is to cap the value of transactions that will be eligible for the \$7,000 first home owner grant. However, the cap will only be relevant to contracts to purchase or build that commence after section 14(1)(b) comes into operation. Accordingly, if a contract is made prior to the date fixed by proclamation for this section to operate, the cap will not be applicable.

In the case of a contract to purchase or build a home, the amount of the cap will be the amount that it was at the time of commencement of the eligible transaction. Even if the cap amount is changed by regulation at some point after a transaction commences, the wording of section 14(1)(b)(i) ensures that it is the cap amount at the commencement date of the eligible transaction that will apply.

In the case of the building of a home by an owner builder, the amount of the cap will be the amount that it was at the time of completion of the transaction. This date is specified in proposed section 14AA(2)(c) as the date the building is ready for occupation as a place of residence. The legislation has been designed in this manner to avoid the owner and the Commissioner from having to track and verify the cost of construction of an owner built home. As a result of this policy setting, owner builders will benefit from any increase in the cap amount that occurs over the period that the home takes to complete, however, any increase in the value of the land over the same period will also be taken into account for the

purposes of determining whether the value is within the cap amount at the completion date.

Subclause (2) amends section 14 by deleting subsections (5) to (8), and inserting a new subsection (5). Subsections (5) to (7) as deleted relate to the commencement and completion dates for transactions. These provisions have been moved to new section 14AA. Subsection (8) as deleted relates to the consideration for transactions. This provision has been moved to new section 14AB.

Subsection (5) as inserted is a transitional provision that ensures that the cap amount does not apply to homes that are being owner built if the commencement date of the transaction occurred before section 9 of the *First Home Owner Grant Amendment Act 2009* commenced. This is necessary because the cap amount applies to homes constructed by owner builders at the date of completion of the home, rather than the date of commencement.

Clause 10: Sections 14AA to 14AE inserted

This clause inserts new sections 14AA to 14AE that set out the meaning of concepts that are relevant to special eligible transactions.

Sections 14AA and 14AB replicate the existing provisions contained in section 14(5) to (8) relating to commencement and completion dates and the meaning of consideration. While the structure of these provisions has changed, the meaning is intended to remain the same.

Section 14AC inserts the meaning of the term “total value”, which is a new term relevant for the purposes of determining whether the property value is less than the cap amount.

The method of calculating the total value of a transaction will depend on the type of transaction involved. For a contract to purchase an established home, the total value will be the higher of the consideration for the transaction or the unencumbered value of the property that is the subject of the transaction. The terms “consideration” and “unencumbered value” are defined in section 14AB and 14AE(1) respectively.

For a comprehensive home building contract, the total value is the sum of the consideration for the transaction and the value of the relevant interest in the land on which the home is to be built. The value of the relevant interest in the land is determined at the commencement date of the transaction, which is the date the contract to build is made. Subclause (2) gives further

clarification on how the value of the relevant interest is determined. This provision ensures that the cap amount applies to both the house and land components, which ensures consistency with the treatment of established homes.

For the building of a home by an owner builder, the total value is the unencumbered value of the property at the completion of the transaction. The term “unencumbered value” is defined in section 14AE(1).

Subclause (2) clarifies that the value of the relevant interest referred to in subsection (1)(b)(ii) relating to a comprehensive home building contract, and (1)(c)(ii) relating to an owner builder, is the greater of the unencumbered value of the interest or the consideration for the interest.

Section 14AD inserts the meaning of the term “cap amount”. The cap amount is the amount that the total value of a transaction must not exceed in order to be eligible for the \$7,000 first home owner grant.

The cap amount is \$750,000 if the home is located south of the 26th parallel or \$1,000,000 if the home is located north of the 26th parallel. Alternative amounts can be prescribed by regulation. Allowing the level of the cap to be amended by regulation is intended to provide flexibility to adjust the cap to reflect changes in the median house price. This ensures that the provisions of Schedule A of the *Intergovernmental Agreement on Federal Financial Relations* as described earlier can be complied with in a timely manner.

Section 14AE inserts the meaning of the term “unencumbered value” in relation to property. A definition of “property” has been inserted in section 3. This concept is relevant when determining the total value of a transaction to which the cap amount is to be applied. This provision is based on similar valuation provisions which are contained in section 36 of the *Duties Act 2008*, however, some adjustments have been made to align it more closely with the equivalent meaning in the Queensland First Home Owner Grant Act. At this point, Queensland is the only jurisdiction to have legislated the arrangements to cap the value of property purchased by a first home owner.

Subsection (1) provides that the value of the property is to be determined without having regard to certain encumbrances, schemes or arrangements to reduce the value of the property, or trust liabilities.

Subsection (2) gives further guidance as to the factors the Commissioner may have regard to when determining whether

the scheme or arrangements referred to in subsection (1)(c) will be disregarded.

Clause 11: Section 18 amended

This clause amends section 18, which sets out the circumstances in which the Commissioner is authorised to pay the first home owner grant, including where the grant is paid prior to completion of the transaction.

Subclause (1) amends section 18(2)(b) to allow the Commissioner to pay the first home owner grant prior to the completion of the transaction if he is satisfied that the interests of the State can be adequately protected by requiring repayment of the grant if the transaction is not completed in a reasonable time, or if the total value of the transaction exceeds the cap amount. This will allow the Commissioner to pay the grant prior to completion of the transaction, but will ensure that in circumstances where the total value of the transaction increases prior to completion through say an increase in the consideration such that it exceeds the cap amount, the grant will be required to be repaid.

This will generally relate to off-the-plan or comprehensive home building contracts where there are variations made to the contract prior to the completion of the home that result in the total price paid exceeding the cap amount. The obligations on the applicant should this occur are set out in the remaining subsections.

Subclause (2) inserts new subsections (3) to (7).

Subsection (3) requires the applicant to notify the Commissioner in writing within 30 days of the applicant becoming aware that the total value of the transaction exceeds, or will exceed, the cap amount for the transaction. The applicant is also required to repay the amount of the grant, or apply to enter into a payment arrangement with the Commissioner.

It should be noted that while this subsection applies when the “total value” exceeds, or will exceed, the cap amount, it will only be changes to the consideration component of the total value that will cause this to occur.

In the case of a comprehensive home building contract, this is because the value of the land upon which a home is built is required to be determined at the commencement date of the

transaction by section 14AC(1)(b)(ii). Accordingly, if the value of the land changes between the commencement date (date the contract is made) and the completion date (date when the building is ready for occupation as a place of residence), it is not taken into account under this section when determining whether the total value of the transaction has exceeded the cap amount. However, if the consideration increases, perhaps as a result of a variation to the contract being made, it will be taken into account in determining whether the cap amount has been exceeded.

While the same principle in relation to changes to the unencumbered value of the property applies in relation to contracts to purchase established homes, it is less likely that the unencumbered value of the property will move substantially between the commencement date and completion date (being the date when the purchaser becomes entitled to possession and if necessary, is registered on the title). This is because settlement of the property usually occurs in a short period after the contract is made.

Subsection (4) applies where there is more than one applicant to a grant application and places the obligation to notify the Commissioner in accordance with subsection (3) on all the applicants. However, compliance with the notification requirement by one applicant means that all applicants are taken to have complied with the requirement.

Subsection (5) allows the Commissioner to impose a penalty, by written notice, if the applicant does not comply with the requirement to repay the amount of the grant to the Commissioner, or does not repay the amount of the grant in accordance with a payment arrangement.

Subsection (6) provides that the penalty under subsection (5) can be up to the amount of the grant to be repaid, but must not exceed this amount.

Subsection (7) provides that the amount of the penalty is required to be paid within 28 days of the Commissioner giving written notice of the penalty, unless there is a payment arrangement approved under section 52.

Clause 12: Section 26 amended

This clause amends the definition of “decision on the application” in section 26 to ensure that an objection can be lodged in relation to a decision by the Commissioner to impose a penalty under section 18. This penalty is payable if the cap amount is exceeded and the applicant does not repay the grant

amount as required. The amendments in this section are amending section 26 subsequent to the amendment in clause 16 being made. The commencement provisions in clause 2 of the Bill provide that clause 16 is scheduled to commence on the day after the day on which this Act receives the Royal Assent, while the amendments in this clause are scheduled to commence on a day fixed by proclamation.

Clause 13: Section 41A inserted

This clause inserts a new section 41A to authorise valuations to be made to determine whether a transaction is an eligible transaction. Prior to the introduction of the cap amount, this provision was not required. It is based on similar valuation provisions contained in section 22 of the *Taxation Administration Act 2003*.

Subsection (1) inserts definitions of the terms “applicant” and “licensed valuer” that are used in this section. These definitions are self-explanatory.

Subsection (2) gives the Commissioner the power to have a valuation of the property or consideration made, or to adopt a valuation by a licensed valuer that the Commissioner considers appropriate.

Subsection (3) provides that the power to have a valuation made or adopt a valuation under subsection (2) applies regardless of whether the Commissioner has required the applicant to provide information about the valuation of the property, or whether the applicant has complied with the requirement.

Clause 14: Section 52 amended

This clause amends section 52, which relates to the Commissioner entering into a payment arrangement where a grant and/or penalty amount is required to be repaid. It inserts a reference to the penalty amount payable under the new provisions of section 18, which impose a penalty where a repayment is not made to the Commissioner. This amendment ensures that if an applicant is required to pay a penalty, they are able to apply to seek an extension of time or pay the amount by instalments.

Clause 15: Other provisions amended

This clause makes a minor amendment to delete the reference to an “eligible” transaction in a number of sections because of the new definition of “transaction” included in section 3.

Part 4 – Other amendments

Clause 16: Section 26 amended

This section amends the definition of “decision on the application” to make it clear that an applicant has a right to object to various decisions of the Commissioner and requirements under the First Home Owner Grant Act, as well decisions to impose penalties. As noted earlier, the amendments in this clause are scheduled to commence prior to the amendments in clause 12.

Clause 17: Section 30 amended

This clause amends section 30, which relates to the Commissioner’s decision on objections, by inserting new subsection (1A), deleting subsection (3), and inserting new subsections (3) to (5).

Subclause (1) inserts a new subsection (1A), which provides a definition of “approved” for the purposes of section 30. The meaning of “approved” has been inserted to ensure there is no misunderstanding in relation to the end date of an interest calculation. In this respect, the date “on which the Commissioner approves the payment or repayment” is the date the Commissioner processes the payment in the Department’s financial system and instructs the relevant area to make the payment. This commonly occurs by an instruction to make payment by electronic funds transfer or by cheque.

Subclause (2) deletes subsection (3) and inserts new subsections (3) to (5). Current subsection (3) applies where a decision of the Commissioner not to authorise the payment of a first home owner grant is reversed as a result of an objection, and provides that interest is payable on the amount of the grant from the date of the decision not to authorise the payment to the date of the objection decision. While this provision works appropriately where a grant has not been paid to the applicant by the Commissioner, deficiencies have arisen where the grant has been paid by the Commissioner and is required to be repaid by the applicant.

Subsection (3) as inserted requires the interest to be calculated from the date of the decision not to authorise the payment of the grant to the date approved for the payment. This is intended to introduce a method of calculating interest that can be made consistent with the arrangements that apply in relation to the first home owner rate of duty that is covered by the provisions of the *Taxation Administration Act 2003*. Future

amendments to that Act will be necessary to totally achieve the desired outcome.

Subsection (4) provides the authority for certain payments or refunds to be made to the applicant in circumstances where a requirement to repay the grant is reversed as a result of an objection decision. The amounts include the amount repaid by the applicant, any interest paid in accordance with a repayment arrangement, any amounts paid associated with the registration of memorials, and interest on these amounts.

Subsection (5) sets out the amounts payable to an applicant if a penalty is varied or reversed as a result of an objection. These amounts are the amount of the penalty paid by the applicant, any interest paid in accordance with a repayment arrangement and interest on these amounts.

Clause 18: Section 32 replaced

This clause deletes and replaces section 32, which relates to decisions on applications for review of an objection decision in the State Administrative Tribunal or, subject to the requirements of section 105 of the *State Administrative Tribunal Act 2004* being met, in the Supreme Court.

Current section 32 applies where a decision of the Commissioner not to authorise the payment of a first home owner grant is reversed as a result of a review, and provides that interest is payable on the amount of the grant from the date of the objection to the date of the review decision. The perceived shortcomings outlined above in relation to the current section 30 are mirrored in this section.

Subsection (1) provides a definition of “approved” for the purposes of section 32. As noted above in relation to section 30, the meaning of “approved” has been inserted to ensure there is no misunderstanding in relation to the end date of an interest calculation.

Subsection (2) requires the interest to be calculated from the date of the decision not to authorise the payment to the date approved for the payment.

Subsection (3) sets out the amounts payable to an applicant if a requirement to repay an amount paid on an application is reversed. These amounts are the amount repaid by the applicant, any interest paid in accordance with a repayment arrangement, any amounts paid associated with the registration of memorials, and interest on these amounts.

Subsection (4) sets out the amounts payable to an applicant if a decision is made to vary or reverse a penalty as a result of a review application. These amounts are the amount of the penalty paid by the applicant, any interest paid in accordance with a repayment arrangement and interest on these amounts.

Clause 19: Section 55 amended

This clause amends section 55, which relates to the Commissioner's ability to lodge a memorial over land and create a charge for certain amounts that an applicant is liable to pay to the Commissioner. This enables the Commissioner to secure an amount owing to the State as a result of a requirement or potential requirement to repay the grant.

Subclause (1) inserts new subsection (2A).

Subsection 2A gives the Commissioner the power to lodge a memorial where a first home owner grant has been paid to an applicant, the applicant has a relevant interest in the home the subject of the grant, and the Commissioner believes that the applicant intends to sell the home prior to meeting the necessary residency requirements. The residency requirements are set out in section 13 of the First Home Owner Grant Act, and essentially require the applicant to reside in the home for a continuous six month period, commencing within 12 months of the completion date of the transaction (the date of settlement or the date the home is ready for occupation as a place of residence).

This provision is intended to allow the Commissioner to lodge a memorial in circumstances where it becomes apparent to the Commissioner that a person who has received a grant, but has not lived in the property for the required period, intends to sell the home. The Commissioner commonly identifies this intention through compliance investigations or when a land tax clearance certificate is sought from the Commissioner as part of the sale process. The ability to lodge a memorial in these circumstances would ensure that the grant is repaid as part of the settlement process.

Subclause (2) amends section 55(2). Section 55(2) currently specifies that when a memorial is registered, it creates a charge for the amount that is covered by section 53. The amendment in this section limits the application of section 55(2) so that it only applies to the charge described in subsection (1). The new subsection 3A inserted by subclause (3) applies to memorials lodged in accordance with new subsection (2A).

Subclause (3) inserts new subsection 3A.

Subsection 3A specifies that the charge created by the memorial lodged in accordance with new subsection (2A) is for the amount of the first home owner grant paid to the applicant. The charge does not cover any penalties payable under the First Home Owner Grant Act, as these are not capable of being identified at the point the memorial is lodged under subsection (2A).