

FIRST HOME OWNER GRANT AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

This Bill amends the *First Home Owner Grant Act 2000* to provide access to the first home owner grant to applicants who have a licence or right of occupancy granted by a local government.

The grant has always been available to applicants who have a licence or right of occupancy granted by the Commonwealth or the State.

The amendments apply retrospectively from the date of commencement of the First Home Owner Grant Act, 1 July 2000, to ensure parity between applicants who have been granted a right to occupy land by the Commonwealth, the State, or a local government.

The Bill proposes a grace period of one year to allow those first home owners who have not previously applied for the grant to apply where their relevant interest in land meets the amended definition.

A series of transitional provisions ensure equity among applicants and allow those who previously did not apply because of the ineligibility of their interest in land to make an application for the grant.

Currently, an interest held in residential property under a licence or right of occupancy granted by a local government prior to 1 July 2000 does not disqualify a person from obtaining a grant when they subsequently purchase a home.

This will change upon commencement of this legislation so that a person who enters into a contract to purchase a home will no longer be eligible for a first home owner grant if they, or their spouse or de facto partner, held such an interest prior to 1 July 2000.

The stamp duty concession which came into effect from 1 July 2004 will also apply where the relevant instrument relating to a licence or right of occupancy granted by a local government was executed on or after 1 July 2004.

It is estimated that the cost to government will be \$0.4 million in the first year, as a result of the retrospective amendments, and \$0.1 million for each subsequent year.

Part 1 - Preliminary

Clause 1: Short title

This clause provides that this Act may be cited as the *First Home Owner Grant Amendment Act 2005*.

Clause 2: Commencement

This clause provides the commencement dates for this Act.

Subclause (1) provides that, subject to subsection (2), this Act comes into operation on the day that it receives the Royal Assent.

Subclause (2) provides that section 4 of this Act is deemed to have come into operation on 1 July 2000.

Part 2 - Amendments

Clause 3: The Act amended

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

Clause 4: Section 6 amended

This clause amends section 6(1)(f) by deleting “Commonwealth or the State” and inserting instead - “Commonwealth, the State or a local government”.

This clause provides that subject to section 6(2) of the *First Home Owner Grant Act 2000*, a licence or right of occupancy granted by a local government that gives, in the Commissioner’s opinion, the licensee or the holder of the right reasonable security of tenure, is a relevant interest for the purposes of that Act.

This places a licensee or a holder of a licence or right of occupancy granted by a local government on an equal footing with a person who is a licensee or a holder of a right of occupancy granted by the Commonwealth or the State. This amendment is, under section 2(2) of this Act, retrospective to the commencement of the *First Home Owner Grant Act 2000*. This means that all such licensees or holders of rights granted by a local government will be deemed to have held a relevant

interest.

The term "local government" is defined by section 5 of the *Interpretation Act 1984* to mean a local government established under the *Local Government Act 1995*.

With the exception of the particular circumstances provided for in Part 3 of this Act, it is intended that when this Act comes into operation, the *First Home Owner Grant Act 2000* will be deemed to have always included the reference to a licence or right of occupancy granted by a local government.

Consequently, a person who enters into a contract to purchase a home, after this Act receives the Royal Assent, will no longer be eligible for a first home owner grant if they, or their spouse or de facto partner, held prior to 1 July 2000, an interest in land by way of a license or right of occupancy granted by a local government.

Example 1

Ms Black owned a house for which right of occupancy was granted via a lease from a local government. She sold the house in December 1999. After this Act receives the Royal Assent she purchases a home. She will not be eligible for a first home owner grant in respect of that home.

Example 2

Mr White owned a house for which right of occupancy was granted via a lease from a local government. He sold the house in December 1999. Prior to this Act receiving the Royal Assent he purchased a home. He will be eligible for a first home owner grant in respect of that home.

Example 3

Mrs Violet has never owned a home and, subsequent to this Act receiving the Royal Assent, purchases a house for which a right of occupancy was granted via a lease from a local government. She will be eligible for a first home owner grant in respect of the purchase of that home.

Part 3 - Transitional provisions

Division 1 - First home owner grant

Clause 5: Terms used in this Division

Subclause (1) provides self-explanatory definitions of the

following terms used in this Division:

- “commencement day”;
- “FHOG Act”; and
- “relevant eligible transaction”.

Subclause (2) provides that if a term is used in this Division that is defined in the *First Home Owner Grant Act 2000*, that term has the same meaning in this Division as in that Act.

Clause 6: Application of amendments to FHOG Act section 12

Subclause (1) provides that the amendments in section 4 of this Act to section 6 of the *First Home Owner Grant Act 2000* do not affect a person’s eligibility to be an applicant for a first home owner grant to the extent that the person held a relevant interest in residential property prior to the day on which this Act receives the Royal Assent. This means that if, before the day on which this Act receives the Royal Assent, a person was eligible to be an applicant for a grant because any prior interest in a right of occupancy granted by a local government was not considered to be a relevant interest, then that person will still be eligible to be an applicant for a grant after the day on which this Act receives the Royal Assent.

Subclause (2) provides that subsection (1) only applies if the commencement date of the eligible transaction to which the application relates is on or before the day this Act receives the Royal Assent.

This clause preserves a person’s eligibility to apply for a grant in respect of a home (inclusive of a home situated on land leased from a local government) where, prior to 1 July 2000 that person held an interest in residential property by way of a licence or right of occupancy granted by a local government and the commencement date of the eligible transaction to which the application relates (i.e. for the subsequent property) falls between 1 July 2000 and the date on which this Act receives the Royal Assent.

However, a person who held, prior to 1 July 2000, a relevant interest in residential property by way of a licence or right of occupancy granted by a local government, and who makes an application in respect of an eligible transaction the commencement date of which is after the day on which this Act receives the Royal Assent will not be eligible for a first home

owner grant.

Example

Prior to 1 July 2000, Mrs Green had owned a property by way of a licence granted by a local government. On 23 January 2005 she acquired her first home. On the commencement date of the eligible transaction for the home (i.e. 23 January 2005) Mrs Green is not considered to have held a relevant interest in a residential property for the purposes of section 12 of the *First Home Owner Grant Act 2000*. Therefore, Mrs Green is entitled to apply for the grant in respect of her home. The changes made by section 4 of this Act do not affect this eligibility.

Clause 7: Application of amendments to FHOG Act section 15

Subclause (1) provides that where an application for a first home owner grant is made in respect of a relevant eligible transaction, section 15(5) of the *First Home Owner Grant Act 2000* is to be read as providing that an application for a grant may only be made within the period:

- beginning on the commencement date of the relevant eligible transaction; and
- ending 12 months after the later of:
 - the completion of the relevant eligible transaction; or
 - the day on which the *First Home Owner Grant Amendment Act 2005* receives the Royal Assent.

This clause provides a 12 month grace period in which to make an application for an applicant whose eligible transaction in relation to their home relates to a relevant interest in land that is by way of a licence or right of occupancy granted by a local government, the commencement date of which is on or after 1 July 2000 and on or before the day on which this Act receives the Royal Assent.

Example

Ms Brown purchased a home in Geraldton in 2002, the commencement date of the relevant eligible transaction was 2 April 2002. At the time of the purchase she was not eligible for the first home owner grant because the relevant interest in land was by way of a right of occupancy granted by the City of Geraldton. After this Act receives the Royal Assent, Ms Brown will have 12 months in which to make an application for a grant

in respect of her home.

Subclause (2) provides that subject to subsection (1) and section 6, the *First Home Owner Grant Act 2000* as in force on the commencement date of the relevant eligible transaction applies to and in relation to an application referred to in that subsection. This means that where a person makes an application for a first home owner grant that relates to a relevant interest in land that is by way of a licence or right of occupancy granted by a local government and the commencement date of the relevant eligible transaction is on or after 1 July 2000 and on or before the day on which this Act receives the Royal Assent, then the *First Home Owner Grant Act 2000* as in force on the commencement date of the eligible transaction applies to that application.

Example

In Ms Brown's case, as the commencement date of the relevant eligible transaction was between 1 January 2002 and 30 June 2002, the amount of her grant would be \$10,000 as set out in section 14B(1b) and 19(3) of the *First Home Owner Grant Act 2000*. This is consistent with all other grants issued in respect of eligible transactions whose commencement dates were between 1 January 2002 and 30 June 2002. Similarly, although Ms Brown would be required under section 13 to make the home her principal place of residence, she would not, specifically, be subject to the required residence period of six months that came into effect on 1 July 2004.

Clause 8: Application of amendments to existing first home owner grants

This clause provides that the amendments to the *First Home Owner Grant Act 2000* as effected by section 4 of this Act do not affect the validity of a first home owner grant that has been paid, or authorised to be paid, before the day on which this Act receives the Royal Assent. This clause protects the entitlement of all previous recipients of the grant and, in particular, ensures that the provisions of this Act cannot be used to apply retrospectively to reclaim the grant from a person who may previously have held a relevant interest by way of a licence or right of occupancy granted by a local government.

Example

In 1998 Mr Grey owned and occupied a house on land leased from the Shire of Manjimup. He sold the house in the following year and in 2001 he bought his first home in Perth and applied

for a first home owner grant in respect of that eligible transaction. When Mr Grey bought his home in Perth, the prior ownership of the house in the Shire of Manjimup did not constitute holding a relevant interest before 1 July 2000 (under section 12 of the *First Home Owner Grant Act 2000*). Mr Grey is still entitled to keep the grant he received in respect of his home in Perth, despite the amendments made in this Act to section 6(1)(f) of the *First Home Owner Grant Act 2000*.

Division 2 – Stamp duty

Clause 9: Terms used in this Division

Subclause (1) provides self-explanatory definitions of the following terms used in this Division:

- “commencement day”;
- “relevant instrument of transfer”;
- “section 75AG”.

Subclause (2) provides that if a term is used in this Division that is defined in section 75AG of the *Stamp Act 1921* that term has the same meaning in this Division as in that section.

Clause 10: Assessment of duty under *Stamp Act 1921* section 75AG for transfers relating to certain first home owners

This clause provides that if an application is made to the Commissioner under section 75AG of the *Stamp Act 1921* for the amount of duty chargeable on a relevant instrument of transfer to be assessed under that section, then section 75AG(4) is to be read as providing that the application for assessment of duty under this section may only be made within the period:

- beginning on the commencement date of the eligible transaction to which the application relates; and
- ending 12 months after the later of:
 - the completion of the eligible transaction; or
 - the day on which the *First Home Owner Grant Amendment Act 2005* receives the Royal Assent.

This clause provides a 12 month grace period in which to make an application for an assessment under section 75AG of the

Stamp Act 1921 where the instrument of transfer of the home relates to a relevant interest in land that is a licence or right of occupancy granted by a local government, that is executed on or after 1 July 2004 and on or before the day on which this Act receives the Royal Assent.

This clause mirrors the provisions of section 7 of this Act in respect of the *First Home Owner Grant Act 2000* relating to eligible transactions which occur on or after 1 July 2004. This places all applicants, whose instruments of transfer in relation to their first home are executed on or after that date, on the same footing.

Example

Mr Silver purchased a home in 2004, the relevant instrument of transfer was executed on 30 July 2004. At the time of the purchase he was not eligible for the first home owner grant because the relevant interest in land was by way of a right of occupancy granted by his local government. After the day on which this Act receives the Royal Assent, Mr Silver will have 12 months in which to come forward and make an application for an assessment of stamp duty at the first home owner rate in respect of his home.