

# FIRST HOME OWNER GRANT AMENDMENT BILL 2001

## EXPLANATORY MEMORANDUM

The purpose of this Bill is to give effect to the Prime Minister's announcement that payments under the First Home Owner Grant Scheme will be increased to \$14,000 in certain circumstances where eligible first home owners enter into contracts to purchase or build a new home.

Under the existing First Home Owner Grant Scheme, first home owners that satisfy five eligibility criteria are entitled to the payment of a grant of \$7,000 to compensate for the effect of the goods and services tax on home ownership.

The first and second criteria require the application to be made by a natural person who is an Australian citizen or permanent resident.

The third and fourth eligibility criteria will disqualify any person if the person or their spouse has previously received a grant anywhere in Australia, or has held a relevant interest in residential property, including an investment property, prior to 1 July 2000.

The fifth eligibility requirement provides that all applicants must occupy the home to which the grant relates as their principal place of residence within a 12 month period.

On 9 March 2001, the Prime Minister announced that the grant would be increased from \$7,000 to \$14,000 for persons that meet the criteria for the existing grant, and also satisfy certain additional criteria.

To be eligible for the additional \$7,000 grant, an applicant must enter into a contract for the purchase or construction of a new home, or in the case of an owner builder, commence construction of a new home, between 9 March 2001 and 31 December 2001 inclusive.

A home will be considered to be a "new home" if it has not been previously occupied or sold as a residence. A home may also be considered to be a new home where it is the subject of a contract for sale, the 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 a substantially renovated new residential premise, and in its renovated state, the home has not been previously sold or occupied as a residence.

An applicant must also meet the following additional criteria which apply to the commencement and completion dates for building contracts, off-the-plan sales and construction by owner builders:

- where a first home buyer enters into a contract for the construction of a new home, construction must commence within 16 weeks of entering into the contract, and the contract must specify a completion date within 12 months of the date of commencement. Where the completion date is not specified, completion must occur within 12 months of the commencement date; and
- in the case of construction undertaken by an owner builder or by a builder under a contract for an off-the-plan sale, construction must be completed before 1 May 2003.

These parameters have been dictated by the Commonwealth and will apply consistently across Australia. As such, there exists no scope for the State to modify them.

Even though the extended scheme is only temporary, legislative support was considered necessary to ensure an applicant's objection rights are available and to legitimise compliance activity and prosecution action.

The amendments contained in the Bill will apply retrospectively to 9 March 2001.

**Clause 1: Short Title**

This clause provides that the Act may be cited as the *First Home Owner Grant Amendment Act 2001*.

**Clause 2: Commencement**

This clause provides that the Act has retrospective application to 9 March 2001, the date of the Prime Minister's announcement.

**Clause 3: The Act amended**

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

**Clause 4: Subdivision heading inserted**

This clause inserts a new Subdivision 1 heading before section 14. This allows a new Subdivision 2 to be inserted. Subdivision 1 relates to eligible transactions, which are those transactions that meet the criteria for the existing \$7,000 grant.

**Clause 5: Part 2 Division 3 Subdivision 2 inserted**

This clause inserts a new Subdivision 2, which consists of new sections 14A and 14B. The new Subdivision 2 relates to special eligible transactions, which are those eligible transactions that also meet the further criteria relevant to the additional \$7,000 grant for new homes.

Section 14A provides that the meaning of a “**new home**” for the purposes of the Subdivision is one that has not been sold or previously occupied as a place of residence. This would include, for example, a commercial warehouse that has been converted to residential premises, provided it has not been occupied as a residential premise 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.

Section 14B provides the meaning of a “**special eligible transaction**” and outlines the circumstances in which an eligible transaction will be considered to be a special eligible transaction.

Subsection (1) provides that a “**special eligible transaction**” is an eligible transaction entered into on or after 9 March 2001 and on or before 31 December 2001. The transaction may be a contract for purchase, a comprehensive home building contract, or a construction by an owner builder. Each of these transactions are outlined in paragraphs (a), (b) and (c).

Paragraph (a) provides that a contract for the purchase of a new home or a substantially renovated home is a “special eligible transaction”. A substantially renovated home is defined in subsection (2).

Paragraph (b) provides that a comprehensive home building contract for a new home is a “special eligible transaction” if subparagraphs (i) and (ii) are satisfied.

Subparagraph (i) requires that the building work begin within 16 weeks after the commencement date. Clarification is provided in subsection (5) as to when building work is considered to begin. There is also a power for the Commissioner to allow a longer period where a delay has been caused by circumstances beyond the control of the parties.

Subparagraph (ii) requires that the contract provide that building work will be completed within 12 months after it has begun. Where a contract does not specify a completion date, building work must actually be completed within 12 months after it has begun. Clarification is provided in subsection (5) as to when building work is considered to be completed.

Paragraph (c) provides that the construction of a new home by an owner builder is a “special eligible transaction” if the transaction is completed before 1 May 2003.

Subsection (2) provides the meaning of a substantially renovated home for the purposes of subsection (1)(a). A home is considered to be a substantially renovated home if it meets the requirements set out in paragraphs (a) and (b).

Paragraph (a) requires that the sale of a home under a 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 a substantially renovated new residential premise.

For example, where a house is demolished by a builder leaving the façade and a first home buyer purchases the rebuilt premises from the builder, the builder would pay GST on the sale of the entire premises as a taxable supply. This transaction would meet the requirements of paragraph (a).

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

Subsection (3) provides that a contract to purchase a home on a proposed lot on a proposed plan of subdivision of land (ie. “off-the-plan”) will be considered to be an eligible transaction for the purposes of subsection (1)(a) only if the

contract provides to the effect that building work will be completed before 1 May 2003. Where a contract does not specify a completion date, building work must actually be completed before this date.

Subsection (4) provides that a contract will not be considered to be an eligible transaction if the Commissioner is satisfied that the parties entered into contractual arrangements prior to 9 March 2001, and have cancelled their contract and entered into a new contract on the same or substantially similar terms to take advantage of the additional \$7,000 grant.

Subsection (5) clarifies that for the purposes of this section, building work is taken to begin when laying the foundations for the home begins. It should be noted that the interpretation of this provision by the State Revenue Department as it applies to the existing section 14(5)(b)(i) is that the laying of the foundations is the actual pouring of concrete. Siteworks or other similar work prior to this stage are not considered to be the laying of the foundations. A home is completed when the building is ready for occupation as a home.

**Clause 6: Section 19 amended**

Subclause 1 amends section 19 by inserting the subsection designation (1) before the word “The”. This enables a new subsection (2) to be inserted.

Subclause 2 inserts a new subsection (2) at the end of section 19. Subsection (2) specifies the amount of the grant for a special eligible transaction that meets the requirements of section 14B. The amount is the lesser of the consideration for the special eligible transaction, or \$14,000. This will ensure that where the consideration for the transaction is less than \$14,000, the amount of the first home owner grant for that transaction will be equal to the amount of the consideration for that transaction.

In the case of an owner builder, existing section 14(8)(c) will apply to ensure that the consideration comprises the actual costs incurred by an owner builder, excluding any amount for the owner builder’s own labour.

It should be noted that where subsection (2) applies on the basis of a special eligible transaction, the amount payable under subsection (1) is not applicable. This is because subsection 8(3) of the Act provides that only one first home owner grant is payable for the same transaction.

**Clause 7: Saving right to object**

Subclause (1) is a saving provision in relation to the time within which an applicant who is dissatisfied with the Commissioner’s decision on their application may object to the decision. Where the application is in relation to a special eligible transaction, an objection may be lodged within 60 days of the date which notice of the decision is given, or of the day on which this Act receives the Royal Assent, whichever is the later. This is necessary due to the retrospective commencement to ensure that where the 60 day period has already elapsed by the time the Act receives Assent, then a further period of 60 days will be allowed to lodge the objection.

Subclause (2) provides that for the purposes of the saving provision in subclause (1), **“eligible transaction”, “first home owner grant”** and **“special eligible transaction”** will have the meaning given to them by the amendments in this Bill.