

EXPLANATORY MEMORANDUM

FIRST HOME OWNER GRANT AMENDMENT BILL 2000

The purpose of this Bill is to extend access to the first home owner grant to New Zealand citizens who reside permanently in Australia.

Under the Act, first home buyers who are Australian citizens or permanent residents may qualify for a grant of up to \$7,000 to compensate for the impact of the GST on house prices.

The current legislation defines a permanent resident as the holder of a permanent visa within the meaning of the Commonwealth's *Migration Act 1958*. This does not include special category visas granted to New Zealand citizens upon their arrival in Australia, even though both types of visa can serve the same purpose.

As a result, New Zealand citizens residing permanently in Australia are at a disadvantage relative to other migrants who hold a permanent visa.

This anomaly emerged after the original legislation was drafted and it is intended that these amendments operate retrospectively to 1 July 2000, being the commencement date of the Scheme.

Similar amendments are intended, or have already been made, by other States and Territories so that national uniformity of the Scheme is maintained in line with the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.

It is difficult to estimate the number of first home buyers who will be eligible for assistance as a result of the amendments contained in the Bill.

However, the Government has received many complaints from New Zealanders who are currently excluded from the Scheme.

The Commonwealth has indicated that it is supportive of this extension to the Scheme, and that its current estimates of the cost of the Scheme would already include grants paid to New Zealanders. Accordingly, any grant payments resulting from these amendments will be taken into account in the calculation of the Commonwealth's guarantee payments to the States and Territories, thereby ensuring that the State's budget remains no worse off as a result of national tax reform.

As a result, there is no additional cost arising from this extension relative to forecasts already relied upon.

This Bill also proposes minor amendments to clarify that an applicant must meet the eligibility criteria specific to the applicant, at the commencement date of the eligible transaction.

The commencement date is:

- in the case of a contract – the date when the contract is made; or
- in the case of the building of a home by an owner builder – the date when laying the foundations for the home begins.

The Scheme has always been administered on that basis and these amendments merely seek to remove any ambiguity that could arise from the current wording of the Act.

Clause 1: **Short title**

This clause provides that the Act may be cited as the *First Home Owner Grant Amendment Act 2000*.

Clause 2: **Commencement**

Subclause (1) provides that all sections other than section 8 operate from the date of Royal Assent.

Subclause (2) provides that section 8, dealing with the extension of the Scheme to New Zealand citizens, has retrospective application to 1 July 2000, the date that the Scheme commenced.

Clause 3: **The Act amended**

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

Clause 4: **Section 7 amended**

Paragraph (a) amends section 7(1) to clarify that for the purposes of the first home owner grant, a person is a spouse of an applicant if they are legally married at the commencement date of the eligible transaction to which the application relates.

Paragraph (b) deletes the existing section 7(1)(b) and replaces it with a new paragraph (b). This is to clarify that for the purposes of the first home owner grant, a person is considered to be the spouse of an applicant if that person and the applicant have been living together on a genuine domestic basis for at least 2 years at the commencement date of the eligible transaction to which the application relates.

For example: An unmarried person may enter into a contract to build a home on land that they own and meet all eligibility requirements for a grant at that time. Prior to completion of the home, the person marries a person who has previously owned a home. In these circumstances it could be argued that the person is ineligible for the grant, even though the spouse has no interest in the home. The amendments will make it clear that if the

couple were not married at the commencement date, and had not been living together on a genuine domestic basis for at least 2 years prior to the commencement date, eligibility for the grant will not be affected.

Clause 5: **Section 11 amended**

This clause amends section 11(1)(a) so that an applicant is ineligible for a grant if, at any time prior to payment of the grant, a grant has been paid on another application. This will cover the scenario where all eligibility criteria are met at the commencement date of the eligible transaction, however, before the grant is paid, the applicant or the applicant's spouse receives a grant on another application. This will ensure that only one grant is paid to an applicant.

Clause 6: **Section 12 amended**

This clause amends section 12(3) so that an applicant is ineligible if the applicant or the applicant's spouse has, on or after 1 July 2000 and **before the commencement date**, held an interest in property (other than property to which the application relates), used at any time on or after 1 July 2000 as the residence of the applicant or the applicant's spouse. Section 12(3) currently makes an applicant ineligible where an applicant or the applicant's spouse held and used property in such a manner at any time up to the date on which the application was made.

Clause 7: **Amendments relating to "Australian citizen"**

Subclause (1) deletes the existing definition of "**Australian citizen**" in section 3(1) and inserts a new definition that provides that "**Australian citizen**" has the meaning given by a new section 7A inserted by subclause (2). The amendment clarifies that an applicant must be an Australian citizen on the commencement date of the eligible transaction.

Subclause (2) inserts a new section 7A in Part 1 to provide a meaning of "**Australian citizen**" for the purposes of an application for a first home owner grant.

A person is an "**Australian citizen**" for the purposes of an application for a first home owner grant if, on the commencement date of the eligible transaction to which the application relates, the person is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth.

Clause 8: **Amendments relating to "permanent resident"**

Subclause (1) deletes the existing definition of "**permanent resident**" in section 3(1) and inserts a new definition that provides that "**permanent resident**" has the meaning given by a new section 7B inserted by subclause (2). The amendment clarifies that an applicant must be a permanent resident on the commencement date of the eligible transaction.

For example: A new arrival into Australia enters into a contract to build a home but does not meet the eligibility criteria for a grant at that time, as the person is not an Australian citizen under the *Australian Citizenship Act 1948*, nor the holder of a permanent or special category visa under section 30 or 32 of the *Migration Act 1958*. If the person gains permanent residency status prior to completion of the contract, it could be argued that the person is eligible for the grant. These amendments will make it clear that the person is ineligible.

Subclause (2) inserts a new section 7B in Part 1 to provide a meaning of **“permanent resident”** for the purposes of an application for a first home owner grant.

Paragraph (a) provides that the following persons are “permanent residents” for the purposes of the Act –

- in item (i) - the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth; or
- in item (ii) - a New Zealand citizen who is the holder of a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

Paragraph (b) provides that applicants falling within the meaning of **“permanent resident”** in section 7B must satisfy the Commissioner of State Revenue that he or she intends to reside permanently in Australia. This category of applicant will be required to declare their intentions in this regard when making an application and audit activities will be carried out to ensure that information supplied to the Commissioner is not false or misleading.

Anyone who attempts to mislead the Commissioner as to their permanency may be required to repay the grant plus a penalty equal to the amount that they are required to repay.

Furthermore, that person will also commit an offence against the Act for which a penalty of up to \$20,000 is provided.

As the amendments in this clause have retrospective application to 1 July 2000, the Commissioner will be taken to have been satisfied of the intent as to permanency in respect of all applications already approved.