

FIRST HOME OWNER GRANT AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the First Home Owner Grant Act 2000 to provide for an additional \$3,000 grant, together with the existing \$7,000 grant, for the construction or purchase of eligible new homes where the contract is entered into (or in the case of owner builders, where construction starts) between 1 January 2002 and 30 June 2002 (inclusive).

Under the original First Home Owner Grant Scheme, eligible first home owners are entitled to the payment of a grant of \$7,000.

On 9 March 2001, the Prime Minister announced that the First Home Owner Grant Scheme would be extended to provide an additional \$7,000 grant (ie. a total of \$14,000) in respect of contracts to build a new home, or to buy a previously unoccupied new home, entered into between 9 March 2001 and 31 December 2001 (inclusive).

The Prime Minister made a further announcement on 9 October 2001 that the additional grant for new homes would be extended beyond the end of the year. With effect from 1 January 2002, the additional grant for new homes is \$3,000 (together with the existing \$7,000 grant). The amount of the grant will revert to the original \$7,000 from 1 July 2002.

In order to qualify for the additional grant, an applicant will need to satisfy all of the eligibility requirements for the existing grant, in addition to the following:

- construction of the home must commence within 26 weeks of entering into the contract, unless the Commissioner of State Revenue is of the view that there are good reasons for extending the period;
- the contract must specify a completion date within 18 months of the date of commencement; and
- in the case of an owner builder, building must commence between 1 January 2002 and 30 June 2002 (inclusive) and be completed by 30 June 2004.

In addition, the Prime Minister announced that the commencement and completion dates applying to the existing additional \$7,000 grant for new homes would be extended. For contracts entered into between 9 October 2001 and 31 December 2001 (inclusive), construction must commence within 26 weeks of entering into the contract (instead of 16 weeks) and the contract must specify a completion date within 18 months of the date of commencement (instead of 12 months).

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.

The amendments contained in the Bill relating to the extension of the scheme will apply retrospectively to 9 October 2001, the date of the Prime Minister's announcement.

The Bill also makes two minor amendments affecting the administration of the scheme. The first amendment relates to the date building work by an owner builder is taken to begin. It enables the Commissioner to exercise his discretion to approve an alternative commencement date where he considers it appropriate, based on the circumstances of the case. This amendment has a retrospective commencement date of 9 March 2001.

The second amendment is to the offence provision for failure to notify the Commissioner and repay the grant where the residence requirement has not been met. It is recognised that there may be extenuating circumstances and prosecution may not be appropriate in all cases. Therefore, the offence provision has been replaced with a penalty provision. This amendment commences on the day the Act receives the Royal Assent.

Clause 1: Short Title

This clause provides that the Act may be cited as the *First Home Owner Grant Amendment Act 2002*.

Clause 2: Commencement

Subclause (1) provides that the Act comes into operation on the day on which it receives the Royal Assent, subject to subsections (2) and (3).

Subclause (2) provides that section 4 (apart from subsection (5)), which provides for the three classes of special eligible transactions, and section 5, which provides for the amount of the grant, are taken to have come into operation on 9 October 2001, the date of the Prime Minister's announcement.

Subclause (3) provides that section 4(5), which gives the Commissioner the discretion to determine an alternative commencement date for building work, is taken to have come into operation on 9 March 2001. This provides legislative support for the Commissioner's current administrative practice.

Clause 3: The Act amended

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

Clause 4: Section 14B amended

Subclause (1) amends section 14B(1) by deleting the reference to a "special eligible transaction" and inserting a reference to a "**class 1 eligible transaction**", and by deleting the reference to "31 December 2001" and inserting a reference to "8 October 2001". This is necessary to distinguish between the different commencement and completion dates and the amount of the grant for the three types of special eligible transactions.

A “**class 1 eligible transaction**” is an eligible transaction with a commencement date between 9 March 2001 and 8 October 2001 (inclusive) and that is:

- a contract for the purchase of a new home or a substantially renovated home;
- a comprehensive home building contract for a new home where building work commences within 16 weeks after the commencement date, and is completed within 12 months after it begins; or
- the building of a new home by an owner builder where the transaction is completed before 1 May 2003.

Subclause (2) inserts new subsections (1a) and (1b) which provide for class 2 and class 3 eligible transactions.

A “**class 2 eligible transaction**” is an eligible transaction with a commencement date between 9 October 2001 and 31 December 2001 (inclusive) and that is:

- a contract for the purchase of a new home or a substantially renovated home;
- a comprehensive home building contract for a new home where building work commences within 26 weeks after the commencement date, and is completed within 18 months after it begins; or
- the building of a new home by an owner builder where the transaction is completed before 1 January 2004.

A “**class 3 eligible transaction**” is an eligible transaction with a commencement date between 1 January 2002 and 30 June 2002 (inclusive) and that is:

- a contract for the purchase of a new home or a substantially renovated home;
- a comprehensive home building contract for a new home where building work commences within 26 weeks after the commencement date, and is completed within 18 months after it begins; or
- the building of a new home by an owner builder where the transaction is completed before 1 July 2004.

Subclause (3) amends section 14B(2) to insert a reference to new subsections (1a) and (1b). This is necessary so that the meaning of a “substantially renovated home” (as defined by section 14B(2)) applies to each of the three classes of special eligible transactions.

Subclause (4)(a) amends section 14B(3) by inserting a reference to new subsections (1a)(a) and (1b)(a). Paragraphs (b) and (c) replace references to “1 May 2003” and “that date” respectively with references to “the relevant date”. This is necessary so that this subsection 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), (1a)(a) or (1b)(a) only if the contract

provides to the effect that building work will be completed before the relevant date. The “relevant date” is defined in new subsection (6).

Subclause (5) replaces section 14B(5)(a) with a new paragraph (a). This paragraph provides that building work begins on the date when laying the foundations for the home begins or another date the Commissioner considers appropriate in the circumstances of the case.

This allows the Commissioner to use his discretion where first home owners may not be eligible for the additional grant in circumstances where they do not comply with the commencement and completion date requirements for legitimate reasons. For example, where an applicant has purchased a new home that has not yet been completed and further work is required to make the house suitable for occupation as a place of residence, the applicant may not meet the completion date requirement if building work has to be completed within the allowed time from when the foundations for the home were laid.

It may be more appropriate for the Commissioner to determine that building work commenced when the uncompleted home was purchased by the applicant, enabling the applicant to complete the building work within the allowed time from the date the home was purchased.

Another example of a circumstance in which it may not be appropriate for the building work to be taken to have commenced when the foundations for the home were laid, is where a commercial property, such as a factory or shed, is knocked down, but the foundations remain, and a new home is built on the existing foundations.

Subclause (6) inserts a new subsection (6) which provides the meaning of a “**relevant date**” and “**special eligible transaction**” for the purposes of section 14B.

Clause 5: Section 19 amended

Subclause (1) replaces section 19(2)(b) with a new paragraph (b). This paragraph provides that the amount of the grant for a special eligible transaction is the lesser of the consideration for the transaction or “the relevant amount”.

Subclause (2) inserts a new subsection (3) which provides that the relevant amount is \$14,000 in the case of class 1 and class 2 eligible transactions, and \$10,000 in the case of class 3 eligible transactions.

Clause 6: Section 21 amended

This clause amends section 21 by repealing subsection (5) and inserting new subsections (5) and (6).

Subsection (5) provides that the Commissioner may impose a penalty on the applicant if the applicant does not pay the amount required to be repaid under subsection (2). Subsection (2) requires the applicant to notify the Commissioner and repay the grant where the residence requirement has not been met within the 12 month or extended period allowed.

Subsection (6) provides that the applicant is required to pay the amount of the penalty imposed 28 days after the date on which notice of the penalty is given to the applicant. The application of this requirement is subject to section 52 which provides for payment by instalment arrangements or the extension of time for payment.

Clause 7: Section 26 amended

This clause amends paragraph (c) of the definition of “decision on the application” by inserting a reference to the imposition of a penalty under section 21. This is necessary so that the objection and appeal provisions apply to the imposition of a penalty under section 21.

Clause 8: Section 52 amended

This clause amends section 52(1)(a) by inserting a reference to section 21. This is necessary so that the arrangements by which the Commissioner may approve an extension of time to repay the grant or allow the applicant to enter into an instalment arrangement also apply to the repayment required, or the penalty imposed, under section 21.

Clause 9: Saving of right to object

Subclause (1) is a saving provision that applies 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:

- the date building work is taken to commence under section 14B(5)(a) for a class 1 eligible transaction;
- the commencement and completion date requirements under section 14B(1a)(b) or the date building work is taken to commence under section 14B(5)(a) for a class 2 eligible transaction; or
- a class 3 eligible transaction,

an objection may be lodged within the later of 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 of the amendments to ensure that if 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), “**class 1 eligible transaction**”, “**class 2 eligible transaction**”, “**class 3 eligible transaction**”, “**eligible transaction**” and “**first home owner grant**” will have the same meaning as in the *First Home Owner Grant Act 2000*.

This subclause also provides that the “***First Home Owner Grant Act 2000***” means that Act as amended by this Act. Therefore, the terms referred to in subclause (2) will have the meaning given to them by the amendments in this Bill.