



REPORT OF THE
STANDING COMMITTEE ON
CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

FIRST HOME OWNER GRANT
BILL 2000

Presented by Hon Murray Nixon JP MLC (Chairman)

Report 51

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

December 21 1989

Terms of Reference:

- 1 The functions of the committee are to inquire into and report on:
 - a) the constitutional law, customs and usages of Western Australia;
 - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

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REPORT OF THE STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**IN RELATION TO THE*****FIRST HOME OWNER GRANT BILL 2000***

1 REFERENCE AND PROCEDURE

- 1.1 A tabled paper (the *First Home Owner Grant Bill 2000*, Tabled Paper number 853) was referred to the Standing Committee on Constitutional Affairs (the Committee) for consideration and report on April 5 2000 by Hon Peter Foss QC, MLC, Minister representing the Minister Assisting the Treasurer.
- 1.2 The *First Home Owner Grant Bill 2000* (the Bill) was referred to the Committee by the Legislative Council under Standing Order 230(d) on May 4 2000.

2 BACKGROUND TO THE BILL

- 2.1 The Federal Government has passed legislation to implement a goods and services tax (GST) at a rate of ten per cent from July 1 2000.
- 2.2 Following Premiers' conferences on November 13 1998 and April 9 1999, all States and Territories signed an agreement known as the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (the IGA) under which the States and Territories agreed to undertake all necessary steps to have appropriate legislation enacted to give effect to the reform measures contained in the IGA. These included ceasing to apply financial institutions duty from July 1 2001, ceasing State diesel subsidies as a result of the new Commonwealth scheme, and ensuring payroll tax is not levied on top of GST. For a discussion of the IGA and other related GST matters, refer to the Committee's Forty-Fourth and Forty-Fifth Reports.
- 2.3 Under the IGA the States and Territories also agreed to assist first home buyers though the funding and administration of a new uniform First Home Owners Scheme (FHOS) to offset the impact of the introduction of the GST on house prices. The principles of the FHOS are set out in Appendix D of Schedule 1 of the IGA. Appendix D of the IGA is attached as Appendix 1 of this report.

3 CONTENTS AND PURPOSE OF THE *FIRST HOME OWNER GRANT BILL 2000*

- 3.1 The purpose of the Bill is to put in place the FHOS. The FHOS will assist eligible first home buyers by providing a \$7 000 Commonwealth grant where they enter into a contract on or after July 1 2000 to purchase or build their first home. July 1 2000 is the introductory date for the new reformed tax system for Australia.
- 3.2 The FHOS provides compensation to first home buyers and aims to ensure that home affordability for this group is maintained at existing levels. Each jurisdiction currently has in place stamp duty exemption or concession arrangements for eligible first home buyers. Under the IGA, States and Territories agreed that they would not introduce or vary any taxes or charges associated with home purchases with the intention of reducing the benefit for grant recipients. Accordingly, existing assistance to eligible first home buyers such as the Stamp Duty First Home Concession will continue to operate in addition to this new first home owner grant. The FHOS has therefore been developed on the basis of establishing a separate, stand-alone scheme.
- 3.3 The FHOS is restricted to eligible first home buyers because other home buyers should benefit from a GST-induced increase in the selling price of their existing home.
- 3.4 The principles on which the FHOS is based were set out in the IGA and, together with the eligibility criteria and the amount of the grant, are consistent across all jurisdictions. Each State and Territory will implement separate but consistent legislation to give effect to the FHOS.
- 3.5 The impact of the assistance provided by the FHOS is expected to be significant compensation for the GST. In the first year, it is expected that over 17 000 applicants in Western Australia will be able to claim assistance totalling nearly \$120 million.
- 3.6 The Bill therefore establishes the FHOS. It details the entitlement and eligibility criteria, the process for making applications and payment of the grant, objection and appeals provisions and the administration and other provisions necessary for the effective operation of the scheme. As stated above, the FHOS will provide a once-only grant of \$7 000 to eligible persons buying or constructing their first home in Western Australia to offset the impact of the introduction of the GST on house prices. Applicants will be eligible if they have purchased a home, where the contract to purchase or build has been entered into on or after July 1 2000 or, in the case of owner builders, where construction commences on or after July 1 2000. The payment of the grant is not means tested and there is no upper limit on the value of the property being acquired.
- 3.7 To receive the grant, each of the applicants must comply with five eligibility criteria. The application for the grant must also relate to an “eligible transaction” which is

defined in the Bill and discussed further in this report. Only one grant is payable for the same eligible transaction.

- 3.8 The Bill also contains anti-avoidance provisions to deny the payment of a grant to an applicant who effectively contracts before July 1 2000 to enter into a building contract or to purchase a home after July 1 2000.
- 3.9 The anti-avoidance provisions do not prevent pre-construction activity occurring as a precursor to a post July 1 2000 binding contract, if the arrangement in relation to the pre-construction activity allows both parties to walk away at any time without a requirement to sign a binding contract to build.
- 3.10 The Bill also contains a number of standard administration provisions, including rights of objection and appeal where a grant is not approved. The Bill also includes extensive investigation powers to ensure only eligible applicants receive the grant. Recovery powers are included in the Bill to ensure that the \$7 000 grant can be recovered where no entitlement existed, or conditions attached to its payment were not met.
- 3.11 The FHOS has been actively promoted by the Ministry of Housing since early March of this year to ensure that intending purchasers and builders of first homes could make informed decisions.
- 3.12 In Western Australia, the scheme will be administered by the State Revenue Department. To reduce the effort required for a person to make application for the grant, the State Revenue Department is negotiating with a range of financial institutions and associated providers of first home finance to allow potential applicants to apply for the grant through their financial institution at the time they seek finance. Those persons who do not require finance or who are financing through a financial institution that has not elected to provide such an application service will be able to apply directly to the State Revenue Department.
- 3.13 The Bill contains 70 clauses in four parts:

Part 1 – Preliminary

Part 2 – First home owner grant

Part 3 – Administration

Part 4 – Miscellaneous

- 3.14 Certain selected clauses of the Bill are outlined below. The Committee has provided comment on those clauses.

3.15 As part of its review, the Committee placed an advertisement in *The West Australian* newspaper inviting submissions on the Bill.

3.16 The Committee received one oral submission as a result of the advertisement. Mr Mark Houlahan, a property valuer in Geraldton, expressed his concern that the \$7 000 first home owner grant would have the effect of artificially inflating the first home owner market for approximately six to twelve months after the introduction of the grant.

3.17 As a further part of the review, the Committee invited comment from a number of parties who it considered may wish to make a submission. The witnesses who appeared before the Committee were:

- Mr Bill Sullivan, Assistant Commissioner (Policy and Legislation) State Revenue Department;
- Mr Robert Harrison, Manager, First Home Owners' Scheme, State Revenue Department;
- Mr Michael Barnes, Assistant Director, Economic and Revenue Policy Division, Treasury Department;
- Mr Roger Guinery, Director of Homeownership, Ministry of Housing;
- Mr Gavin Forster, Director of Housing, Master Builders' Association; and
- Mr Lino Iacomella, Public Affairs Director, Real Estate Institute of Western Australia.

4 SELECTED CLAUSES OF THE *FIRST HOME OWNER GRANT BILL 2000*

4.1 Part 1 – Preliminary

Clause 4 – Meaning of “home”

4.1.1 Clause 4 of the Bill provides a definition of “home”. This term is used throughout the Bill and is relevant for the purposes of eligibility for the grant. Paragraph (a) provides that the home must be lawfully used as a place of residence. Paragraph (b) provides that the building must, in the Commissioner’s opinion, be a suitable building for use as a place of residence.

4.1.2 Most dwellings that are permanently connected to services such as power, water and sewerage (or septic tanks) will be considered suitable for use as a

residence. This will include new or established houses, home units and flats as well as demountable dwellings. It should be noted that caravans, other than those permanently affixed to land, would not fall within this definition.

Clause 5 – Meaning of “owner” of a home or “home owner”

- 4.1.3 Clause 5 of the Bill defines “owner” or “home owner”. The terms link two requirements of the Bill, namely that an owner must have a relevant interest in land and a home must be built on that land.

Clause 6 – Meaning of “relevant interest”

- 4.1.4 The meaning of “relevant interest” is provided in clause 6. To qualify for the grant, an applicant must have, or expect to have, title to the land or another acceptable form of security of tenure. The Committee was advised at the hearing that the Bill does not recognise beneficial interests in land.
- 4.1.5 Subclause (1) provides a list of the types of interests in land that will constitute a relevant interest, which includes the usual interest that a person has as owner of land. Each type of relevant interest is considered to provide the owner with an acceptable level of security of tenure.
- 4.1.6 Subclause (1)(h) allows for further types of interests to be prescribed. It is intended that these matters will relate to circumstances where the person building a home may not be the registered owner of the land upon which the home is to be situated but where, in the circumstances, security of tenure is considered to exist.
- 4.1.7 Subclause (2) provides three exceptions to subclause (1) where a person will not be considered to hold a relevant interest, despite the fact that they may be the registered legal owner of the interest.
- 4.1.8 Despite subclause (2), however, subclause (3) enables the regulations to provide for recognition of an interest (a “non-conforming interest”) as a relevant interest even though the interest may not conform with the listed interests constituting relevant interests and even though the interest may not be registered at law or in equity as an interest in land. Such an interest may be prescribed under subclause (1)(h) which will allow a grant to be paid as if a relevant interest existed.
- 4.1.9 Subclause (4) empowers the Commissioner to impose conditions on the payment of grants in respect of non-conforming interests in order to ensure recovery of amounts paid if criteria prescribed by the regulations about future

conduct or events are not satisfied. It is intended that these conditions will be a protective measure to ensure non-conforming interests cannot be used to improperly access the grant.

Clause 7 – Meaning of an applicant’s “spouse”

- 4.1.10 Clause 7 provides a meaning of “spouse” for the purposes of the Bill. Both the applicant and his or her spouse must meet two of the eligibility criteria to receive the grant, even where the applicant’s spouse is not a party to the transaction.
- 4.1.11 Subclause (1) provides that a person is the “spouse” of another if they are legally married or cohabiting on a genuine domestic basis in a relationship of de facto marriage. The Committee was advised by Mr Sullivan that the meaning of de facto marriage that is used within the bounds of the Bill is consistent with the definition of “de facto married couple” in section 75C of the *Stamp Act 1921*. Mr Sullivan advised that this definition was chosen as it was felt that there was merit in obtaining consistency in the definitions, especially as it was likely that the State Revenue Department would be dealing with the same customer base in terms of stamp duty issues.
- 4.1.12 The Committee notes that the definition of “spouse” in the Bill does not recognise same sex relationships.
- 4.1.13 Subclause (2) provides an exclusion from the definition of spouse where persons are legally married but are separated and are not intending to resume the relationship. This allows an applicant who is disqualified from the grant solely on the basis of his or her spouse’s eligibility to still receive the grant where the marriage has broken down. This would also apply where a couple chooses not to divorce for religious reasons, but are living apart and do not intend to resume cohabitation.
- 4.1.14 Refer to Appendix 2 for some examples of eligibility for the first home owner grant. This document was provided to the Committee by Mr Sullivan.

4.2 Part 2 – First home owner grant

- 4.2.1 This Part deals with the general entitlement to the first home owner grant, the eligibility criteria to be satisfied by applicants, what constitutes an eligible transaction, how an application is to be made, and how an application is to be dealt with. Part 2 also deals with objections to and reviews of decisions of the Commissioner.

Division 1 – Entitlement to grant**Clause 8 – Entitlement to grant**

- 4.2.2 Clause 8 sets out the circumstances in which a person will be entitled to the grant.
- 4.2.3 Subclause (1) provides that a grant is payable when an applicant, or each applicant if there are two or more of them, satisfies the eligibility criteria (these are set out in clauses 9 to 13), the transaction involved is an “eligible transaction” (“eligible transaction” is defined in clause 14), and the transaction has been completed.
- 4.2.4 Subclause (2) provides an exception to two specific circumstances where not all applicants are required to meet the eligibility criteria. These are exemptions allowing one of joint applicants to not be an Australian citizen or permanent resident under subclause 10(2) or not occupy the home as a principal place of residence under subclause 13(2).
- 4.2.5 Subclause (3) provides that only one grant is payable per eligible transaction. This means that an eligible transaction involving one person or ten people will potentially qualify for a single \$7 000 grant.

Division 2 – Eligibility criteria (applicants)

- 4.2.6 Division 2 of Part 2 sets out the five eligibility criteria to be satisfied by applicants.

Clause 9 – Criterion 1 – applicant to be a natural person

- 4.2.7 The first eligibility criterion is set out in clause 9 which requires all applicants for the grant to be natural persons. Companies, trusts and other entities are not eligible for the grant.

Clause 10 – Criterion 2 – applicant to be Australian citizen or permanent resident

- 4.2.8 Clause 10 sets out the second of the five eligibility criterion.
- 4.2.9 Subclause (1) requires applicants to be Australian citizens or permanent residents. Clause 3 contains definitions of these terms.
- 4.2.10 Subclause (2) makes an exception to this requirement in the case of joint applicants, if at least one of the applicants is an Australian citizen or

permanent resident. This would apply where an applicant's spouse has moved to Australia from overseas but has not become, at the time of the application, an Australian citizen or permanent resident.

Clause 11 – Criterion 3 – applicant or applicant's spouse must not have received an earlier grant

4.2.11 The third eligibility criterion is set out in clause 11 which provides that a person is ineligible for the grant if the applicant or his or her spouse has received an earlier grant.

4.2.12 Subclause (1) provides that an applicant, or his or her spouse, must not have received an earlier grant under the proposed Act or the corresponding law of another State or Territory. This means that a person who in all other respects is eligible for the grant would, by virtue of subclause (1), be ineligible if their spouse had previously received assistance in Western Australia or another jurisdiction.

4.2.13 Subclause (2) provides that the applicant is not ineligible if the grant was received but later paid back; for example, if the grant was received subject to conditions and the applicant was required to repay the grant because the conditions were not met.

Clause 12 – Criterion 4 – applicant or applicant's spouse must not have had relevant interest in residential property

4.2.14 Criterion 4 is set out in clause 12. The Commonwealth policy principles set down in the IGA dictate this criterion and are a uniform requirement across all jurisdictions (refer to paragraph (iv) of Appendix D of the IGA, attached as Appendix 1 of this report).

4.2.15 Subclause (1) provides that the applicant or his or her spouse must not have had a relevant interest in residential property anywhere in Australia before July 1 2000. This provision will apply even where the applicant's spouse is not registered on the title of the home. The reasoning behind this restriction arises because a spouse would in most cases benefit from the grant by also living in the home as the principal place of residence. To allow a spouse a separate application for a grant would open a loophole that would enable couples to purchase additional homes in individual names and receive more than one grant.

4.2.16 This clause, in conjunction with clause 11, means that an applicant would be ineligible where they or their spouse have owned a residential property prior

to July 1 2000, whether as their principal place of residence or as an investment property. Ownership of non-residential property or vacant land only prior to July 1 2000 will not affect eligibility.

- 4.2.17 Subclause (3) provides additional disqualifying circumstances by providing that the applicant or his or her spouse must not have held a relevant interest in residential property anywhere in Australia used as the residence of the applicant or his her spouse on or after July 1 2000 and before the date of the application. This requirement does not apply to the property that is the subject of the current application.

Clause 13 – Criterion 5 – residence requirement

- 4.2.18 The fifth eligibility criterion is set out in clause 13 which requires occupation of the home as a principal place of residence.
- 4.2.19 Subclause (1) provides that all applicants for the grant must occupy the home for which a grant was obtained as their principal place of residence within a period of 12 months of completion of the eligible transaction. No time limit is provided as to how long occupation must occur. What is a principal place of residence is a question of fact, however any transitory occupation by an applicant to satisfy this requirement will be carefully examined by the Commissioner.
- 4.2.20 It should be noted that subclause (1) allows the Commissioner to extend the period for occupation to occur beyond 12 months. This takes into account the possibility of extenuating individual circumstances. An applicant may not be able to move into a home within the 12 month period stipulated for a number of reasons; for example if they have to go to hospital or if they receive a work posting overseas or interstate after purchase, but prior to completion, and they intend to take up occupation upon their return. To enable the grant to be paid before this criterion is met, clause 21 sets out the circumstances surrounding payment of the grant prior to an applicant residing in the property.
- 4.2.21 Subclause (2) provides that the Commissioner may exempt an applicant from the residence requirement if the applicant is one of two or more joint applicants for the grant, at least one of the applicants complies with the residence requirement and there are, in the Commissioner's opinion, good reasons to exempt the applicant from the residence requirement.

Division 3 – Eligible transactions

Clause 14 – Eligible transaction

4.2.22 Clause 14 of the Bill deals with eligible transactions.

4.2.23 Subclauses (1) to (3) set out what constitutes and what does not constitute an “eligible transaction”. Subclause (3) provides a transitional anti-avoidance provision to prevent the true date of a transaction being manipulated to allow access to the grant after July 1 2000. This subclause provides, subject to the Commissioner’s declaration under subclause (4), that the following contracts will **not** be eligible transactions:

- contracts for the purchase of a home where an option to purchase exists before July 1 2000 to allow the purchaser to purchase the home or the vendor to require the purchaser to purchase the home; and
- contracts for a comprehensive home building contract where either party had a right or option prior to July 1 2000 to require the other party to enter into the contract.

“Option to purchase” and “comprehensive home building contract” are defined in clause 3.

4.2.24 In the case of a contract to build, certain activity such as the preparation of plans can precede the contract without affecting eligibility. The following types of pre-construction activity would generally not be considered to circumvent the FHOS requirements:

- where the pre-construction arrangement between a builder and intended purchaser allows each party to walk away from the other party at any time without having to sign a contract to build; and
- where the pre-construction activity pursuant to that arrangement could be undertaken prior to a binding contract executed after July 1 2000.

4.2.25 Subclause (5) defines the “commencement date” of an eligible transaction and subclause (6) defines when an eligible transaction is completed. These definitions are relevant to the calculation of the application period under clause 15(5).

4.2.26 Subclause (8) sets out what is meant by “consideration” for an eligible transaction, which is relevant to determine the amount of the grant under clause 19.

Division 4 – Application for the grant**Clause 15 – Application for grant**

- 4.2.27 Clause 15 sets out the requirements for making a first home owner grant application.
- 4.2.28 Subclause (1) provides that the grant application is to be made to the Commissioner.
- 4.2.29 Subclause (2) provides that the application is to be in a form approved by the Commissioner and is to contain all information required by him. A pro forma application form will be available for this purpose.
- 4.2.30 Subclause (5) provides for the period within which an application is to be made. This begins at the commencement date of the eligible transaction (see clause 14(5)) and ends 12 months after the completion of the eligible transaction (see clause 14(6)).
- 4.2.31 Subclause (6) allows the Commissioner to accept an application prior to the commencement date where, for example, approval is required by an applicant prior to the purchase of a property at auction. There is no ability to extend the period for making an application. It is considered that 12 months from completion is sufficient to allow persons to make an application. The grant has been widely publicised and will be promoted by financial institutions during the course of finance approval. Extension beyond the 12 months would severely limit the Commissioner's ability to verify the details associated with the application.

Clause 16 – Interested persons

- 4.2.32 Clause 16 sets out who is required to be a party to an application for a grant.
- 4.2.33 Subclause (1) provides that all interested persons must be applicants, unless specifically excluded by regulation. For example, if a home is being purchased in joint names, both parties are required to be applicants. This clause prevents the grant being paid in circumstances where an eligible applicant applied for the grant, but a non-eligible applicant did not.

Clause 17 – Application on behalf of person under legal disability

- 4.2.34 Clause 17 allows first home owner applications to be made by a guardian on behalf of a person with a legal disability. The eligibility criteria will be measured against the person with the disability.

Division 5 – Decision on application

Clause 18 – Commissioner to authorise payment of grant

- 4.2.35 Subclause (1) provides that once the Commissioner is satisfied that the grant is payable on an application, the Commissioner must authorise the payment of the grant.
- 4.2.36 Subclause (2) enables the Commissioner to authorise the payment of the grant before the eligible transaction is completed if the Commissioner is satisfied that there are good reasons for doing so and there is a good chance that the grant can be repaid if the transaction is not completed within a reasonable time.
- 4.2.37 This provision will be utilised to authorise the payment of the grant at settlement where an established home is purchased and a financial institution has been involved in the application process under a clause 37 administration agreement. Pursuant to clause 14(6), completion does not occur until the purchaser is registered on the title as the owner. This requirement can be overridden where a financial institution is involved in the settlement process, due to their title registration practices and the infrastructure in place under the clause 37 agreement.

Clause 19 – Amount of grant

- 4.2.38 This clause provides that the amount of the grant is either the consideration for the eligible transaction or \$7 000, whichever is the lesser. This ensures that the grant will never exceed the cost of the eligible transaction.

Clause 20 – Payment of grant

- 4.2.39 This clause provides for the manner and form of payment of the grant. Under this clause, payment of the grant may be by electronic funds transfer, by cheque or in any other way the Commissioner thinks appropriate. It is likely that electronic funds transfer payments will be the favoured method used by the Commissioner. The grant may be paid to the applicant or the applicant's nominee.

Clause 21 – Payment in anticipation of compliance with residence requirement

- 4.2.40 This clause provides that the Commissioner may authorise the payment of the grant in anticipation of compliance with the residence requirement on

condition that the applicant who has not yet complied with the requirement intends to occupy the home as a principal place of residence within 12 months after completing the eligible transaction, and that the grant is repaid if the residence requirement is not complied with by the relevant date.

4.2.41 “Relevant date” is defined in subclause (3) as being either the end of the period allowed for compliance with the residence requirement or the date on which it first becomes apparent to the applicant that the residence requirement will not be complied with during the period allowed for compliance, whichever is the earlier. An example of where the residence requirement would not be met prior to the 12 month period allowed would be where the applicant sells the property prior to taking up residence within the 12 month period.

4.2.42 Subclause (5) makes it an offence attracting a maximum penalty of \$20 000 if the residence requirement is not complied with and the applicant does not, within 14 days after the relevant date, give written notice to the Commissioner of non-compliance with the residence requirement and repay the amount of the grant.

Clause 22 – Commissioner may impose conditions

4.2.43 This clause provides that the Commissioner may authorise the payment of the grant on conditions that he considers appropriate. An example of when a condition may be imposed is where a grant is made where spouses are separated within the meaning of clause 7(2). The payment of the grant in these cases should be subject to a condition requiring repayment if the spouses resume living together as a couple within a specified period, such as 12 months. This will ensure that the grant cannot be obtained by contrived separation agreements seeking to remove a non-eligible spouse from the application.

4.2.44 Subclause (4) makes it an offence attracting a maximum penalty of \$20 000 not to comply with a condition imposed by the Commissioner.

Clause 24 – Power to correct decision

4.2.45 This clause gives the Commissioner the power to vary or reverse a decision (within five years of the decision) on an application if he is satisfied that the decision was incorrect. The five year limitation period is overridden if the Commissioner is satisfied that the decision to pay the grant was made on the basis of false or misleading information. If this is the case, the decision to reverse or vary the grant can be made at any time.

Clause 25 – Notice of decision

- 4.2.46 This clause provides that the Commissioner must give the applicant written notice of the decision on the application, and that where the Commissioner decides to refuse the application or to vary or reverse an earlier decision on an application, he must state in the notice the reasons for the decision. Where the grant is not subject to conditions, the payment of the grant will be sufficient notice of the decision.

Division 6 – Objections and appeals

- 4.2.47 Division 6 of the Bill sets up a review and appeal structure relating to first home owner grants.

Subdivision 2 – Objections

Clause 27 – Right to object and procedure for making objections

- 4.2.48 This clause sets out the applicant's entitlement to lodge an objection to the Commissioner's decision on the application. The clause further sets out the manner and form of the objection; for example, the objection must be in writing and set out in detail the grounds of the objection.

Clause 28 – Time for lodging objection

- 4.2.49 This clause provides a 60-day time period for lodgement of an objection. The 60-day period commences on the date the notice of the decision was given to the applicant. An applicant may apply for an extension of time within which to lodge an objection. This would generally be granted by the Commissioner where any reasonable request is made.

Clause 30 – Decision on objection

- 4.2.50 This clause sets out the obligations with which the Commissioner must comply when he decides an objection. The Commissioner may decide an objection by confirming, varying or reversing the decision on the application. The Commissioner must give the applicant written notice of the decision and, if the objection is disallowed, the reasons for the decision. The tabled paper referred to the Committee did not specify whether this notice was required to be in writing. As a result of questions raised by the Committee at the hearing, the Committee is pleased to note that the Bill introduced in the Legislative Council includes that requirement.

- 4.2.51 Subclause (3) provides that where a decision not to pay the grant is reversed, interest is payable on the amount of the grant from the date of the objection to the date of the decision.

Subdivision 3 – Appeals

Clause 31 – Right of appeal

- 4.2.52 This clause sets out an applicant’s right of appeal when he or she is dissatisfied with the Commissioner’s decision on an objection. The appeal is to the Local Court and must be commenced within 60 days after the Commissioner’s notice of the decision is given. There is a discretion for the court, at the applicant’s request, to extend the time for commencing an appeal.

Clause 32 – Hearing and determination of appeals

- 4.2.53 This clause provides that the Local Court may confirm, vary or reverse the Commissioner’s decision on an objection and make consequential or ancillary orders, including an order for costs.

4.3 Part 3 – Administration

Division 1 – Administration generally

Clause 34 – Administration of Act

- 4.3.1 This clause sets out the relationship between the Commissioner and the Minister. It is intended that the *First Home Owner Grant Act 2000* will be included in the portfolio of the Minister Assisting the Treasurer.

Clause 35 – Delegation

- 4.3.2 This clause provides that the Commissioner may delegate functions related to the administration of the FHOS. An example would be where the Commissioner enters into arrangements with financial institutions to assist in the administration of the FHOS to facilitate the payment of grants to eligible applicants.

Clause 37 – Administration agreements

- 4.3.3 This clause sets out the arrangements under which the Commissioner may delegate certain functions to financial institutions or other persons under the Bill.
- 4.3.4 Negotiations have been underway in Western Australia for some time to allow the first home owner grant to be processed and paid by financial institutions. Final approval for payment of the grant will, however, remain with the Commissioner.
- 4.3.5 A significant amount of development work has already been carried out on an Australia-wide basis to allow computerised processing of the grants in conjunction with financial institutions. It is expected that this system will be fully operational by July 1 2000.

Division 2 – Investigations

Clause 38 – Investigations

- 4.3.6 This clause sets out the circumstances when the Commissioner is authorised to conduct an investigation. The circumstances listed cover the necessary scope to allow proper administration of the Bill, including the bona fides of applications, matters relating to objections, whether eligibility criteria have been met, whether conditions have been complied with and any other matter related to the administration of the Bill or First Home Owner Grant Acts in other jurisdictions.

Clause 39 – Cross-border investigations

- 4.3.7 This provision facilitates cross-border investigations by empowering the Commissioner, on request by an authority responsible for administering a corresponding law, to carry out authorised investigations under that corresponding law.
- 4.3.8 Subclause (2) allows the Commissioner to delegate his powers of investigation under the Bill to another authority responsible for administering a corresponding law or a person nominated by that authority.

4.4 Part 4 – Miscellaneous

Division 1 – Offences

Clause 47 – False or misleading information and documents

4.4.1 This clause provides that it is an offence attracting a maximum penalty of \$20 000 where a person knowingly provides false or misleading oral or written information or a document to the Commissioner or an authorised investigator.

4.4.2 Subclause (2) provides a rebuttable presumption such that the person who provided the information or document is presumed to have known the information was false or misleading, unless the contrary is proved.

Clause 48 – Obstructing or misleading Commissioner or authorised investigator

4.4.3 This clause provides that it is an offence for a person to hinder, obstruct or mislead the Commissioner or an authorised investigator in carrying out functions under the Bill. A penalty of up to \$20 000 is provided.

Division 3 – Repayments and penalties

Clause 51 – Commissioner may require repayment and impose penalty

4.4.4 This clause provides the ability for the Commissioner to require the grant to be repaid and impose penalties in certain circumstances.

4.4.5 Subclause (1) provides that the Commissioner may, by written notice, require an applicant to repay a grant if:

- the amount was paid in error; for example, where a processing error was made by the Commissioner and a person received the grant when they were not entitled to it;
- the Commissioner reverses a decision under which the amount was paid in circumstances other than when the amount was paid in error; for example, where false or misleading information was provided to the Commissioner and it was later discovered during an audit; or
- the Commissioner imposed a condition on the payment of the grant and the applicant has failed to comply with the condition within the time allowed; for example, where a non-eligible spouse recommenced living as a couple with a spouse who received the grant within a conditional period.

4.4.6 Subclause (2) provides the Commissioner with the ability to apply a 100 per cent penalty where the grant was paid to an applicant on the basis of false or misleading information. In this case the person would be required to pay the

Commissioner up to \$14 000. The imposition of the penalty is an administrative matter and is not in any way related to the person being successfully prosecuted for an offence. The Commissioner is also able to impose an amount of less than \$7 000 if that is considered appropriate in particular circumstances.

- 4.4.7 Subclause (3) provides an alternative penalty which is akin to a late payment penalty where an amount required to be paid is not received by the due date. This is a 100 per cent maximum penalty and, like the penalty imposed under subclause (2), can be imposed at a lesser amount if that is considered appropriate in the circumstances.
- 4.4.8 Subclause (4) provides that the grant must be repaid, or a penalty paid, within 28 days of the date of a notice given to the applicant. This time period may be extended under the extension and instalment arrangements in clause 52 of the Bill.
- 4.4.9 Subclause (5) provides a limitation on the penalties applicable under subclauses (2) and (3), such that a penalty can only ever be a maximum of 100 per cent of the grant amount.

Division 6 – General

Clause 65 - Confidentiality

- 4.4.10 This clause inserts provisions placing obligations on the Commissioner and other persons to maintain secrecy in relation to information that is provided or obtained.
- 4.4.11 Subclause (3) includes a number of specific exceptions relevant to criminal investigations. It also authorises the disclosure of statistical or other information which is not reasonably expected to lead to the identification of the person to whom it relates, and the disclosure of information or material in other circumstances permitted by the regulations.

Clause 66 – Time for commencing prosecutions

- 4.4.12 A prosecution for an offence under the Bill can be commenced within five years of the date the offence is alleged to have been committed.

Clause 68 – Appropriation of Consolidated Fund

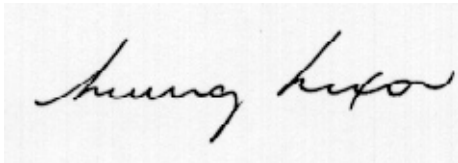
- 4.4.13 This clause authorises the appropriation of the Consolidated Fund to fund the payment of the grant to first home owners.

Clause 70 – Review of Act

4.4.14 This clause requires a review of the operation and effectiveness of the Act after five years of operation. The provision requires the preparation of a report that must be tabled in each House of Parliament.

5 RECOMMENDATION

The Committee recommends that all clauses of *the First Home Owner Grant Bill 2000* be passed.



Hon Murray Nixon JP MLC
Chairman

Date: May 17 2000

APPENDIX 1

APPENDIX 1

Financial Relations Agreement (Consequential Provisions) Bill 1999

Schedule 1 Intergovernmental Agreement on the Reform of
Commonwealth-State Financial Relations

APPENDIX D

FIRST HOME OWNERS SCHEME

Principles

- 5 D1. The States and Territories will make legislative provision for the First
Home Owners Scheme (FHOS) from 1 July 2000 which will incorporate
programme criteria consistent with the following principles:
- (i) Eligible applicants will be entitled to \$7,000 assistance (per
application) on eligible homes under the FHOS.
 - 10 (ii) Assistance will be available directly as a one off payment. If the
recipient expressly consents, it may be available as an offset
against statutory levies and charges or some combination of these.
 - (iii) Eligible applicants must be natural persons who are Australian
citizens or permanent residents who are buying or building their
15 first home in Australia. An applicant's spouse (or de facto) must
be included on the application.
 - (iv) To qualify for assistance, neither the applicant or the applicant's
spouse (or de facto) must have previously owned a home, either
jointly, separately or with some other person.
 - (v) Entering into a binding contract or commencement of building
20 in the case of owner builders, must have occurred on or after
1 July 2000.
 - (vi) An eligible home will be a new or established house, home unit,
flat or other type of self contained fixed dwelling that meets local
25 planning standards. Fixed dwellings will include demountable
dwellings where these meet local planning standards.
 - (vii) An eligible home must be intended to be a principal place of
residence and occupied within a reasonable period. The home
must be located in the State or Territory in which the application is
30 made. Applicants who have entered into a financing mechanism
which involves a shared equity arrangement will be eligible.
 - (viii) Assistance will not be means tested.

Financial Relations Agreement (Consequential Provisions) Bill 1999

Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations **Schedule 1**

- 5 (ix) The relevant State and Territory legislation will contain adequate administrative review and appeal mechanisms, along with provision to prevent abuse of the FHOS. The States and Territories will cooperate in the exchange of information to identify eligible first home owners.

Other matters

- D2. Funding of grants under the FHOS may not be drawn from Home Purchase Assistance (HPA) funds provided through the Commonwealth State Housing Agreement, including the pool of existing HPA revenues.
- 10 D3. Further details concerning eligibility criteria consistent with the above principles are to be agreed between the Commonwealth and each State and Territory.
- D4. The States and Territories will not introduce or vary any taxes or charges associated with home purchase with the intention of offsetting the
15 benefits of the FHOS for recipients.

APPENDIX 2

APPENDIX 2

ATTACHMENT 1

Type of Partner	Partner has had a relevant interest in residential property prior to 1 July 2000	Partner has <u>not</u> had a relevant interest in residential property prior to 1 July 2000
Legally married spouse	Applicant not eligible	Applicant eligible
De facto spouse as defined in clause 7	Applicant not eligible	Applicant eligible
De facto spouse (does not meet clause 7 definition)	Applicant eligible	Applicant eligible
Same sex de facto partner (does not meet clause 7 definition)	Applicant eligible	Applicable eligible
Former legally married spouse (as defined in clause 7(2))	Applicant eligible	Applicant eligible
Former de facto spouse (no longer meets clause 7 definition)	Applicant eligible	Applicant eligible