



AUSTRALIAN CAPITAL TERRITORY

# First Home Owner Grant Act 2000

No 23 of 2000

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**DICTIONARY**



AUSTRALIAN CAPITAL TERRITORY

# First Home Owner Grant Act 2000

No 23 of 2000

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**An Act to encourage and assist home ownership, and to offset the effect of the GST on the acquisition of a first home, by establishing a scheme for the payment of grants to first home owners**

*[Notified in ACT Gazette No. 24: 15 June 2000]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## **PART 1—PRELIMINARY**

**1 Name of Act**

This Act is the *First Home Owner Grant Act 2000*.

**2 Commencement**

This Act commences on 1 July 2000.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*identity card*—see the *Taxation Administration Act 1999*, subsection 3 (1)' means that the expression 'identity card' is defined in subsection 3 (1) of that Act and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

### 4 Homes

A *home* is a building (affixed to land) that—

- (a) may lawfully be used as a place of residence; and
- (b) is, in the commissioner's opinion, a suitable building for use as a place of residence.

### 5 Ownership of land and homes

(1) A person is an *owner* of a home or a *home owner* if the person has a relevant interest in land on which a home is built.

(2) Each of the following is a *relevant interest* in land:

- (a) a leasehold interest in the land granted by the Commonwealth;
- (b) a life estate in the land approved by the commissioner;
- (c) a licence or right of occupancy granted by the Commonwealth that gives, in the commissioner's opinion, the licensee or the holder of the right reasonable security of tenure;
- (d) an interest in a company's shares if the commissioner is satisfied that—
  - (i) the interest entitles the holder of the interest to exclusive occupation of a particular home owned by the company; and
  - (ii) the value of the shares is not less than the value of the company's interest in the home.

- (3) However—
- (a) an interest is not a relevant interest in land at a particular time unless the holder of the interest has, or will have within 12 months after that time (or a longer time allowed by the commissioner), a right to immediate occupation of the land; and
  - (b) an interest is not a relevant interest in land in the hands of a person who holds it subject to a trust; and
  - (c) an equitable interest is not a relevant interest in land unless it is the interest of a person under a legal disability for whom a guardian holds the interest on trust.
- (4) Despite subsections (2) and (3), the regulations may provide for recognition of an interest (a *noncomplying interest*) as a relevant interest in land—
- (a) even though the interest may not comply with the subsections; and
  - (b) even though the interest may not be recognised at law or in equity as an interest in land.
- (5) If a first home owner grant is to be paid because of the recognition of a noncomplying interest as a relevant interest in land, the commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if criteria prescribed under the regulations about future conduct or events are not satisfied.

## 6 Partner of applicant

- (1) A person is the *partner* of an applicant if—
- (a) they are legally married; or
  - (b) they are parties to a de facto relationship.
- (2) However, the person to whom an applicant is legally married is not to be regarded as the applicant's partner if the commissioner is satisfied that, at the time of deciding the application for a first home owner grant, the applicant—
- (a) is not living with the person; and
  - (b) has no intention of resuming living with the person.
- (3) A *de facto relationship* is the relationship between 2 people, whether of the opposite or same sex, living together as a couple on a genuine domestic basis.

## **PART 2—FIRST HOME OWNER GRANT**

### ***Division 2.1—Entitlement to grant***

#### **7 Entitlement to grant**

- (1) A first home owner grant is payable on an application under this Act if—
- (a) the applicant or, if there are 2 or more of them, each of the applicants complies with the eligibility criteria; and
  - (b) the transaction for which the grant is sought—
    - (i) is an eligible transaction; and
    - (ii) has been completed.
- (2) Despite paragraph (1) (a), an applicant need not comply with the eligibility criteria to the extent the applicant is exempted from compliance under this Act.
- (3) Only 1 first home owner grant is payable for the same eligible transaction.

### ***Division 2.2—Eligibility criteria (applicants)***

#### **8 Criterion 1—Applicant to be an individual**

An applicant for a first home owner grant must be an individual.

#### **9 Criterion 2—Applicant to be Australian citizen or permanent resident**

- (1) An applicant for a first home owner grant must be an Australian citizen or permanent resident.
- (2) However, if an application is made by joint applicants and 1 of the applicants is an Australian citizen or permanent resident, it is not necessary for the other or others to be Australian citizens or permanent residents.

#### **10 Criterion 3—Applicant (or applicant's partner) must not have received an earlier grant**

- (1) An applicant is ineligible if—

- (a) the applicant or the applicant's partner has been a party to an earlier application under this Act or a corresponding law; and
  - (b) a grant was paid on the application.
- (2) However, the applicant is not ineligible if the grant was paid but later paid back under the conditions on which the grant was made.
- (3) An applicant is also ineligible if the applicant or the applicant's partner—
- (a) could have successfully applied for a first home owner grant under this Act or a corresponding law in relation to an earlier transaction to which he or she was a party but did not do so; or
  - (b) could, assuming that he or she had then been an Australian citizen or permanent resident, have successfully applied for a first home owner grant under this Act or a corresponding law in relation to an earlier transaction to which he or she was a party.

**11 Criterion 4—Applicant (or applicant's partner) must not have had relevant interest in residential property**

- (1) An applicant is ineligible if the applicant or the applicant's partner has, before 1 July 2000, held—
- (a) a relevant interest in residential property in the ACT; or
  - (b) an interest in residential property in a State that is a relevant interest under the corresponding law of the State.
- (2) In working out for subsection (1) whether an applicant held a relevant interest (within the meaning of this Act or a corresponding law) in residential property at a particular time, any deferment of the applicant's right of occupation (because the property was subject to a lease) is to be disregarded.

**12 Criterion 5—Residence requirement**

- (1) An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence within 1 year after completion of the eligible transaction or a longer period approved by the commissioner.
- (2) The commissioner may exempt an applicant (the *noncomplying applicant*) from the residence requirement if—

- (a) the applicant is one of 2 or more joint applicants for a first home owner grant; and
- (b) at least 1 of the applicants complies with the residence requirement; and
- (c) there are, in the commissioner's opinion, good reasons to exempt the noncomplying applicant from the residence requirement.

***Division 2.3—Eligible transactions***

**13 Eligible transaction**

**(1)** An *eligible transaction* is—

- (a) a contract for the purchase of a home in the ACT made on or after 1 July 2000; or
- (b) a comprehensive home building contract made on or after 1 July 2000 by the owner of land in the ACT, or a person who will on completion of the contract be the owner of land in the ACT, to have a home built on the land; or
- (c) the building of a home in the ACT by an owner-builder if the building work begins on or after 1 July 2000.

**(2)** However, a contract is not an eligible transaction if the commissioner is of the opinion that it forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant and the commissioner will, unless satisfied to the contrary, presume the existence of such a scheme, if—

- (a) for a contract to purchase a home—the purchaser had an option to purchase the home granted before 1 July 2000 or the vendor had an option to require the purchaser to purchase the home granted before that date; or
- (b) for a comprehensive building contract—either party had a right or option granted before 1 July 2000 to require the other to enter into the contract.

**(3)** A contract is a *contract for the purchase of a home* if the contract is a contract for the acquisition of a relevant interest in land on which a home is built.

**(4)** The *commencement date* of an eligible transaction is—

- (a) for a contract—the date when the contract is made; or

- (b) for the building of a home by an owner-builder—
  - (i) the date when laying the foundations for the home begins;  
or
  - (ii) another date the commissioner considers appropriate in the circumstances of the case.
- (5) Subject to any qualifications prescribed under the regulations, an eligible transaction is **completed** when—
  - (a) for a contract for the purchase of a home—
    - (i) the purchaser becomes entitled to possession of the home under the contract; and
    - (ii) if the purchaser is to obtain a registered title to the land on which the home is situated—the necessary steps to obtain registration of the purchaser’s title have been taken; or
  - (b) for a contract to have a home built—the building is ready for occupation as a place of residence; or
  - (c) for the building of a home by an owner-builder—the building is ready for occupation as a place of residence.
- (6) If a person purchases a moveable building and intends to use it as a place of residence on land in which the person has a relevant interest but on which it is not situated at the time of purchase—
  - (a) this Act applies as if the person were an owner-builder building a home on the land; and
  - (b) the commencement date of the transaction is taken to be the date of the contract to purchase the moveable building; and
  - (c) the transaction is taken to be completed when the moveable building is ready for occupation as a place of residence on land in which the purchaser has a relevant interest.
- (7) The **consideration** for an eligible transaction is—
  - (a) for a contract for the purchase of a home—the consideration for the purchase; or
  - (b) for a comprehensive home building contract—the total consideration payable for the building work; or
  - (c) for the building of a home by an owner-builder—the actual costs to the owner of carrying out the work (excluding any allowance for the owner-builder’s own labour).

**Division 2.4—Application for grant**

**14 Application for grant**

- (1) An application for a first home owner grant is to be made to the commissioner.
- (2) An application—
  - (a) must be in a form approved by the commissioner; and
  - (b) must contain the information required by the commissioner.
- (3) An applicant must provide the commissioner with any further information the commissioner requires to decide the application.
- (4) Information provided by an applicant in or in relation to an application must, if the commissioner so requires, be verified by statutory declaration or supported by other evidence required by the commissioner.
- (5) An application may only be made within a period (the *application period*)—
  - (a) beginning on the commencement date of the eligible transaction to which the application relates; and
  - (b) ending 1 year after the completion of the eligible transaction to which the application relates.
- (6) However, the commissioner has a discretion to allow an application before or after the application period.
- (7) An applicant may, with the commissioner's consent, amend an application.

**15 All interested persons to join in application**

- (1) All interested persons must be applicants.
- (2) An *interested person* is a person who is, or will be on completion of the eligible transaction to which the application relates, an owner of the relevant home except such a person who is excluded from the application of this section under the regulations.

**16 Application on behalf of person under legal disability**

- (1) An application may be made on behalf of a person under a legal disability by a guardian.

- (2) For the purpose of deciding eligibility, the person under the legal disability is to be regarded as the applicant.

***Division 2.5—Decision on application***

**17 Commissioner to decide applications**

- (1) If the commissioner is satisfied that a first home owner grant is payable on an application, the commissioner must authorise the payment of the grant.
- (2) The commissioner may authorise the payment of a first home owner grant before completion of the eligible transaction if satisfied that—
- (a) there are good reasons for doing so; and
  - (b) the interests of the Territory can be adequately protected by conditions requiring repayment of the grant if the transaction is not completed within a reasonable time.

**18 Amount of grant**

The amount of a first home owner grant is the lesser of the following:

- (a) the consideration for the eligible transaction;
- (b) \$7,000.

**19 Payment of grant**

- (1) A first home owner grant is to be paid by electronic funds transfer, by cheque or in any other way the commissioner considers appropriate.
- (2) A first home owner grant is to be paid—
- (a) to the applicant; or
  - (b) to someone else to whom the applicant directs in writing that the grant be paid.

**20 Payment in anticipation of compliance with residence requirement**

- (1) The commissioner may authorise payment of a first home owner grant in anticipation of compliance with the residence requirement if the commissioner is satisfied that each applicant who is required to comply, but has not yet complied with the residence requirement, intends to occupy the

home as his or her principal place of residence within 1 year after completion of the eligible transaction or a longer period allowed by the commissioner.

(2) If a first home owner grant is paid in anticipation of compliance with the residence requirement, the payment is made on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the relevant date—

- (a) give written notice of that fact to the commissioner; and
- (b) repay the amount of the grant.

(3) The *relevant date* is the earlier of the following:

- (a) the end of the period allowed for compliance with the residence requirement;
- (b) the date on which it first becomes apparent that the residence requirement will not be complied with during the period allowed for compliance.

(4) A person who fails to comply with the condition prescribed by subsection (2) commits an offence.

Maximum penalty: 50 penalty units.

## **21 Conditions generally**

(1) The commissioner may authorise the payment of a first home owner grant on conditions the commissioner considers appropriate.

(2) A condition imposed by the commissioner (under this section or any other provision of this Act) may require a person on whose application the first home owner grant is paid—

- (a) to give notice of noncompliance with the condition within a period stated in the condition; and
- (b) to repay the grant within a period stated in the condition.

(3) For a joint application, each applicant is individually liable to comply with a requirement under subsection (2) but compliance by any of them is to be regarded as compliance by all.

(4) A person who fails to comply with a condition imposed by the commissioner (under this section or any other provision of this Act) commits an offence.

Maximum penalty: 50 penalty units.

## **22 Death of applicant**

(1) An application for a first home owner grant does not lapse because an applicant dies before the application is decided.

(2) If an applicant dies before the application is decided, the following provisions apply:

- (a) if the deceased applicant was one of 2 or more applicants and 1 or more applicants survive—the application is to be dealt with as if the surviving applicants were the sole applicants;
- (b) in any other case—a first home owner grant, if payable on the application, is to be paid to the estate of the deceased applicant.

(3) If a deceased applicant for a first home owner grant had not occupied the home to which the application relates as the applicant's principal place of residence but the commissioner is satisfied that he or she intended to do so within 1 year after completion of the eligible transaction or a longer period allowed by the commissioner, the residence requirement is satisfied.

## **23 Power to correct decision**

(1) If the commissioner decides an application, and is later satisfied (independently of an objection under this Act) that the decision is incorrect, the commissioner may vary or reverse the decision.

(2) A decision cannot be varied or reversed under this section more than 5 years after it was made.

## **24 Notification of decision**

(1) If the commissioner decides an application (or decides to vary or reverse an earlier decision on an application), the commissioner must give the applicant notice of the decision.

(2) If the decision is to authorise the payment of a first home owner grant without conditions, the payment of the grant is sufficient notice of the decision.

- (3) If the decision is to refuse an application, or to vary or reverse an earlier decision on an application, the commissioner must state in the notice the reasons for the decision.

### ***Division 2.6—Objections and appeals***

#### **25 Objections**

- (1) An applicant may give a written objection to the commissioner if the applicant is dissatisfied with the commissioner's decision in any way.
- (2) The objection must be accompanied by the determined fee.
- (3) The commissioner must refund the fee if—
- (a) the commissioner allows the objection in whole or in part; or
  - (b) the applicant applies to the administrative appeals tribunal for review of the commissioner's decision on the objection and—
    - (i) the tribunal or a court hearing an appeal on the matter upholds the objection in whole or in part; and
    - (ii) the period when any further appeal can be made has ended; and
    - (iii) neither the applicant nor the commissioner has appealed against the decision in relation to a part of the objection that was upheld.

#### **26 Grounds for objection**

- (1) The grounds for the objection must be stated fully and in detail and must be in writing.
- (2) The burden of showing that the objection should be upheld lies with the applicant.

#### **27 Time for making objection**

The objection must be given to the commissioner not later than 60 days after notice of the decision objected to is given to the applicant.

#### **28 Objections made out of time**

- (1) The commissioner may permit the applicant to make an objection after the 60-day period.

- (2) If the applicant wishes to make the objection after the 60-day period, the applicant must state fully and in detail, in writing, the circumstances concerning and the reasons for the failure to make the objection within the period.
- (3) The commissioner may give permission unconditionally or subject to conditions or may refuse permission.
- (4) The commissioner must give notice to the applicant of the commissioner's decision.
- (5) If the commissioner does not give permission unconditionally, the commissioner must include in the notice an explanation for refusing to give permission or for imposing conditions on the permission.
- (6) The notice must be in a form approved by the commissioner.

## **29 Decision on objection**

The commissioner must consider the objection and either allow the objection in whole or in part or disallow the objection.

## **30 Notice of decision**

- (1) The commissioner must give notice to the objector of the commissioner's decision on the objection.
- (2) If the objection is not upheld, the commissioner must, in the notice, give an explanation for disallowing an objection or for allowing an objection in part only.
- (3) The notice must be in a form approved by the commissioner.

## **31 Appeal**

If the applicant is dissatisfied with the commissioner's decision on the objection, the applicant may apply to the administrative appeals tribunal for a review of the decision.

## **32 Giving effect to decision on appeal**

- (1) Within 60 days after a decision by the administrative appeals tribunal becomes final, the commissioner must take any action that is necessary to give effect to the decision.

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(2) For this section, a decision by the tribunal becomes final when a period of 30 days has passed after a relevant decision and no appeal against the decision has been instituted within that period.

(3) In this section—

*relevant decision* means—

- (a) the decision of the tribunal; or
- (b) a decision by a court hearing an appeal from—
  - (i) the decision of the tribunal; or
  - (ii) a decision of a lower court in relation to the decision of the tribunal.

## **PART 3—ADMINISTRATION**

### ***Division 3.1—Administration generally***

#### **33 Administration**

The commissioner is responsible to the Minister for the administration of the first home owner grant scheme.

#### **34 Authorised officers**

(1) A person is an authorised officer for this Act if the person is an authorised officer under section 79 of the *Taxation Administration Act 1999*.

(2) For this Act, a notice may be issued by the commissioner under section 79 (3) of the *Taxation Administration Act 1999* to a person who is engaged in the administration of a corresponding law.

(3) A person to whom the commissioner delegates functions under Division 3.2 is an authorised officer for this Act and the *Taxation Administration Act 1999*.

*Note* The commissioner's power of delegation is in section 78 of the *Taxation Administration Act 1999*.

#### **35 Identity cards**

(1) An identity card issued to a person under subsection 80 (1) of the *Taxation Administration Act 1999* may state that the person is an authorised officer for the purposes of this Act.

*Note* Subsection 80 (1) requires an identity card to be issued to each authorised person.

(2) This section is additional to, and does not limit, section 80 of the *Taxation Administration Act 1999*.

#### **36 Administration agreements**

(1) Without limiting section 78 of the *Taxation Administration Act 1999*, the commissioner may enter into an agreement (an ***administration agreement***) with a financial institution or anyone else under which—

- (a) the commissioner delegates under that section functions related to the administration of the first home owner scheme; and

- (b) the financial institution or other person is required to carry out the delegated functions in accordance with stated conditions.

*Note* Under section 78 of the *Taxation Administration Act 1999* the commissioner may delegate to any person any function of the commissioner under that or any other Act.

(2) The conditions of an administration agreement may include conditions prescribed under the regulations.

(3) If an administration agreement includes conditions prescribed under the regulations, a financial institution or other person that contravenes a condition prescribed under the regulations commits an offence.

Maximum penalty: 50 penalty units.

(4) The commissioner may, at any time, revoke an administration agreement, including any delegation included in the agreement.

### ***Division 3.2—Investigations***

#### **37 Authorised investigations**

An *authorised investigation* is an investigation to decide—

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made; or
- (b) whether an objection to a decision made under this Act or a corresponding law should be upheld; or
- (c) whether an applicant to whom, or for whose benefit, a first home owner grant has been paid under this Act or a corresponding law was eligible for the grant; or
- (d) whether a condition on which a first home owner grant has been paid under this Act or a corresponding law has been complied with; or
- (e) anything else reasonably related to the administration or enforcement of this Act or a corresponding law.

#### **38 Cross-border investigation**

(1) The commissioner may, at the request of an authority responsible for administering a corresponding law, carry out an authorised investigation for the corresponding law.

(2) The commissioner may, under section 78 of the *Taxation Administration Act 1999*, delegate powers of investigation under this Division to the authority responsible for the administration of a corresponding law, or a person nominated by that authority.

(3) Subsection (2) does not limit section 78 of the *Taxation Administration Act 1999*.

### **39 Power to require information, records or other documents or attendance for examination**

(1) The commissioner may, for an authorised investigation, by written notice given to a person, require the person—

- (a) to provide to the commissioner (either orally or in writing) information that is described in the notice; or
- (b) to attend and give evidence before an authorised officer; or
- (c) to produce to the commissioner a record or other document described in the notice that is in the person's custody or control.

(2) The commissioner—

- (a) may state whether information or evidence to be provided or given under this section must be given orally or in writing; and
- (b) may require any information or evidence given in writing to be in the form of, or verified by, a statutory declaration; and
- (c) may require any information or evidence given orally to be given on oath or affirmation.

(3) A person must not, without reasonable excuse, fail—

- (a) to comply with the requirements of a notice under this section within the period stated in the notice or any further period allowed by the commissioner; or
- (b) to comply with any other requirement of the commissioner about the giving of evidence or how information or evidence is to be provided or given under this section.

Maximum penalty: 50 penalty units.

### **40 Powers of entry and inspection**

(1) An authorised officer may, for an authorised investigation, enter and inspect any premises at any reasonable time and do any of the following:

- (a) remain on the premises;
- (b) examine all documents and seize and remove, or take copies of or extracts from, any document on behalf of the commissioner;
- (c) require anyone on the premises to answer questions or otherwise provide information;
- (d) require anyone on the premises to give access to any document in the person's custody or control, and to—
  - (i) produce or display the document; or
  - (ii) provide a copy of the document or a version of it in some form other than that in which it is normally kept;in any printed, electronic or other form that it is reasonably practicable to provide;
- (e) require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as are reasonably necessary to enable the authorised officer to exercise powers under this Division.

(2) An authorised officer who enters premises under subsection (1) and is requested by the occupier to identify himself or herself is only authorised to remain on the premises if the authorised officer produces his or her identity card to the occupier.

(3) The powers of entry and inspection under this section must not be exercised in relation to premises, or a part of premises, used for residential purposes except with the consent of the owner or occupier of the premises or part.

(4) In this section—

*occupier*, of premises, includes a person apparently in charge of or responsible for the premises.

#### **41 Search warrant**

(1) If a magistrate is satisfied, on the application of the commissioner supported by an affidavit or other sworn evidence, that there is a reasonable ground for suspecting that a document relevant to an authorised investigation may be found in particular premises, the magistrate may issue a warrant authorising an authorised officer together with any assistants named or described in the warrant—

- (a) to enter those premises, using such force as is necessary for the purpose; and
  - (b) to search the premises and to break open and search anything in the premises in which a document may be stored or concealed; and
  - (c) to seize or remove, on behalf of the commissioner, any document that appears to be relevant to the authorised investigation.
- (2) The powers conferred by this section are additional to, and do not limit, any other powers given by law.

**42 Use and inspection of documents and records produced or seized**

- (1) This section applies to a document that has been produced to the commissioner or seized and removed by an authorised officer.
- (2) The document may be kept for as long as is necessary to enable it to be inspected and copies of or extracts or notes from it to be made.
- (3) If the document is required by the commissioner as evidence for a legal proceeding, it may be kept until the proceedings are finally decided.
- (4) The commissioner must permit a person who would be entitled to inspect the document if it were not in the commissioner's possession to inspect the document at any reasonable time.
- (5) This section does not affect any lien a person has on the document.

**43 Selfincrimination**

- (1) A person is not excused from answering a question, providing information or producing a document, when required to do so under section 39 (Power to require information, records or other documents or attendance for examination), on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) If the person objects to answering the question, providing the information or producing the document on that ground, the answer, information or document is not admissible against the person in any criminal proceeding other than—
- (a) a proceeding for an offence about false or misleading statements, information or records; or

- (b) a proceeding for an offence in the nature of perjury.

**44 Legal professional privilege**

If, in response to a requirement to answer a question, provide information or produce a document, a person is entitled to claim, and does claim, legal professional privilege in relation to the requirement, the person does not have to comply with the requirement.

**45 Hindering or obstructing authorised officers etc**

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer in the exercise of a function under this Division.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this Division.

Maximum penalty: 50 penalty units.

- (3) A person does not commit an offence against this section arising from the entry of an authorised officer into premises unless the prosecution establishes that, at the material time, the authorised officer had—

- (a) identified himself or herself as an authorised officer; and
- (b) warned the person that a failure to comply with the requirement was an offence.

## **PART 4—MISCELLANEOUS**

### **46 False or misleading statements**

A person must not knowingly or recklessly in or in relation to an application for a first home owner grant—

- (a) state anything that is false or misleading in a material particular; or
- (b) omit from a statement anything without which the statement is misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **47 Power to require repayment and impose penalty**

(1) The commissioner may, by written notice, require an applicant (or former applicant) for a first home owner grant to repay an amount paid on the application if—

- (a) the amount was paid in error; or
- (b) the commissioner reverses the decision under which the amount was paid for any other reason.

(2) If, because of an applicant's dishonesty, an amount is paid by way of a first home owner grant, the commissioner may, by the notice in which repayment is required or a separate notice, impose a penalty of not more than the amount the applicant is required to repay.

(3) If an applicant (or former applicant) for a first home owner grant fails to make a repayment required under this section or the conditions of the grant, the commissioner may, by written notice, impose a penalty of not more than the amount the applicant is required to repay.

(4) If an amount is paid in error on an application for a first home owner grant to a third party, the commissioner may, by written notice, require the third party to repay the amount to the commissioner.

### **48 Interest in relation to repayments**

(1) A person is liable to pay interest under this section on the amount of a first home owner grant paid to the person if the amount is repayable under paragraph 20 (2) (b).

- (2) A person is liable to pay interest under this section on an amount paid to the person on an application for a first home owner grant if the amount is repayable under section 47.
- (3) Interest under this section is to be calculated on a daily basis from—
- (a) if the amount is repayable under paragraph 20 (2) (b)—the relevant date as defined in subsection 20 (3); or
  - (b) if the amount is repayable under subsection 47 (1)—the date the amount was paid to the applicant.
- (4) For this section, the interest rate is the interest rate mentioned in section 26 of the *Taxation Administration Act 1999*.

**49 Power to recover amount paid in error etc**

- (1) This section applies to the following amounts:
- (a) an amount that an applicant (or former applicant) for a first home owner grant is required to repay under the conditions of the grant or by requirement of the commissioner under this Act;
  - (b) the amount of a penalty imposed on an applicant (or former applicant) for a first home owner grant;
  - (c) an amount a third party is required to repay by requirement of the commissioner under this Act;
  - (d) interest the applicant is required to pay under section 48.
- (2) The liability arising from a requirement to pay (or repay) an amount to which this section applies is joint and several if the requirement attaches to 2 or more persons.
- (3) If an applicant who is liable to pay an amount to which this section applies has an interest in the home for which the first home owner grant was sought, the liability is a first charge on the applicant's interest in the home.
- (4) The commissioner may recover an amount to which this section applies as a debt to the Territory.
- (5) The commissioner may enter into an arrangement (which may include provision for the payment of interest) for payment of a liability outstanding under this section by instalments.

(6) The commissioner may remit or refund all or part of an amount of interest paid or payable by a person.

(7) The commissioner may write off the whole or part of a liability to pay an amount to which this section applies if satisfied that action, or further action, to recover the amount outstanding is impracticable or unwarranted.

## 50 Protection of confidential information

(1) In this section—

*duty of confidentiality*—a person is subject to a *duty of confidentiality* if—

- (a) the person is, or has been, engaged in work related to the administration of this Act; or
- (b) the person has obtained access to protected information (directly or indirectly) from a person who is, or has been, engaged in work related to the administration of this Act.

*protected information* means information obtained in the course of work related to the administration of this Act about an applicant for a first home owner grant.

(2) A person who is subject to a duty of confidentiality must not disclose protected information except as permitted by subsection (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Protected information may be disclosed—

- (a) at the request or with the consent of the person to whom the information relates or a person acting on that person's behalf; or
- (b) in relation to the administration or enforcement of—
  - (i) this Act or a corresponding law; or
  - (ii) any other law of which the commissioner has the general administration; or
  - (iii) a taxation law of the Commonwealth or a State; or
- (c) for the purposes of legal proceedings; or
- (d) as authorised under the regulations.

**51 Evidence**

- (1) A certificate signed by the commissioner stating that a first home owner grant was paid to a person named in the certificate on a stated date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- (3) A copy of a notice issued by the commissioner requiring the payment or repayment of a stated amount is admissible in legal proceedings as evidence—
  - (a) that the requirement was made; and
  - (b) that the amount stated in the notice was outstanding at the date of the notice.

**52 Protection of officers etc**

- (1) This section applies to—
  - (a) the commissioner; and
  - (b) an authorised officer; and
  - (c) a delegate of the commissioner who works in an administrative unit of the public service.
- (2) No personal liability attaches to a person to whom this section applies for an honest act or omission in the performance, or purported performance, of functions under this Act.
- (3) A liability that would, apart from subsection (2), lie against a person to whom this section applies lies against the Territory.

**53 Application of certain provisions of Taxation Administration Act**

- (1) The following sections of the *Taxation Administration Act 1999* apply to this Act as if it were a tax law within the meaning of that Act:
  - (a) section 127 (Service of documents on commissioner);
  - (b) section 128 (Day of service of document or payment of money);
  - (c) section 129 (Service of documents by commissioner).

(2) This section does not, by implication, limit the application to this Act of any other provision of the *Taxation Administration Act 1999*.

**54 Determination of fees**

(1) The Minister may determine fees for this Act.

(2) A determination under this section is a disallowable instrument for the *Subordinate Laws Act 1989*.

**55 Regulation-making power**

(1) The Executive may make regulations for this Act.

(2) The regulations may prescribe a maximum penalty for an offence against the regulations of 10 penalty units.

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**DICTIONARY**

(See s 3)

**Australian citizen** means an Australian citizen as defined in the *Australian Citizenship Act 1948* (Cwlth).

**authorised investigation**—see section 37.

**authorised officer**—see section 34.

**building** includes part of a building.

**commencement date**, of an eligible transaction—see subsections 13 (4) and (6).

**commissioner** means the commissioner for revenue.

*Note* The **commissioner for revenue** is defined in the *Interpretation Act 1967*, dictionary.

**completed**, for an eligible transaction—see subsections 13 (5) and (6).

**comprehensive home building contract** means a contract under which a builder undertakes to build a home on land from the inception of the building work to the point where the home is ready for occupation and if, for any reason, the work to be carried out under such a contract is not completed, includes any further contract under which the work is to be completed.

**consideration**, for an eligible transaction—see subsection 13 (7).

**contract for the purchase of a home**—see subsection 13 (3).

**corresponding law** means an Act of a State corresponding to this Act.

*Note* State includes the Northern Territory (see *Interpretation Act 1967*, dict, def of *State*)

**determined fee**, for a provision of this Act, means the fee (if any) determined under section 54 (Determination of fees) for the provision.

**eligibility criteria** means the criteria for deciding whether an applicant for a first home owner grant is eligible for the grant (see Part 2, Division 2.2).

**eligible transaction**—see subsections 13 (1) and (2).

**first home owner grant** means a grant authorised under section 17.

**DICTIONARY**—continued

***first home owner grant scheme*** means the scheme for payment of first home owner grants established under this Act.

***function*** includes power.

***guardian***, of a person under a legal disability, includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

***home***—see section 4.

***home owner***—see section 5.

***identity card***—see the *Taxation Administration Act 1999*, subsection 3 (1).

***option*** to purchase includes a right of pre-emption or a right of first refusal.

***owner*** means—

- (a) of land—a person who has a relevant interest in the land; or
- (b) of a home—a person who has a relevant interest in the land on which the home is built (see subsection 5 (1)).

***owner-builder*** means an owner of land who builds a home, or has a home built, on the land without entering into a comprehensive home building contract, and see subsection 13 (6).

***partner***—see section 6.

***permanent resident*** means the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* (Cwlth).

***relevant interest*** in land—see subsections 5 (2), (3) and (4).

***residence requirement*** means the requirement that an applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence within 1 year after the completion of the eligible transaction or a longer period approved by the commissioner (see section 12).

***residential property***—land in Australia is ***residential property*** at a particular time if there is, at that time, a building on the land

**DICTIONARY**—continued

lawfully occupied as a place of residence or suitable for occupation as a place of residence.

*taxation law* means a law for the assessment or imposition of a tax.

*tribunal* means the administrative appeals tribunal.

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**Endnote**

**Penalty units**

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 30 March 2000]*