

**2000**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**FIRST HOME OWNER GRANT BILL 2000**

**EXPLANATORY MEMORANDUM**

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## **First Home Owner Grant Bill 2000**

### **Summary**

The First Home Owner Grant Bill 2000 establishes the First Home Owners' Scheme (FHOS) in the ACT.

Under the provisions of the Intergovernmental Agreement on the Reform of Commonwealth State Financial Relations (IGA) the States and Territories are required to "assist first homebuyers through the funding and administration of a new uniform First Home Owners' Scheme" to offset the introduction of a Goods and Services Tax. The IGA also sets out the broad principles for the FHOS.

The First Home Owners' Grant Bill 2000 has been developed to reflect these governing principles and is consistent with similar legislation being introduced in all State and Territory jurisdictions.

### **The Bill:**

- establishes the First Home Owners' Scheme;
- entitles eligible applicants to a maximum grant of \$7,000;
- details eligibility criteria for applicants;
- details eligibility criteria for properties in respect of which the FHOS grant is sought;
- provides that the grant will not be means tested;
- provides that the grant will be available on a once only basis;
- provides for the Commissioner to appoint agents to assist in administration of the scheme (eg financial institutions); and
- provides for the States and Territories to exchange information.

### **Financial Implications**

Payment of the FHOS grants is estimated at \$16.4 million annually, commencing in 2000-01.

Salary/administration costs are estimated at \$106,000 annually.

## Details of the First Home Owner Grant Bill 2000

### PART 1 - PRELIMINARY

#### Name of Act

Clause 1 - provides for the title of this Act to be the *First Home Owner Grant Act 2000*.

#### Commencement

Clause 2 - states that this Act commences on 1 July 2000.

#### Dictionary

Clause 3 - includes the Dictionary at the end of the Act as part of the Act.

#### Homes

Clause 4 - defines a "home" as a building, situated on land, that may be lawfully used as a residence and which is, in the Commissioner's opinion, suitable for use as a residence.

#### Ownership of land and homes

Subclause 5(1) - defines an "owner" or a "homeowner" as a person with a relevant interest in the land on which a home is built.

Subclause 5(2) - states that each of the following represent a "relevant interest" in land:

- (a) a lease granted by the Commonwealth;
- (b) a life estate approved by the Commissioner;
- (c) a licence or right of occupancy granted by the Commonwealth which the Commissioner believes gives reasonable security of tenure; and
- (d) an interest in company shares that the Commissioner is satisfied gives the holder the right to exclusive occupation of a particular home owned by the company, where the value of those shares is not less than the company's interest in the home.

Subclause 5(3) - makes the following points:

- (a) to be a relevant interest in land an interest at a particular time must provide the holder with a right to occupy the land within 12 months, or such longer period as allowed by the Commissioner;
- (b) an interest is not a relevant interest in land if that interest is subject to a trust; and
- (c) an equitable interest is not a relevant interest in land unless that interest belongs to a person suffering from a legal disability and the interest is held by guardian on trust.

Subclause 5(4) - states that, despite subsections (2) and (3), a "noncomplying interest" in land may be provided by the regulations even though that interest does not comply with the subsections and may not be recognised at law or in equity as an interest in the land.

Subclause 5(5) - allows the Commissioner, in cases where the FHOS grant is to be paid for a "noncomplying interest" in land, to impose appropriate conditions on the grant to ensure its recovery if criteria set out in the enabling regulations are not satisfied.

#### **Partner of applicant**

Subclause 6(1) - states that a person is the "partner" of an applicant if legally married or parties to a de facto relationship.

Subclause 6(2) - empowers the Commissioner to not regard a person legally married to the applicant as the applicant's partner if the Commissioner is satisfied, that at the time of deciding the application for the FHOS grant, that they are not living together and have no intention of living together.

Subclause 6(3) - defines a "de facto relationship" as the relationship between two people, of the opposite or the same sex, who live together as a couple on a genuine domestic basis.

## **PART 2 - FIRST HOME OWNER GRANT**

### ***Division 2.1 - Entitlement to grant***

#### **Entitlement to grant**

Subclause 7(1) - states that a FHOS grant is payable in response to an application lodged under this Act if:

- (a) the applicant, or each applicant if there is more than 1, meets the eligibility criteria; and
- (b) the transaction for which the grant is sought is a completed, eligible transaction.

Subclause 7(2) - states that regardless of paragraph 1(a), an applicant who is exempted from compliance with eligibility criteria under this Act is not required to meet those criteria to the extent of the exemption.

Subclause 7(3) - states that only 1 FHOS grant is payable in respect of an eligible transaction.

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

#### **Criterion 1 - Applicant to be an individual**

Clause 8 - requires an applicant for a FHOS grant to be a person.

**Criterion 2 - Applicant to be Australian citizen or permanent resident**

Subclause 9(1) - requires an applicant for a FHOS grant to be an Australian citizen or permanent resident.

Subclause 9(2) - states that where an application is made by joint applicants, if 1 of the applicants is an Australian citizen or permanent resident, this criterion is satisfied.

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

Subclause 10(1) - states that an applicant is ineligible if the applicant or the applicant's partner has previously made an application under this Act or a corresponding law and a FHOS grant was paid in respect of that application.

Subclause 10(2) - states that an applicant is not ineligible if a FHOS grant was paid but subsequently repaid in accordance with the conditions of the grant.

Subclause 10(3) - makes an applicant ineligible if the applicant, or the applicant's partner, did not apply for a grant in respect of an earlier transaction for which a successful application for a grant could have been made, or could have been made if he or she had been an Australian citizen or permanent resident at that time.

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

Subclause 11(1) - makes an applicant ineligible if, prior to 1 July 2000, the applicant or the applicant's partner has owned residential property in the ACT or any State or the Northern Territory.

Subclause 11(2) - states that in assessing an applicant's interest in residential property at a particular time that any deferment of the applicant's right to occupy (because the property was subject to a lease) is to be disregarded.

**Criterion 5 - Residence requirement**

Subclause 12(1) requires an applicant for a FHOS grant to occupy the home designated in the application as his/her principal place of residence within 1 year of completion of the eligible transaction, or such longer period approved by the Commissioner.

Subclause 12(2) - allows the Commissioner to exempt an applicant (the "noncomplying applicant") from these residence requirements if that applicant is one of 2 or more joint applicants, one of whom does comply with the residence requirements, where the Commissioner believes good reasons exist to grant this exemption.

## **Division 2.3 - Eligible transactions**

### **Eligible transaction**

Subclause 13(1) - defines an "eligible transaction" as:

- (a) a contract entered into for the purchase of a home in the ACT on or after 1 July 2000; or
- (b) a comprehensive contract to build a home in the ACT entered into by the owner of the land, or a person who will become the owner of the land on completion of the contract, on or after 1 July 2000; or
- (c) the building of a home in the ACT by an owner-builder which commences on or after 1 July 2000.

Subclause 13(2) - states that a contract is not an eligible transaction if it is, in the Commissioner's opinion, intended to avoid or circumvent eligibility or entitlement limitations, conditions or requirements in respect of a FHOS grant and that the Commissioner will, unless satisfied to the contrary consider the transaction ineligible if:

- (a) in respect of a contract to purchase a home – the purchaser had an option to purchase the home before 1 July 2000 or the vendor had an option to require the purchaser to purchase the home before 1 July 2000.
- (b) in respect of a comprehensive building contract – either party to the contract had a right or option to require the other party to enter into the contract before 1 July 2000.

Subclause 13(3) - defines a "contract for the purchase of a home" as a contract which provides for the acquisition of a relevant interest in the land on which a home is built.

Subclause 13(4) - defines the "commencement date" of an eligible transaction as:

- (a) for a contract – the date the contract is entered into;
- (b) for the building of a home by an owner-builder – the date when the laying of the foundations begins or such other date as the Commissioner approves.

Subclause 13(5) - states that, subject to any qualifications contained in regulations made under this Act, an eligible transaction is "completed" when:

- (a) for a contract for the purchase of a home – the purchaser is entitled to assume possession of the home under the terms of the contract and title to the land is transferred to the purchaser, if this is required under the terms of the contract(eg a house/land package); or
- (b) for a contract to have a home built – the home is certified as fit for occupation; or
- (c) for the building of a home by an owner-builder – the home is certified as fit for occupation.

Subclause 13(6) - states that if a person purchases a moveable home with the intention of using it as his/her principal place of residence to be located on land in which the person has a relevant interest but on which land the moveable home is not located at the time of purchase:

- (a) the provisions of this Act which relate to an owner-builder building a home on the land will apply;
- (b) the transaction date will be the date of purchase of the moveable home; and
- (c) the transaction is completed when the moveable home, sited on the land in which the person has a relevant interest, is certified as fit for occupation.

Subclause 13(7) - defines the "consideration" for an eligible transaction as:

- (a) for a contract for the purchase of a home – the amount paid for the purchase of the home;
- (b) for a comprehensive home building contract – the amount paid for construction of the home only; or
- (c) for the building of a home by an owner-builder – the amount paid for the construction of the home excluding any allowance for the owner-builder's labour.

#### ***Division 2.4 - Application for grant***

##### ***Application for grant***

Subclause 14(1) - requires that an application for the FHOS grant is to be made to the Commissioner.

Subclause 14(2) - provides that an application must contain all the information required by the Commissioner in a form approved by the Commissioner.

Subclause 14(3) - requires an applicant to provide any other information sought by the Commissioner to enable a decision in respect of the application.

Subclause 14(4) - permits the Commissioner to require an applicant to provide a statutory declaration verifying information supplied with an application, or any other form of evidence the Commissioner deems appropriate.

Subclause 14(5) - states that an application must be made within a period (the "application period") which commences on the date of the transaction to which the application relates and ends 1 year after that transaction date.

Subclause 14(6) - provides the Commissioner with the ability to accept an application before or after the application period.

Subclause 14(7) - allows an applicant to amend an application, with the Commissioner's consent.

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

Subclause 15(1) - states that all persons as defined in subclause 15(2) must be applicants.

Subclause 15(2) - defines "interested person" as a person who either is or will be on completion of the transaction be an owner of the home which is the subject of the application, unless that person is specifically excluded from this definition by means of regulations under this Act.

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

Subclause 16(1) - permits the guardian of a person under a legal disability to make an application on behalf of that person.

Subclause 16(2) - states that the person under the legal disability will be regarded as the applicant for the purposes of determining eligibility for the FHOS grant.

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

#### **Commissioner to decide applications**

Subclause 17(1) - states that 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.

Subclause 17(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.

#### **Amount of grant**

Clause 18 - defines the amount of a first home owner grant as the lesser of the following:

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

#### **Payment of grant**

Subclause 19(1) - states that a first home owner grant is to be paid by electronic funds transfer, by cheque or in any other way the Commissioner considers appropriate.

Subclause 19(2) - states that 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.

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

Subclause 20(1) - states that 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.

Subclause 20(2) - states that 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.

Subclause 20(3) - defines the relevant date as 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.

Subclause 20(4) - states that a person who fails to comply with the condition prescribed by subclause 20(2) commits an offence and prescribes a maximum penalty of 50 penalty units.

#### **Conditions generally**

Subclause 21(1) - empowers the Commissioner a discretion to authorise the payment of a first home owner grant on conditions the Commissioner considers appropriate.

Subclause 21(2) - states that 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.

Subclause 21 (3) - states that for a joint application, each applicant is individually liable to comply with a requirement under subclause (2) but compliance by any of them is to be regarded as compliance by all.

Subclause 21 (4) - states that a person who fails to comply with a condition imposed by the Commissioner (under this clause or any other provision of this Act) commits an offence and prescribes a maximum penalty of 50 penalty units.

#### **Death of applicant**

Subclause 22(1) - allows that an application for a first home owner grant does not lapse because an applicant dies before the application is decided.

Subclause 22(2) - states that 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.

Subclause 22(3) - states that 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.

#### **Power to correct decision**

Subclause 23(1) - states that 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.

Subclause 23(2) - states that a decision cannot be varied or reversed under this section more than 5 years after it was made.

#### **Notification of decision**

Subclause 24(1) - states that 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.

Subclause 24(2) - states that 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.

Subclause 24(3) - states that 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**

#### **Objections**

Subclause 25(1) - allows an applicant to give a written objection to the Commissioner if the applicant is dissatisfied with the Commissioner's—

- (a) decision on the application; or
- (b) the decision of the Commissioner under subclause 48(6) not to remit or refund all or part of an amount of interest.

Subclause 25(2) - requires that the objection must be accompanied by the determined fee.

Subclause 25(3) - requires that 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;
  - (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.

#### **Grounds for objection**

Subclause 26(1) - requires that the grounds for the objection must be stated fully and in detail and must be in writing.

Subclause 2 (2) - requires that the burden of showing that the objection should be upheld lies with the applicant.

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

Clause 27 - requires that 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.

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

Subclause 28(1) - allows the Commissioner the discretion to permit the applicant to make an objection after the 60-day period.

Subclause 28(2) - states that 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.

Subclause 28(3) - allows the Commissioner the discretion to give permission unconditionally or subject to conditions or may refuse permission.

Subclause 28(4) - states that the Commissioner must give notice to the applicant of the Commissioner's decision.

Subclause 28(5) - states that 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.

Subclause 28(6) - states that the notice must be in a form approved by the Commissioner.

#### **Decision on objection**

Clause 29 - states that the Commissioner must consider the objection and either allow the objection in whole or in part or disallow the objection.

#### **Notice of decision**

Subclause 30(1) - requires that the Commissioner must give notice to the objector of the Commissioner's decision on the objection.

Subclause 30(2) - states that 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.

Subclause 30(3) - requires that the notice must be in a form approved by the Commissioner.

#### **Appeal**

Clause 31 - states that 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.

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

Subclause 32(1) - states that 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.

Subclause 32(2) - states that for this clause, 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.

Subclause 32(3) - defines a relevant decision in this clause to mean:

- (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***

#### **Administration**

Clause 33 - states that the Commissioner is responsible to the Minister for the administration of the first home owner grant scheme.

#### **Authorised officers**

Subclause 34(1) - defines that 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*.

Subclause 34(2) - states that 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.

Subclause 34(3) - defines that 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*. (It is noted that the Commissioner's power of delegation is in section 78 of the *Taxation Administration Act 1999*.)

#### **Identity cards**

Subclause 35(1) - states that 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. (It is noted that subsection 80 (1) requires an identity card to be issued to each authorised person.)

Subclause 35(2) - states that this clause is additional to, and does not limit, section 80 of the *Taxation Administration Act 1999*.

## **Administration agreements**

Subclause 36(1) - allows that, 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.

(It is noted that 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.)

Subclause 36(2) - states that the conditions of an administration agreement may include conditions prescribed under the regulations.

Subclause 36(3) - states that 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 and prescribes a maximum penalty of 50 penalty units.

### **What penalty should be provided?**

Subclause 36(4) - states that the Commissioner may, at any time, revoke an administration agreement, including any delegation included in the agreement.

## **Division 3.2—Investigations**

### **Authorised investigations**

Clause 37 - defines that 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.

### **Cross-border investigation**

Subclause 38(1) - states that the Commissioner may, at the request of an authority responsible for administering a corresponding law, carry out an authorised investigation for the corresponding law.

Subclause 38(2) - states that 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.

Subclause 38(3) - states that subclause 38(2) does not limit section 78 of the *Taxation Administration Act 1999*.

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

Subclause 39(1) - states that 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.

Subclause 39(2) - states that the Commissioner—

- (a) may state whether information or evidence to be provided or given under this clause 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.

Subclause 39(3) - states that a person must not, without reasonable excuse, fail—

- (a) to comply with the requirements of a notice under this clause 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 clause and prescribes a maximum penalty of 50 penalty units.

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

Subclause 40(1) - states that 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.

Subclause 40(2) - states that an authorised officer who enters premises under subclause 40(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.

Subclause 40(3) - states that the powers of entry and inspection under this clause 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.

Subclause 40(4) - defines that in this clause, occupier, of premises, includes a person apparently in charge of or responsible for the premises.

### **Search warrant**

Subclause 41(1) states that 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.

Subclause 41(2) - states that the powers conferred by this clause are additional to, and do not limit, any other powers given by law.

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

Subclause 42(1) - states that this clause applies to a document that has been produced to the Commissioner or seized and removed by an authorised officer.

Subclause 42(2) - states that 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.

Subclause 42(3) - states that if the document is required by the Commissioner as evidence for a legal proceeding, it may be kept until the proceedings are finally decided.

Subclause 42(4) - states that 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.

Subclause 42(5) - states that this clause does not affect any lien a person has on the document.

### **43 Selfincrimination**

Subclause 43(1) - states that a person is not excused from answering a question, providing information or producing a document, when required to do so under clause 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.

Subclause 43(2) - states that 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 Hindering or obstructing authorised officers etc**

Subclause 44(1) - states that a person must not, without reasonable excuse, hinder or obstruct an authorised officer in the exercise of a function under this Division and prescribes a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

Subclause 44(2) - states that a person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this Division and prescribes a maximum penalty of 50 penalty units.

Subclause 44(3) - states that a person does not commit an offence against this clause 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**

### **Dishonesty**

Subclause 45(1) – states that a person must not dishonestly make a false or misleading statement in relation to an application for a first home owner grant. Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Subclause 45(2) – states that a person must not make a misleading statement in relation to an application for a first home owner grant. Maximum penalty: 30 penalty units.

Subclause 45(3) – It is a defence to the offence in subclause (2) where the person charged can establish that they did not intentionally or negligently contravene subclause (2).

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

Subclause 46(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 where:

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

Subclause 46(2) – When an applicant receives a grant as a result of the applicant's dishonesty, the Commissioner may impose a penalty up to the value of the grant recorded on either the repayment notice or by a separate notice.

Subclause (3) – Where an applicant or former applicant for a first home owner grant fails to make a repayment in accordance with this clause or the conditions of the grant, the Commissioner may by written notice impose a penalty up to the value the applicant is required to repay.

Subclause (4) – Where an amount is paid in error on an application for a first home owner grant to a third party, the Commissioner is empowered to require the third party to repay the amount to the Commissioner by giving written notice.

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

Subclause 47(1) – Where a person is liable to repay the amount of a grant under paragraph 20 (2) (b) the person is liable to pay interest on the repayable amount.

Subclause 47 (2) – Persons who are required to repay an amount under clause 46 are also liable to pay interest on the amount they are required to repay.

Subclause 47 (3) – Interest shall be calculated on a daily basis from:

- (a) the relevant date as defined in subclause 20 (2) (b) if the amount is repayable under paragraph 20 (3); or
- (b) the date the amount was paid to the applicant if the amount is repayable under subclause 46 (1).

Subclause 47 (4) – The meaning of 'interest rate' for the purposes of this section is the interest rate as mentioned in the *Taxation Administration Act 1999*.

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

Subclause 48 (1) –states that clause 48 applies to the following amounts:

- (a) an amount that the applicant or former applicant for a first home owner grant is required to repay under the conditions of the grant or as required by 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; and
- (d) interest the applicant is required to pay under clause 47.

Subclause 48 (2) – Where 2 or more persons are liable to pay or repay an amount where this section applies, the liability that arises is both joint and several.

Subclause 48 (3) – Where an applicant retains an interest in the home that the grant was sought for and is liable to pay an amount identified in subclause 48 (1), the liability shall take the form of a first charge on the applicant's interest in the home.

Subclause 48 (4) – The Commissioner is empowered to recover any amounts to which this section applies. These amounts are deemed to be debts to the Territory.

Subclause 48 (5) – The Commissioner is empowered to enter into an arrangement, which includes the payment of interest, for payment of an outstanding liability under this clause by instalments.

Subclause 48 (6) – The Commissioner is empowered to remit or refund all or part of an amount of interest paid or payable by a person.

Subclause 48 (7) – Where the Commissioner is satisfied that action, or further action, to recover an amount outstanding is impracticable or unwarranted, the Commissioner may write off the whole or part of a liability to pay an amount to which this section applies.

### **Protection of confidential information**

Subclause 49 (1) – Provides definitions for 'Protected information' and 'duty of confidentiality'.

Subclause 49 (2) – It is an offence for a person who is subject to a duty of confidentiality, as defined in subclause 49 (1), to disclose protected information unless permitted by subclause 49 (3).

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

Subclause 49 (3) – It is not an offence to disclose protected information if the protected information is 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
- (a) for the purposes of legal proceedings; or
- (b) as authorised under regulations.

### **Evidence**

Subclause 50 (1) – A certificate which states that a first home owner grant was paid to the person named in the certificate on a specified date and which is signed by the Commissioner is admissible in legal proceedings as evidence of the payment of the grant.

Subclause 50 (2) – A copy of a notice issued by the Commissioner that imposes a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.

Subclause 50 (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 that:

- (a) the requirement was made; and
- (b) the amount stated in the notice was outstanding at the date of the notice.

### **Protection of officers etc**

Subclause 51 (1) – Clause 51 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.

Subclause 51 (2) – A person to whom clause 51 applies who commits an honest act or omission in the performance, or purported performance, of functions under this Act does not attract personal liability.

Subclause 51 (3) – A liability that would, but for subclause 51 (2), attract a liability, lies against the Territory.

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

Subclause 52 (1) – The following sections of the *Taxation Administration Act 1999* and their meanings within that act apply to this 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)

Subclause 52 (2) – Subclause 52 (1) does not limit the application to this Act of any other provisions of the *Taxation Administration Act 1999*.

### **Determination of Fees**

Subclause 53 (1) – The Minister may determine fees for this Act.

Subclause 53 (2) – A determination under this section is a disallowable instrument for the *Subordinate Laws Act 1989*.

### **Regulation-making power**

Subclause 54 (1) – The Executive may make regulations for this Act.

Subclause 54 (2) – The regulations may prescribe a maximum penalty for an offence against the regulations of 10 penalty units.

### **Dictionary**

The Dictionary at the end of the Act defines certain words and expressions used in this Act. It also includes references to other words and expressions defined elsewhere in this Act or in other legislation.