

2003

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

FIRST HOME OWNER GRANT AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by the authority of the Treasurer

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First Home Owner Grant Amendment Bill 2003

Overview

The *First Home Owner Grant Amendment Bill 2003* (the Bill) makes two main amendments to the *First Home Owner Grant Act 2000* (the Act). First, it restricts the circumstances in which the First Home Owner Grant (the grant) may be paid to applicants who are under 18 years of age. Secondly, it introduces a six-month residency period which applicants must satisfy for entitlement to the grant.

The policy settings for the grant were developed by the Commonwealth as part of the introduction of the GST and in accordance with the *Intergovernmental Agreement on Commonwealth-State Financial Relations* (IGA). The First Home Owners Scheme (the scheme) is a national scheme administered by the States and Territories under their own legislation enacted in accordance with the policy agreed between the Commonwealth, and States and Territories. The agreed eligibility criteria for its uniform scheme impose no minimum occupation period of the home as a principal place of residence and no age limit on applicants.

Consistent with the Commonwealth policy settings for the scheme, the FHOG Act allows a guardian, which includes a trustee or a parent, to apply on behalf of a person under a legal disability, including minors. Eligibility is then determined by reference to the person and not the guardian, trustee or parent. It is also possible for minors to personally enter into contracts and to hold title to land.

Since the FHOG Act commenced on 1 July 2000, the ACT has maintained and administered the legislation as required by the IGA and has applied the common eligibility criteria. Therefore, at present, the age of the applicant is not relevant for eligibility purposes as there is no age limit specified in the legislation. As a result, minors may apply for the grant. Commonwealth Treasurer has now indicated support for an age restriction for applicants.

Without an age limit there is potential for abuse of the scheme under the Commonwealth policy where minors may be used in transactions to obtain grants where the real purchaser, such as their parents, would be ineligible for the grant or had already received the grant. This Bill will therefore amend the FHOG Act to require an applicant to be at least 18 years of age.

However, to cater for genuine cases where a minor might apply, the Bill will confer upon the Commissioner for ACT Revenue discretion to approve the grant in appropriate cases. This discretion is consistent with the discretion given to the Commissioner in some other States that have enacted or have recently introduced legislation imposing an age restriction. In exercising this discretion, the Commissioner will need to be satisfied that the applicant meets all other eligibility criteria. Examples of where the discretion is likely to be exercised are:

- where a paraplegic child who has obtained funds from a compensation payment builds a home modified for their medical needs and lives in the home with their parents (who act as the child's carers); and
- a 17 year old child who has used funds from an inheritance to purchase a home in which they will live.

An example of where the discretion may not be exercised is where parents acquire a home unit as the family home and do so as trustee for one of their young children and the parents fund the purchase and the costs of owning and maintaining the home.

It is proposed that this change to the FHOG Act be made retrospective to 14 October 2003; the day the Treasurer announced the Government's intention to impose an age limit. This means that the age limit will apply to any application lodged on or after 14 October 2003. If the grant has been paid under such applications to a person under the age of 18 years old, a repayment of that grant will not be sought because of a failure to meet the age limit.

This Bill contains another change to the eligibility criteria for the grant that will operate from 1 January 2004. In particular, this will apply to applications received from 1 January 2004. Currently applicants seeking to qualify for a grant must satisfy a residence condition. This condition requires an applicant to move into the home as their principal place of residence within one year of acquiring the property, or any longer period approved by the Commissioner. The problem with this condition is that it does not state a minimum period in which an applicant must live in the property.

Case law provides guidance as to whether a home is used as a principal place of residence. However, it is difficult for investigators to determine if an applicant has resided in the property as principal place of residence. This is especially the case where an applicant has occupied the home for a short period of time.

At the same time, there is also the risk of abuse of the scheme by an applicant moving in for a short period before leasing or selling the home. Introducing a time period will overcome these difficulties. A six-month residence period has been agreed by all States and Territories and communicated to the Commonwealth. A six-month residence requirement will therefore be added to the existing residence requirement. In addition, a discretion for the Commissioner to accept a lesser period, or waive the 6-month residence requirement is included. This discretion will only be exercised where there are good reasons to do so. Two examples of good reasons are:

- where an applicant's employer requires the applicant to relocate out of the ACT; and
- where the applicant's home is destroyed.

As a result of introducing the a six-month residence requirement, the Bill also states that if an applicant repays a grant because of a failure to meet the residence requirements, then that will not exclude that applicant from applying for the grant with respect to a subsequent property purchase. For example, if a person buys Property X, receives the grant, fails to meet all residence requirements and repays the grant (voluntarily or after a compliance investigation), then that person can subsequently buy Property Y and be eligible for the grant provided all other eligibility criteria are met. In these circumstances, the ownership of Property X would not be counted as a 'relevant interest' that would exclude an applicant from being eligible for the grant with respect to the purchase of Property Y.

Financial Implications

The Bill will have positive financial outcomes by preventing potential misuse of the Scheme.

Details of the Bill are attached.

Details of the First Home Owner Grant Amendment Bill 2003

Part 1 Preliminary

Clause 1 Name of Act

This Act is the *First Home Owner Grant Amendment Act 2003*.

Clause 2 Commencement

This clause states that sections 3 and 4 commence on the day after the Act's notification day. The remaining provisions which relate to the residence requirements commence on 1 January 2004.

Clause 3 Legislation amended

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

Clause 4 New section 8A – Criterion 1A – Applicant to be at least 18 years old

This clause inserts a new section, which states that the minimum age for an applicant for a first home owner grant is 18 years old. However, if the commissioner is satisfied there are good reasons to do so, the Commissioner may accept an application from a person younger than 18 years old. The age requirement is to be applied with respect to applications received on or after 14 October 2003 unless a grant had been paid with respect to that application.

Clause 5 Criterion 4—Applicant (or applicant's partner) must not have had relevant interest in residential property Section 11 (3)

This clause omits "relevant transaction" and substitutes "eligible transaction to which the application relates" to provide clarity to the subsection.

Clause 6 Section 11 (4)

This subsection is renumbered as subsection (5).

Clause 7 New section 11 (4)

This clause inserts a provision that ensures that, if an applicant or applicant's partner resided in a property which was the subject of any previous grant application but failed to reside the full length of time required or approved and the grant money was repaid, the applicant would not be taken to have a relevant interest in that property. This would enable the applicant to apply for the grant with respect to a subsequent property purchase.

Clause 8 Section 12 – Criterion 5 – Residence requirements

A new section 12 is substituted which sets out the residence requirements that an applicant must meet to be eligible for the first home owner grant. Applicants must move into the property within 12 months from settlement of the purchase of the property and must reside in the property for at least 6 consecutive months. If applied for, the Commissioner may approve a longer period for the applicant to move into the property. In addition, if the Commissioner is satisfied there are good reasons to do so, the Commissioner may approve a shorter period for residing in the property or exempt an applicant from residing in the property. Similarly, in cases where there is more than one applicant, if one applicant has complied with the residence requirement, then (if there are good reasons for doing so) the commissioner may also exempt the other applicants from the residence requirements.

Clause 9 Section 20 heading

A new section heading is substituted.

Clause 10 Section 20 (1) to (3)

New sections 20 (1) to (3) are substituted in light of the amendments to the residence requirements under section 12 and is not a policy change.

**Clause 11 Death of applicant
Section 22 (3)**

A new subsection is substituted in light of the amendments to the residence requirements under section 12 and is not a policy change.

**Clause 12 New part 5 – Transitional
Section 57 – Amendments by First Home Owner Grant
Amendment Act 2003 – continuing operation of Act for certain
eligible transactions**

This clause contains transitional provisions to ensure that for applications lodged prior to the commencement of the relevant provisions, the *First Home Owner Grant Act 2000* operates as if it was not amended.

Clause 13 Dictionary, definition of *residence requirement*

A new definition of ‘residence requirements’ replaces the definition of ‘residence requirement’.