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South Australia

First Home Owner Grant (Housing Grant Reforms) Amendment Bill 2012

A BILL FOR

An Act to amend the *First Home Owner Grant Act 2000*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *First Home Owner Grant (Housing Grant Reforms) Amendment Act 2012*.

2—Commencement

This Act will be taken to have come into operation on 1 July 2012.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *First Home Owner Grant Act 2000*

4—Amendment of long title

After "first home owners" insert:

; to promote housing construction within the State; and for other purposes

5—Amendment of section 1—Short title

Delete "*First Home Owner Grant Act 2000*" and substitute:

First Home and Housing Construction Grants Act 2000

6—Amendment of section 3—Definitions

(1) Section 3—after the definition of ***home*** insert:

housing construction grant means a grant authorised under section 18BAB;

(2) Section 3—after the definition of ***new home*** insert:

new home grant scheme means the scheme for the payment of housing construction grants established by this Act;

new home transaction means an eligible transaction that is—

(a) a contract for the purchase of a new home; or

(b) a comprehensive home building contract for a new home; or

(c) the building of a new home by an owner-builder;

7—Amendment of section 5—Ownership of land and homes

(1) Section 5(3)—delete "subsection (4)" and substitute:

subsections (4) and (6)

(2) Section 5(5)—after "first home owner grant" insert:

or housing construction grant

(3) Section 5—after subsection (5) insert:

(6) In the case of housing construction grants—

(a) subsection (3)(b) does not apply; and

(b) no equitable interest may constitute a relevant interest in any circumstances.

8—Substitution of heading to Part 2

Heading to Part 2—delete the heading and substitute:

Part 2—Grants

9—Amendment of section 7—Entitlement to grants

Section 7—after subsection (3), insert:

(4) A housing construction grant is payable on an application under this Act if the requirements of section 18BAB are satisfied.

(5) Only 1 housing construction grant is payable in relation to a particular new home.

10—Amendment of section 10—Criterion 3—Applicant (or applicant's spouse etc) must not have received earlier grant

(1) Section 10(1)—after "an application" insert:

for a first home owner grant

(2) Section 10(3)—after "An applicant" insert:

for a first home owner grant

11—Amendment of section 11—Criterion 4—Applicant (or applicant's spouse etc) must not have had relevant interest in residential property

(1) Section 11(1)—after "An applicant" insert:

for a first home owner grant

(2) Section 11(3)—after "An applicant" insert:

for a first home owner grant

12—Amendment of section 14—Application for grant

Section 14(1)—after "first home owner grant" insert:

or a housing construction grant

13—Amendment of section 17—Commissioner to decide applications

(1) Section 17(1)—after "first home owner grant" insert:

or a housing construction grant

(2) Section 17(2)—after "first home owner grant" insert:

or a housing construction grant

14—Amendment of section 18—Amount of first home owner grant

(1) Section 18(1)(b)—delete paragraph (b) and substitute:

(b) —

(i) in the case of an eligible transaction other than a new home transaction—

(A) if the commencement date of the eligible transaction is before the 2012 statutory date—$7 000; and

(B) if the commencement date of the eligible transaction is between the 2012 statutory date and 30 June 2014 (both dates inclusive)—$5 000;

(ii) in the case of an eligible transaction that is a new home transaction—

(A) if the commencement date of the eligible transaction is before 15 October 2012—$7 000; and

(B) if the commencement date of the eligible transaction is on or after 15 October 2012—$15 000.

(2) Section 18—after subsection (4) insert:

(4a) To avoid doubt, a first home owner grant is not payable under this section in relation to a contract made on or after 1 July 2014 unless the contract is a new home transaction.

(3) Section 18(5)—after the definition of ***special eligible transaction*** insert:

2012 statutory date is the date on which the *First Home Owner Grant (Housing Grant Reforms) Amendment Act 2012* is assented to by the Governor.

15—Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 15 October 2012

(1) Section 18BA(1)(a)—delete "1 July 2012" and substitute:

15 October 2012

(2) Section 18BA(1)(b)—delete paragraph (b) and substitute:

(b) the eligible transaction is a new home transaction; and

(3) Section 18BA(1)(d)(iii)—after "new home" insert:

entered into before 1 July 2012

(4) Section 18BA(1)(d)—after subparagraph (iii) insert:

and

(iv) if the eligible transaction is a contract for an "off-the-plan" purchase of a new home entered into on or after 1 July 2012 and before 15 October 2012—

(A) the contract states that the eligible transaction must be completed on or before 14 April 2014; or

(B) in any other case, the eligible transaction is completed on or before that date.

16—Substitution of section 18BAB

Section 18BAB—delete the section and substitute:

18BAB—Housing construction grant

(1) Subject to this section, a grant (the ***housing construction grant***) is payable on an application under this Act if—

(a) the application relates to an eligible transaction that is a new home transaction; and

(b) the commencement date of the eligible transaction is on or after 15 October 2012 but before 1 July 2013; and

(c) the market value of the home to which the eligible transaction relates is less that $450 000; and

(d) —

(i) if the eligible transaction is a comprehensive home building contract for a new home—the contract states that the eligible transaction must be completed within 18 months after the laying of the foundations for the home is commenced or, in any other case, the eligible transaction is completed within 18 months after the laying of the foundations for the home is commenced; and

(ii) if the eligible transaction is the building of a new home by an owner-builder—the transaction is completed within 18 months after its commencement date; and

(iii) if the eligible transaction is a contract for an "off-the-plan" purchase of a new home—

(A) the contract states that the eligible transaction must be completed on or before 31 December 2014; or

(B) in any other case, the eligible transaction is completed on or before that date; and

(e) the transaction for which the grant is sought has been completed.

(2) The amount of the housing construction grant under this section is as follows:

(a) if the market value of the home to which the eligible transaction relates does not exceed $400 000—$8 500;

(b) if the market value of the home to which the eligible transaction relates exceeds $400 000 (but is less than $450 000)—an amount calculated in accordance with the following formula:

$$A = B - \left(\frac{C\ (D - E)}{100} \right)$$

where—

A is the amount of the housing construction grant

B is $8 500

C is 17

D is the market value of the home to which the eligible transaction relates, rounded down to the nearest $100

E is $400 000.

(3) The Commissioner may, in a particular case, if he or she considers there are proper reasons for doing so, extend the time within which an eligible transaction must be completed under this section.

(4) This section does not give rise to an entitlement to a housing construction grant if the Commissioner is satisfied that a contract that formed the basis of an eligible transaction for the purchase (or purported purchase) of a new home does not constitute a genuine sale of the new home.

(5) For the purposes of subsection (4), the Commissioner may take into account the following:

(a) whether the parties to the contract are close associates;

(b) whether the parties are otherwise not at arms length;

(c) such other matters as the Commissioner considers appropriate.

(6) For the purposes of subsection (5), 2 persons are close associates if—

(a) 1 is a relative of the other; or

(b) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or

(c) 1 is a body corporate and the other is a director, manager or officer of the body corporate; or

(d) 1 is a body corporate (other than a public company whose shares are quoted on a financial market) and the other is a shareholder in the body corporate; or

(e) 1 has a right to participate (otherwise as a shareholder in a body corporate) in income or profits derived from a business conduced by the other; or

(f) they are in partnership; or

(g) 1 is a beneficiary under a trust or an object of a discretionary trust of which the other is a trustee; or

(h) they fall within a class of persons prescribed by the regulations for the purposes of this subsection.

(7) For the purposes of subsection (6), 1 person is a relative of another if the other person is—

(a) a spouse or domestic partner; or

(b) a parent or remoter lineal ancestor; or

(c) a son, daughter or remoter descendant; or

(d) a brother or sister; or

(e) related in any other way prescribed by the regulations for the purposes of this subsection.

(8) This section does not give rise to an entitlement to a housing construction grant if the Commissioner is satisfied that the contract that formed the basis of the eligible transaction replaces a contract made before 15 October 2012 (the ***earlier contract***), and that the earlier contract was—

(a) a contract for the purchase of the same home; or

(b) a comprehensive home building contract to build the same or a substantially similar home.

(9) A reference to a first home owner grant or to a first home bonus grant in a following section of this Act (other than section 20 or 22(3)) will be taken to include a reference to a housing construction grant under this section.

17—Substitution of section 18C

Section 18C—delete the section and substitute:

18C—Amount of grants must not exceed consideration

If, by virtue of an additional payment under section 18(2), a first home bonus grant or a housing construction grant, the total amount payable in relation to a home would, but for this section, exceed the consideration for the eligible transaction, the additional payment, first home bonus grant or housing construction grant will, as determined by the Commissioner, be adjusted so that the total amount payable under this Act is equal to the amount of the consideration.

18—Amendment of section 31—Administration

Section 31—after "first home owner grant scheme" insert:

and the administration of the new home grant scheme

19—Amendment of section 32—Delegation

(1) Section 32(1)—after "first home owner grant scheme" insert:

or to the administration of the new home grant scheme

(2) Section 32(2)(a)—delete "first home owner scheme" and substitute:

first home owner grant scheme or the new home grant scheme

20—Amendment of section 41—Protection of confidential information

Section 41(3)—after paragraph (a) insert:

(ab) in order to let a person know whether a housing construction grant has been paid in relation to a particular home; or

Schedule 1—Transitional provisions

1—Interpretation

(1) In this Schedule—

principal Act means the *First Home Owner Grant Act 2000* (being, if the context requires, the *First Home and Housing Construction Grants Act 2000*).

(2) Terms used in this Schedule that are defined in the principal Act have the same respective meanings as in that Act.

2—Transitional provisions

(1) If—

(a) a person is entitled to a first home owner grant of $15 000 under section 18(1)(b)(ii)(B) of the principal Act as amended by this Act; and

(b) the person has received a benefit constituted by an *ex gratia* payment by the State equal to the difference between $15 000 and $7 000 in order to provide for the payment of the higher amount under section 18 of the principal Act as amended by this Act for the period between 15 October 2012 and the day on which this Act is assented to by the Governor,

no further amount will be payable under section 18(1)(b)(ii)(B) on or after the enactment of this Act.

(2) If—

(a) a person is entitled to a first home bonus grant under section 18BA of the principal Act as amended by this Act in relation to an eligible transaction with a commencement date that is on or after 1 July 2012; and

(b) the person has received—

(i) a first home bonus grant under repealed section 18BAB of the principal Act (as in force before the commencement of this Act); or

(ii) a benefit constituted by an *ex gratia* payment by the State in order to provide for the first home bonus grant under section 18BA of the principal Act as amended by this Act for the period between 1 July 2012 and the day on which this Act is assented to by the Governor,

the amount of the entitlement referred to in paragraph (a) will be reduced by the amount of the grant received by the person under section 18BAB or the amount of the *ex gratia* payment (including so as to fully set off the amount of the relevant entitlement).

(3) If—

(a) a person is entitled to a housing construction grant under section 18BAB of the principal Act as enacted by this Act; and

(b) the person has received a benefit constituted by an *ex gratia* payment by the State in order to provide for a housing construction grant under section 18BAB enacted by this Act for the period between 15 October 2012 and the day on which this Act is assented to by the Governor,

the amount of the relevant entitlement will be reduced by the amount of the *ex gratia* payment (including so as to fully set off the amount of the relevant entitlement).

(4) If—

(a) a person—

(i) applies for a first home owner grant of $15 000 under section 18(1)(b)(ii)(B) of the principal Act as amended by this Act; or

(ii) receives an *ex gratia* payment contemplated by subclause (1)(b); and

(b) the Commissioner is satisfied (whether before or after the enactment of this Act) that the contract that formed the basis of the eligible transaction replaces a contract made before 15 October 2012 (the ***earlier contract***), and that the earlier contract was—

(i) a contract for the purchase of the same home; or

(ii) a comprehensive building contract to build the same or a substantially similar home,

then—

(c) if the Commissioner has not made a payment under section 18 or an *ex gratia* payment contemplated by subclause (1)(b)—the amount of the first home owner grant under section 18 will be $7 000 rather than $15 000; or

(d) if the Commissioner has made a payment under section 18 or an *ex gratia* payment contemplated by subclause (1)(b) (whether before or after the commencement of this Act)—the Commissioner may recover the amount of $8 000 as a debt due to the Crown from the person who received the payment.

(5) To avoid doubt, any set off or right of recovery under this clause extends to a benefit or payment obtained or made before the commencement of this clause.