

Legislative Council—No 111

As received from the House of Assembly and read a first time, 23 June 2011

South Australia

Statutes Amendment (Budget 2011) Bill 2011

A BILL FOR

An Act to amend the *First Home Owner Grant Act 2000*, the *Liquor Licensing Act 1997*, the *Statutes Amendment (Budget 2010) Act 2010* and the *Summary Procedure Act 1921*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 3—Definitions
- 5 Amendment of section 13A—Special eligible transactions
- 6 Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012
- 7 Insertion of section 18BAB
18BAB Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013
- 8 Amendment of section 18BB—Market value of homes
- 9 Amendment of section 18C—Amount of grant must not exceed consideration
- 10 Transitional provision

Part 3—Amendment of *Liquor Licensing Act 1997*

- 11 Insertion of section 50A
50A Annual fees
- 12 Amendment of section 53—Discretionary powers of licensing authority
- 13 Insertion of section 59A
59A Licence fee payable on grant of licence
- 14 Amendment of section 138—Regulations
- 15 Transitional provision

Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

- 16 Repeal of sections 60 and 61
- 17 Repeal of section 63

Part 5—Amendment of *Summary Procedure Act 1921*

- 18 Substitution of section 189
189 Costs generally
189A Costs payable by Crown in certain criminal proceedings
189B Costs payable by defendant in certain criminal proceedings
189C Costs in preliminary examination
189D Costs against complainant in proceedings for restraining order
189E Costs—delay or obstruction of proceedings
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Budget 2011) Act 2011*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.
- (2) Part 2 will be taken to have come into operation on 10 June 2011.

5 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 section 3—Definitions

10 Section 3—after the definition of *consideration* insert:

contract for an "off-the-plan" purchase, of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of a subdivision of land;

5—Amendment of section 13A—Special eligible transactions

15 Section 13A(8)—delete subsection (8)

6—Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012

- (1) Section 18BA(1)—after "17 September 2010" insert:
but before 1 July 2012

20 (2) Section 18BA(1)—after paragraph (c) insert:

and

- (d) in the case of an eligible transaction with a commencement date that is on or after 10 June 2011—

25 (i) if the eligible transaction is a comprehensive home building contract for a new home—

(A) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

30 (B) 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

35 (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 2013; or

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

(3) Section 18BA—after subsection (2) insert:

(2a) 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.

7—Insertion of section 18BAB

After section 18BA insert:

18BAB—Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013

(1) Subject to this section, the amount of a first home owner grant under section 18 will be increased by an amount under this section (the *first home bonus grant*) if—

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

(b) the eligible transaction is—

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

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

(iii) the building of a new home by an owner builder; and

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

(d) in the case of an eligible transaction that is a comprehensive home building contract for a new home—

(i) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

(ii) 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

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

(f) in the case of an eligible transaction that is a contract for an "off-the-plan" purchase of a new home—

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

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

(2) The amount of the first home bonus 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—\$4 000;

(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 first home bonus grant

B is \$4 000

C is 8

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.

8—Amendment of section 18BB—Market value of homes

Section 18BB(1)—delete "and 18BA" and substitute:

, 18BA and 18BAB

9—Amendment of section 18C—Amount of grant must not exceed consideration

Section 18C—delete "or 18BA" and substitute:

, 18BA or 18BAB

10—Transitional provision

(1) If—

- 5 (a) a person has, before the day on which this Act is assented to by the Governor, received a payment under section 18BA of the *First Home Owner Grant Act 2000* in respect of an eligible transaction with a commencement date that is on or after 10 June 2011; and
- (b) the person is not entitled to the payment under section 18BA as amended by section 6 of this Act,

10 the Commissioner may recover the amount of the payment from the person as a debt due to the Crown.

(2) Terms used in subsection (1) that are defined in the *First Home Owner Grant Act 2000* have the same respective meanings as in that Act.

Part 3—Amendment of *Liquor Licensing Act 1997*

11—Insertion of section 50A

15 After section 50 insert:

50A—Annual fees

- 20 (1) A licensee (including the holder of a licence that has been suspended) must, in each year, pay to the Commissioner an annual fee in accordance with the regulations.
- (2) Without limiting the matters that may be dealt with in the regulations, the regulations may—
- 25 (a) fix the day of the month on or before which the fee is to be paid in each year; and
- (b) fix the period of 12 months (the *annual fee period*) in respect of which the fee is to be paid; and
- 30 (c) provide for the fee to be determined by reference to the class of licence or business conducted under the licence, the trading hours authorised by the licence or any other factor and for a matter to be determined according to the discretion of the Commissioner; and
- 35 (d) provide for transitional arrangements if the date for payment or the annual fee period is to be varied, including by providing for the payment of 2 fees within the same year for the purposes of the transition to a different date for payment and for an annual fee period that is longer or shorter than 12 months for the purposes of the transition to a different annual fee period.

- 5 (3) If the trading hours or conditions of a licence are varied, or
circumstances vary, in respect of trade in liquor during an annual fee
period such that the annual fee paid in respect of the period is less
than the annual fee that would have been payable had the variations
been taken into account in the calculation of the fee, the
Commissioner may recalculate the annual fee and, by written notice,
require the licensee to pay the difference on or before a date
specified in the notice.
- 10 (4) If a licensee fails to pay the annual fee in accordance with the
regulations or to pay an amount in accordance with subsection (3),
the Commissioner may, by written notice, require the person to make
good the default as specified in the notice and, in addition, pay to the
Commissioner the amount prescribed as a penalty for default.
- 15 (5) If a licensee fails to comply with a notice under subsection (4), the
Commissioner may, by further written notice, suspend the licence
until the notice has been complied with.
- (6) This section does not apply in relation to a limited licence.

12—Amendment of section 53—Discretionary powers of licensing authority

Section 53(3)—after "application" insert:

20 or the payment of fees relating to the grant of the application

13—Insertion of section 59A

After section 59 insert:

59A—Licence fee payable on grant of licence

- 25 (1) On the grant of a licence, a licence fee becomes payable to the
Commissioner by the licensee.
- (2) In the case of a limited licence—
- 30 (a) the amount of the licence fee is to be determined in
accordance with the regulations; and
- (b) the licence fee is payable before the commencement of the
special occasion or the first in the series of special occasions
to which the licence relates; and
- 35 (c) the regulations may provide for the licence fee to be
determined by reference to the class of special occasion or
the series of special occasions to which the licence relates or
any other factor and for a matter to be determined according
to the discretion of the Commissioner; and
- 40 (d) if the holder of the licence fails to pay the licence fee before
the commencement of the special occasion or the first in the
series of special occasions to which the licence relates, the
licence is cancelled.

- (3) In the case of a licence other than a limited licence—
- (a) the amount of the licence fee is a proportion of the annual fee for the licence, being the proportion that the number of months in the period from the grant of the licence until the end of the current annual fee period bears to 12 months (with part of a month being counted as a full month); and
 - (b) the licence fee is payable within 28 days after the grant of the licence; and
 - (c) if the trading hours or conditions of the licence are varied, or circumstances vary, in respect of trade during the current annual fee period such that the licence fee paid is less than the licence fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the licence fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice; and
 - (d) if the licensee fails to pay the licence fee, or an amount under paragraph (c), within the period allowed, the licence is suspended until the fee or amount is paid; and
 - (e) the Commissioner must notify the licensee in writing of the suspension of the licence.
- (4) In this section—
annual fee period—see section 50A.

14—Amendment of section 138—Regulations

Section 138—after subsection (4) insert:

- (5) A regulation may provide for the Commissioner to waive, reduce or refund fees payable under this Act.

15—Transitional provision

- (1) The regulations first made under section 50A as inserted in the *Liquor Licensing Act 1997* by this Act may provide—
- (a) for the first annual fee period to be longer or shorter than 12 months; and
 - (b) for the payment of 2 fees within the first 12 months (so that licensees have a longer period within which to make the first payment); and
 - (c) for the first annual fee period to commence at any time on or after 1 July 2011.
- (2) If, after the day on which this Act is assented to by the Governor and before the day fixed by the Commissioner for the payment of the first annual fee, an application is made under the *Liquor Licensing Act 1997* for a reduction in trading hours authorised by a licence so that, following the reduction, the licence authorises only the hours during which it is proposed the licensed premises will be open for trade—
- (a) no fee is payable for the application; and
 - (b) section 52 of the *Liquor Licensing Act 1997* does not apply to the application.

Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

16—Repeal of sections 60 and 61

Sections 60 and 61—delete the sections

5 17—Repeal of section 63

Section 63—delete the section

Part 5—Amendment of *Summary Procedure Act 1921*

18—Substitution of section 189

Section 189—delete section 189 and substitute:

10 189—Costs generally

Subject to sections 189A to 189E (inclusive), the Court may award such costs for or against a party to proceedings as the Court thinks fit.

189A—Costs payable by Crown in certain criminal proceedings

- 15** (1) If, in proceedings for an offence prosecuted by a police officer—
- (a) the Court dismisses the proceedings; or
 - (b) the proceedings are withdrawn,

the Court may only make an order for costs in favour of the defendant if the Court is satisfied that it is proper that the order should be made.

- 20**
- (2) In deciding whether it is proper to make an order for costs in favour of the defendant, the Court must take into account all relevant circumstances, including, for example—
- 25** (a) whether the prosecution of the offence was conducted in good faith; and
 - (b) whether there was a failure to take appropriate steps to investigate a matter coming to, or within, the knowledge of the prosecution; and
 - 30** (c) whether the investigation into the offence was conducted in an appropriate way; and
 - (d) whether the order of dismissal (in the case of proceedings dismissed by the Court) was made on technical grounds and not on a finding that there was insufficient evidence to convict or make an order against the defendant; and
 - 35** (e) whether the defendant brought suspicion on himself or herself by conduct engaged in after the events constituting the commission of the offence; and

(f) whether the defendant unreasonably declined an opportunity before a charge was laid—

(i) to explain the defendant's version of events; or

(ii) to produce evidence likely to exonerate the defendant,

and the explanation or evidence could have avoided a prosecution; and

(g) whether the defendant conducted the defence in a way that prolonged the proceeding unreasonably; and

(h) whether the defendant was acquitted on a charge, but convicted on another.

(3) Subject to subsection (4), in deciding the amount of costs to be awarded under this section, the Court may award costs only—

(a) if the regulations prescribe a scale of costs for the purposes of this section—

(i) for an item allowed under the prescribed scale of costs; and

(ii) up to the amount allowed for the item under the prescribed scale; or

(b) if no scale of costs is prescribed in accordance with paragraph (a)—

(i) for an item allowed under the scale of costs prescribed in relation to criminal proceedings under section 49(1)(e) of the *Magistrates Court Act 1991*; and

(ii) up to the amount allowed for the item under that scale.

(4) The Court may allow a higher amount for costs if the Court is satisfied that the higher amount is just and reasonable having regard to the special difficulty or complexity of the case, or where the Court finds that the prosecution has not acted in good faith in bringing the proceedings.

189B—Costs payable by defendant in certain criminal proceedings

(1) This section does not apply to—

(a) a defendant who enters a written plea of guilty in accordance with section 57A; or

(b) an enforcement procedure under section 13 of the *Expiation of Offences Act 1996*.

- (2) If the Court finds a defendant guilty in proceedings for an offence prosecuted by a police officer, the Court must, subject to subsection (3), make an order for costs against the defendant for—
- (a) if an amount is prescribed by regulation for the purposes of this subsection—the prescribed amount; or
- (b) if no such amount is prescribed—\$100.
- (3) If the prosecution agrees that an order under subsection (2) should not be made, the Court may instead make some other order as to costs (or may make no order as to costs).

189C—Costs in preliminary examination

Despite any other provision of this Part, costs will not be awarded against a party to a preliminary examination of an indictable offence unless the Court is satisfied that the party has unreasonably obstructed the proceedings.

189D—Costs against complainant in proceedings for restraining order

- (1) Despite any other provision of this Part, costs will not be awarded against a complainant in proceedings for a restraining order unless the Court is satisfied that the complainant has acted in bad faith or unreasonably in bringing the proceedings.

- (2) In this section—

complainant, in relation to a restraining order, includes an applicant for a restraining order;

restraining order includes a domestic violence restraining order under the *Domestic Violence Act 1994* and an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

189E—Costs—delay or obstruction of proceedings

- (1) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—
- (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
- (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- (c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

- 5
- (2) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the Court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.
- (3) If proceedings are unreasonably obstructed by a party or a witness, or proceedings are delayed through the failure of a party or a witness to appear before the Court when required to do so, the Court may make either or both of the following orders:
- 10
- (a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;
- (b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the obstruction or delay.
- 15
- (4) Before making an order under subsection (1), (2) or (3), the Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.
- 20
- (5) A person against whom an order for costs is made under subsection (1), (2) or (3) has the same rights of appeal as a party to a civil action.