

South Australia

FIRST HOME OWNER GRANT ACT 2000

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.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **26 July 2001**.*

FIRST HOME OWNER GRANT ACT 2000

being

First Home Owner Grant Act 2000 No. 25 of 2000
[Assented to 29 June 2000]¹

as amended by

First Home Owner Grant (New Zealand Citizens) Amendment Act 2000 No. 64 of 2000 [Assented to 9 November 2000]²

First Home Owner Grant (New Homes) Amendment Act 2001 No. 26 of 2001 [Assented to 26 July 2001]³

¹ Came into operation 1 July 2000: s. 2.

² Came into operation 1 July 2000: s. 2.

³ **Came into operation (except s. 4) 9 March 2001: s. 2(1); s. 4 came into operation 30 May 2001: s. 2(2).**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Homes
5. Ownership of land and homes
6. Spouses

PART 2 FIRST HOME OWNER GRANT

DIVISION 1—ENTITLEMENT TO GRANT

7. Entitlement to grant

DIVISION 2—ELIGIBILITY CRITERIA (APPLICANTS)

8. Criterion 1—Applicant to be a natural person
- 8A. Criterion 1A—Applicant to be at least 18 years of age
9. Criterion 2—Applicant to be Australian citizen or permanent resident
10. Criterion 3—Applicant (or applicant's spouse) must not have received an earlier grant
11. Criterion 4—Applicant (or applicant's spouse) must not have had relevant interest in residential property
12. Criterion 5—Residence requirement

DIVISION 3—ELIGIBLE TRANSACTIONS

13. Eligible transaction
- 13A. Special eligible transaction

DIVISION 4—APPLICATION FOR GRANT

14. Application for grant
15. All interested persons to join in application
16. Application on behalf of person under legal disability

DIVISION 5—DECISION ON APPLICATION

17. Commissioner to decide applications
18. Amount of grant
19. Payment of grant
20. Payment in anticipation of compliance with residence requirement
21. Conditions generally
22. Death of applicant
23. Power to correct decision
24. Notification of decision

DIVISION 6—OBJECTIONS AND APPEALS

25. Objections
26. Reference of objection to Crown Solicitor for advice
27. Powers of the Treasurer on objection
28. Appeal
29. Determination of appeal
30. Objection or appeal not to stay proceedings based on the relevant decision

**PART 3
ADMINISTRATION**

DIVISION 1—ADMINISTRATION GENERALLY

- 31. Administration
- 32. Delegation

DIVISION 2—INVESTIGATIONS

- 33. Authorised investigations
- 34. Cross-border investigation
- 35. Power of investigation
- 36. Powers of entry and inspection
- 37. Self incrimination

**PART 4
MISCELLANEOUS**

- 38. Dishonesty
- 39. Power to require repayment and impose penalty
- 40. Power to recover amount paid in error etc.
- 41. Protection of confidential information
- 42. Evidence
- 43. Time for commencing prosecution
- 44. Standing appropriation
- 45. Protection of officers etc.
- 46. Regulations

**APPENDIX
LEGISLATIVE HISTORY**

First Home Owner Grant Act 2000

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *First Home Owner Grant Act 2000*.

Commencement

2. This Act will come into operation on 1 July 2000.

Definitions

3. In this Act, unless the contrary intention appears—

"**Australian citizen**" means an Australian citizen within the meaning of the *Australian Citizenship Act 1948* (Cwth);

"**authorised investigation**"—*see* section 33;

"**authorised officer**" means a person authorised by the Commissioner to exercise the powers of an authorised officer under this Act;

"**building**" includes part of a building;

"**commencement date**" of an eligible transaction—*see* section 13(4);

"**Commissioner**" means the Commissioner of State Taxation;

"**completed**"—for completion of an eligible transaction, *see* section 13(5);

"**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* section 13(7);

"**corresponding law**" means an Act of another State, or a Territory, corresponding to this Act;

"**eligibility criteria**" means the criteria for determining whether an applicant for a first home owner grant is eligible for the grant (*see* Part 2, Division 2);

"**eligible transaction**"—*see* section 13(1);

"**first home owner grant**" means a grant authorised under section 17;

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

"**function**" includes a 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;

"**new home**" means a home that has not been occupied or sold as a place of residence;

"**option**" to purchase includes a right of preemption or a right of first refusal;

"**owner**" means—

- (a) in relation to land—a person who has a relevant interest in the land;
- (b) in relation to a home—a person who has a relevant interest in the land on which the home is built (*see* section 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;

"**permanent resident**" means—

- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* (Cwth); or
- (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* (Cwth);

"**relevant interest**"—*see* section 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 12 months 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 lawfully occupied as a place of residence or suitable for occupation as a place of residence;

"**spouse**"—*see* section 6;

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

Homes

4. 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.

Ownership of land and homes

5. (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, subject to subsection (3), a **relevant interest** in land:

- (a) an estate in fee simple in the land; or
- (b) a life estate in the land approved by the Commissioner; or

First Home Owner Grant Act 2000

- (c) a perpetual lease of the land granted by the Commonwealth or the State; or
- (d) a leasehold interest in the land granted by the Commonwealth or the State that may be converted under the terms of the lease or by statute into an estate in fee simple; or
- (e) an interest as purchaser under a contract for the purchase from the Commonwealth or the State of an estate in fee simple in the land by instalments; or
- (f) a licence or right of occupancy granted by the Commonwealth or the State that gives, in the Commissioner's opinion, the licensee or the holder of the right reasonable security of tenure; or
- (g) 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 specified 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) Subject to subsection (4)—

- (a) an interest is not a relevant interest 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;
- (b) an interest is not a relevant interest in the hands of a person who holds it subject to a trust;
- (c) an equitable interest is not a relevant interest unless it is the interest of a person under a legal disability for whom a guardian holds the interest on trust.

(4) The regulations may provide for recognition of an interest (a **non-conforming interest**) as a relevant interest—

- (a) even though the interest may not conform with the above provisions; 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 in consequence of the recognition of a non-conforming interest as a relevant interest, the Commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if criteria prescribed in the regulations about future conduct or events are not satisfied.

Spouses

6. (1) A person is the **spouse** of another if—

- (a) they are legally married; or
- (b) they are cohabiting on a genuine domestic basis in a relationship of de facto marriage.

(2) If the Commissioner is satisfied that, at the time of deciding an application for a first home owner grant, an applicant—

- (a) is legally married but not cohabiting with the person to whom the applicant is legally married; and
- (b) has no intention of resuming cohabitation,

the person to whom the applicant is legally married is not to be regarded as the applicant's spouse.

First Home Owner Grant Act 2000

**PART 2
FIRST HOME OWNER GRANT**

DIVISION 1—ENTITLEMENT TO GRANT

Entitlement to grant

7. (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 subsection (1)(a), an applicant need not comply with the eligibility criteria to the extent the applicant is exempted from compliance by or under this Act.

(3) Only 1 first home owner grant is payable for the same eligible transaction.

DIVISION 2—ELIGIBILITY CRITERIA (APPLICANTS)

Criterion 1—Applicant to be a natural person

8. An applicant for a first home owner grant must be a natural person.

Criterion 1A—Applicant to be at least 18 years of age

8A. (1) An applicant for a first home owner grant must be at least 18 years of age.

(2) The Commissioner may exempt an applicant from the above requirement if the Commissioner is satisfied that:

- (a) the home to which the application relates will be occupied by the applicant as his or her principal place of residence within 12 months after completion of the eligible transaction or a longer period approved by the Commissioner; and
- (b) the application does not form part of a scheme to circumvent limitations on or requirements affecting, eligibility or entitlement to a first home owner grant.

Criterion 2—Applicant to be Australian citizen or permanent resident

9. (1) Subject to subsection (2), an applicant for a first home owner grant must be an Australian citizen or a permanent resident.

(2) If an application is made by joint applicants and 1 of the applicants is an Australian citizen or a permanent resident, it is not necessary for the other or others to be Australian citizens or permanent residents.

Criterion 3—Applicant (or applicant's spouse) must not have received an earlier grant

10. (1) Subject to subsection (2), an applicant is ineligible if—

- (a) the applicant or the applicant's spouse 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) An 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 spouse—

- (a) could have successfully applied for a first home owner grant under this Act or a corresponding law in respect of 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 a permanent resident, have successfully applied for a first home owner grant under this Act or a corresponding law in respect of an earlier transaction to which he or she was a party.

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

11. (1) An applicant is ineligible if the applicant or the applicant's spouse has, before 1 July 2000, held—

- (a) a relevant interest in residential property in South Australia; or
- (b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.

(2) In working out for the purposes of 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.

(3) An applicant is also ineligible if, before the commencement date of the relevant transaction, the applicant or the applicant's spouse—

- (a) held a relevant interest in residential property in South Australia or an interest in residential property in another State or Territory that is a relevant interest under the corresponding law of that State or Territory; and
- (b) occupied the property as a place of residence.

Criterion 5—Residence requirement

12. (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 12 months after completion of the eligible transaction or a longer period approved by the Commissioner.

(2) The Commissioner may exempt an applicant (the **non-complying 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 non-complying applicant from the residence requirement.

First Home Owner Grant Act 2000

DIVISION 3—ELIGIBLE TRANSACTIONS

Eligible transaction

13. (1) An **eligible transaction** is—

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

(2) 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.

(3) 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) in the case of 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) in the case of a comprehensive home building contract—either party had a right or option granted before 1 July 2000 to require the other to enter into the contract.

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

- (a) in the case of a contract—the date when the contract is made;
- (b) in the case of the building of a home by an owner builder—
 - (i) the date when laying the foundations for the home commences; or
 - (ii) another date the Commissioner considers appropriate in the circumstances of the case.

(5) Subject to any qualifications prescribed by regulation, an eligible transaction is **completed** when—

- (a) in the case of 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;
- (b) in the case of a contract to have a home built—the building is ready for occupation as a place of residence;
- (c) in the case of 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) in the case of a contract for the purchase of a home—the consideration for the purchase;
- (b) in the case of a comprehensive home building contract—the total consideration payable for the building work;
- (c) in the case of 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).

Special eligible transaction

13A. (1) A **special eligible transaction** is an eligible transaction for which the commencement date falls between 9 March 2001 and 31 December 2001 (both dates inclusive) that is—

- (a) the contract for the purchase of a new home or a substantially renovated home; or
- (b) a comprehensive home building contract for a new home if—
 - (i) the building work starts within 16 weeks after the commencement date, or such longer period as the Commissioner may, in particular circumstances, allow; and
 - (ii) the contract states that the contract must be completed within 12 months after the building work is commenced or, if the contract does not state a completion date, it is completed within 12 months after the building work is commenced; or
- (c) the building of a new home by an owner builder if the transaction is completed before 1 May 2003.

(2) For the purposes of subsection (1)(a), a home is a substantially renovated home if—

- (a) the sale of the home is, under *A New Tax System (Goods and Services Tax) Act 1999* (Cwth), a taxable supply as a sale of new residential premises within the meaning of section 40-75(1)(b) of that Act; and
- (b) the home, as so renovated, has not been occupied or sold as a place of residence.

(3) However, an eligible transaction referred to in subsection (1)(a) that is a contract to purchase a new home on a proposed lot in an unregistered plan of subdivision of land is a special eligible transaction only if the contract states that the contract must be completed before 1 May 2003 or, if it does not state a completion date, the contract is completed before that date.

First Home Owner Grant Act 2000

(4) Also, an eligible transaction that is a contract is not a special eligible transaction if the Commissioner is satisfied that the contract replaces a contract made before 9 March 2001 that was a contract to purchase the same home or a comprehensive home building contract to build the same or a substantially similar home.

(5) For the purposes of this section, building work—

(a) commences when laying the foundations for the home commences; and

(b) is completed when the building is ready for occupation as a home.

DIVISION 4—APPLICATION FOR GRANT

Application for grant

14. (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) commencing on the commencement date of the eligible transaction to which the application relates; and

(b) ending 12 months 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.

All interested persons to join in application

15. (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.

Application on behalf of person under legal disability

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

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

DIVISION 5—DECISION ON APPLICATION

Commissioner to decide applications

17. (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 State can be adequately protected by conditions requiring repayment of the grant if the transaction is not completed within a reasonable time.

Amount of grant

18. (1) The amount of a first home owner grant is the lesser of the following:

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

(2) Despite subsection (1), the amount of a first home owner grant for an eligible transaction that is a special eligible transaction (within the meaning of section 13A) is the lesser of the following:

- (a) the consideration for the eligible transaction;
- (b) \$14 000.

Payment of grant

19. (1) A first home owner grant is to be paid by electronic funds transfer, by cheque or in any other way the Commissioner thinks appropriate.

(2) A first home owner grant is to be paid—

- (a) to the applicant; or
- (b) to some other person to whom the applicant directs in writing that the grant be paid.

(3) If the applicant requests, the Commissioner may apply the amount of a first home owner grant, or part of the amount, towards a liability for State taxes, fees or charges.

Payment in anticipation of compliance with residence requirement

20. (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 12 months 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

First Home Owner Grant Act 2000

(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) is guilty of an offence.

Maximum penalty: \$5 000.

Conditions generally

21. (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 non-compliance with the condition within a period stated in the condition; and

(b) to repay the grant within a period stated in the condition.

(3) In the case of a joint application, each applicant is individually liable to comply with a requirement under subsection (2) but compliance by any one or more of them is to be regarded as compliance by both or 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) is guilty of an offence.

Maximum penalty: \$5 000.

Death of applicant

22. (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 was one of 2 or more applicants and one 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.

(3) If a deceased applicant for a first home owner grant had not, by the date of death, 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 12 months after completion of the eligible transaction or a longer period allowed by the Commissioner, the residence requirement is satisfied.

Power to correct decision

23. (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.

Notification of decision

24. (1) When 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 6—OBJECTIONS AND APPEALS

Objections

25. (1) An applicant who is dissatisfied with the Commissioner's decision on the application may lodge a written notice of objection with the Treasurer.

(2) The grounds of objection must be stated fully and in detail in the notice of objection.

(3) The objection must be lodged within 60 days after the date of the notice of the decision or, if the decision was made in anticipation of a provision that operates retrospectively, within 60 days after the date of the notice of the decision or the date of the enactment or making of the provision (whichever is the later).

(4) If the Treasurer is satisfied that an objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Treasurer may extend the time for lodging the objection.

Reference of objection to Crown Solicitor for advice

26. The Treasurer may refer an objection, or any aspect of an objection, to the Crown Solicitor or any other person for advice.

Powers of the Treasurer on objection

27. (1) After considering an objection, the Treasurer may confirm, vary or reverse the decision subject to the objection.

(2) The Treasurer must give the objector written notice of the decision on the objection setting out the reasons for the decision.

Appeal

28. (1) An objector who is dissatisfied with the Treasurer's decision on the objection may appeal to the Magistrates Court against the decision.

(2) An appeal must be commenced within 60 days after the notice of the decision on the objection is given.

(3) The Court may extend the time for commencing an appeal.

First Home Owner Grant Act 2000

Determination of appeal

29. On an appeal, the Court may—

- (a) confirm, vary or reverse the decision on the application for a first home owner grant; and
- (b) make incidental and ancillary orders.

Objection or appeal not to stay proceedings based on the relevant decision

30. (1) Although a decision is subject to an objection or appeal, the Commissioner may act on the basis that the decision is correct until the objection or appeal is decided.

(2) When an objection or appeal is decided, the Commissioner must take any necessary action to give effect to that decision.

**PART 3
ADMINISTRATION**

DIVISION 1—ADMINISTRATION GENERALLY

Administration

31. The Commissioner is responsible to the Treasurer for the administration of the first home owner grant scheme.

Delegation

32. (1) The Commissioner may delegate functions related to the administration of the first home owner grant scheme.

(2) Without limiting subsection (1), the Commissioner may enter into an agreement (an **administration agreement**) with a financial institution or other person under which—

- (a) the Commissioner delegates 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 specified conditions.

(3) The conditions of an administration agreement may include conditions prescribed by the regulations.

(4) If an administration agreement includes prescribed conditions, a financial institution or other person that contravenes a prescribed condition is guilty of an offence.

Maximum penalty: \$10 000.

(5) The Commissioner may, at any time, at the Commissioner's discretion, revoke an administration agreement or any other delegation under this section.

DIVISION 2—INVESTIGATIONS

Authorised investigations

33. An **authorised investigation** is an investigation to determine—

- (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) any other matter reasonably related to the administration or enforcement of this Act or a corresponding law.

First Home Owner Grant Act 2000

Cross-border investigation

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

(2) The Commissioner may 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.

Power of investigation

35. (1) For the purposes of an authorised investigation, the Commissioner may, by written notice, require a person—

- (a) to give the Commissioner written information specified in the notice; or
- (b) to attend at a specified time and place before the Commissioner or the Commissioner's nominee to answer questions relevant to the investigation; or
- (c) to produce a document to the Commissioner at a specified time and place.

(2) The Commissioner may require that information given, or to be given, under this section be verified on oath or by statutory declaration.

(3) A person who, without reasonable excuse, refuses or fails to comply with a requirement of the Commissioner under this section is guilty of an offence.

Maximum penalty: \$10 000.

(4) A person who, having attended before the Commissioner or the Commissioner's nominee in response to a notice under subsection (1)(b), refuses or fails, without reasonable excuse, to answer a question relevant to the investigation is guilty of an offence.

Maximum penalty: \$10 000.

Powers of entry and inspection

36. (1) An authorised officer may, for the purposes of an authorised investigation, exercise any of the following powers:

- (a) inspect premises;
- (b) require a person to produce a document relevant to the investigation for inspection and (if necessary) to operate a computer or other device in which information is stored to produce a document in understandable form;
- (c) retain a document for inspection, to make a copy of it, or to take extracts from it;
- (d) require a person to answer questions relevant to the investigation;
- (e) require a person to give the authorised person other assistance that may be reasonable in the circumstances to carry out the authorised investigation.

(2) An authorised person may enter premises to carry out an authorised investigation—

- (a) with the consent of the occupier; or
- (b) on the authority of a warrant issued under subsection (3).

(3) A magistrate may issue a warrant authorising an authorised officer to enter premises (using force that may be reasonably necessary in the circumstances) if satisfied that the warrant is reasonably necessary for the administration or enforcement of this Act.

(4) An authorised officer may be accompanied by any assistants the authorised officer reasonably requires to carry out an authorised investigation.

(5) A person must not—

- (a) hinder or obstruct an authorised officer who is carrying out an authorised investigation or a person assisting the authorised officer; or
- (b) use abusive, threatening or insulting language to an authorised officer who is carrying out an authorised investigation or a person assisting an authorised officer; or
- (c) refuse or fail, without reasonable excuse, to comply with a requirement made by an authorised officer in the exercise of powers conferred by this section; or
- (d) answer a question put by an authorised officer under this section knowing that the answer is false or misleading.

Maximum penalty: \$5 000.

Self incrimination

37. (1) If a person is required to answer a question or to produce a document in the course of an authorised investigation, it is not an excuse for non-compliance that the answer to the question or the contents of the document might tend to incriminate the person or to make the person liable to a penalty.

(2) However, if the person answers the question or produces the document after objecting to the requirement to do so on grounds of self-incrimination, evidence of the answer to the question or the production or contents of the document is not admissible in proceedings for an offence or for the imposition of a penalty other than proceedings under this Act.

First Home Owner Grant Act 2000

**PART 4
MISCELLANEOUS**

Dishonesty

38. (1) A person must not dishonestly make a false or misleading statement in or in connection with an application for a first home owner grant.

Maximum penalty: \$20 000 or imprisonment for 2 years.

(2) A person must not make a misleading statement in or in connection with an application for a first home owner grant.

Maximum penalty: \$2 500.

(3) It is a defence to a charge of an offence against subsection (2) to prove that the defendant's contravention of that subsection was neither intentional nor negligent.

Power to require repayment and impose penalty

39. (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, as a result 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 not exceeding 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 not exceeding 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.

Power to recover amount paid in error etc.

40. (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.

(2) The liability arising from a requirement to pay (or repay) an amount to which this section applies is, if the requirement attaches to 2 or more persons, joint and several.

(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 that home.

(4) The Commissioner may recover an amount to which this section applies as a debt due to the Crown.

(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 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.

Protection of confidential information

41. (1) In this section—

"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 or such an applicant's spouse;

"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.

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

Maximum penalty: \$10 000.

(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 connection with the administration or enforcement of—
 - (i) this Act or a corresponding law; or
 - (ii) a taxation law of the Commonwealth or a State; or
- (c) for the purposes of legal proceedings; or
- (d) as authorised under the regulations.

Evidence

42. (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 specified date is admissible in legal proceedings as evidence of the payment.

First Home Owner Grant Act 2000

(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 specified amount is admissible in legal proceedings as evidence—

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

Time for commencing prosecution

43. Proceedings for an offence against this Act may only be commenced within 2 years after the date on which the offence is alleged to have been committed.

Standing appropriation

44. The Consolidated Account is appropriated to the extent necessary for the payment of grants under this Act.

Protection of officers etc.

45. (1) This section applies to—

- (a) the Commissioner; and
- (b) an authorised officer; and
- (c) a delegate of the Commissioner who works in a department or 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, but for subsection (2), lie against a person to whom this section applies, lies instead against the Crown.

Regulations

46. (1) The Governor may make regulations for the purposes of this Act.

(2) A regulation may prescribe a penalty (not more than \$2 500) for contravention of the regulation.

(3) A regulation made for the purposes of a provision of this Act that operates retrospectively may itself operate retrospectively provided that it does not do so to the prejudice of any person.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	definition of "Australian citizen" amended by 64, 2000, s. 3(a) definition of "new home" inserted by 26, 2001, s. 3 definition of "permanent resident" substituted by 64, 2000, s. 3(b)
Section 8A:	inserted by 26, 2001, s. 4
Section 13A:	inserted by 26, 2001, s. 5
Section 18:	redesignated as s. 18(1) by 26, 2001, s. 6
Section 18(2):	inserted by 26, 2001, s. 6
Section 25(3):	substituted by 26, 2001, s. 7
Section 46(3):	inserted by 26, 2001, s. 8