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.

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Legislative history

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 Act 2000*.

3—Definitions

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;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

(a) the relationship between a legally married couple; or

(b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

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;

domestic partner—see section 6;

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 previously occupied or sold as a place of residence and includes a substantially renovated home;

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 for a continuous period of at least 6 months (or a shorter period approved by the Commissioner), commencing within 12 months after completion of the eligible transaction (or within 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;

substantially renovated home—a home is a substantially renovated home if—

(a) the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40-75(1)(b) (Meaning of *new residential premises*); and

(b) the home, as renovated, has not been previously occupied or sold as a place of residence;

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

4—Homes

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.

5—Ownership of land and homes

(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

(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.

6—Spouses and domestic partners

(1) A person is the ***spouse*** of another if they are legally married.

(1a) A person is the ***domestic partner*** of another if they live together in a close personal relationship.

(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.

Part 2—First home owner grant

Division 1—Entitlement to grant

7—Entitlement to grant

(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.

(1a) However, if—

(a) the commencement date of an eligible transaction for which a grant is sought is on or after 17 September 2010; and

(b) the market value of the home to which the transaction relates (as determined under section 18BB) exceeds—

(i) $575 000; or

(ii) if another amount is prescribed by regulation for the purposes of this subsection—that amount,

no first home owner grant is payable on the application for the grant.

(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)

8—Criterion 1—Applicant to be a natural person

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

8A—Criterion 1A—Applicant to be at least 18 years of age

(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 for a continuous period of at least 6 months (or a shorter period approved by the Commissioner), commencing within 12 months after completion of the eligible transaction (or within 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.

9—Criterion 2—Applicant to be Australian citizen or permanent resident

(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.

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

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

(a) the applicant or the applicant's spouse or domestic partner 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) However, an applicant is not ineligible if—

(a) the grant was later paid back; and

(b) the basis for the repayment of the grant was a failure to comply with the residence requirement or any conditions on which the grant was made; and

(c) any penalty amount payable under section 39(3) in relation to repayment of the earlier grant has been paid.

(3) An applicant is also ineligible if the applicant or the applicant's spouse or domestic partner—

(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.

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

(1) An applicant is ineligible if the applicant or the applicant's spouse or domestic partner 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 or domestic partner—

(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 for a continuous period of at least 6 months.

12—Criterion 5—Residence requirement

(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 for a continuous period of at least 6 months (or a shorter period approved by the Commissioner) (the ***residence period***), commencing within 12 months after completion of the eligible transaction (or within a longer period approved by the Commissioner) (the ***completion period***).

(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.

(3) The Commissioner may, if the Commissioner considers there are good reasons for doing so, vary an applicant's residence requirement at any time (including after the end of the period allowed for compliance with the residence requirement) by approving a shorter residence period or a longer completion period (or both).

(4) If the Commissioner varies a residence requirement under subsection (3), the requirement as varied will be taken to have been the applicant's residence requirement from the date of the determination of his or her application.

Division 3—Eligible transactions

13—Eligible transaction

(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).

13A—Special eligible transactions

(1) Subject to subsection (5), an eligible transaction that is a contract for the purchase of a home (other than a contract for an "off-the-plan" purchase of a new home) is a ***special eligible transaction*** if the contract is made between 14 October 2008 and 31 December 2009 (both dates inclusive).

(2) Subject to subsection (5), an eligible transaction that is a comprehensive home building contract for a new home is a ***special eligible transaction*** if—

(a) the contract is made between 14 October 2008 and 31 December 2009 (both dates inclusive); and

(b) the building work commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

(c) the contract states that the eligible transaction must be completed within 18 months after the building work is commenced or, in any other case, the eligible transaction is completed within 18 months after the building work is commenced.

(3) An eligible transaction that is the building of a new home by an owner-builder is a ***special eligible transaction*** if the commencement date of the eligible transaction is between 14 October 2008 and 31 December 2009 (both dates inclusive) and the transaction is completed within 18 months after the building work is commenced.

(4) Subject to subsection (5), an eligible transaction that is a contract for an "off-the-plan" purchase of a new home is a ***special eligible transaction*** if the contract is made between 14 October 2008 and 31 December 2009 (both dates inclusive) and—

(a) in the case of a contract made between 14 October 2008 and 30 June 2009 (both dates inclusive)—

(i) the contract states that the eligible transaction must be completed on or before 31 December 2010; or

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

(b) in the case of a contract made between 1 July 2009 and 30 September 2009 (both dates inclusive)—

(i) the contract states that the eligible transaction must be completed on or before 31 March 2011; or

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

(c) in the case of a contract made between 1 October 2009 and 31 December 2009 (both dates inclusive)—

(i) the contract states that the eligible transaction must be completed on or before 30 June 2011; or

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

(5) An eligible transaction that is a contract is not a special eligible transaction if the Commissioner is satisfied that—

(a) the contract replaces a contract made before 14 October 2008; and

(b) the replaced contract was—

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

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

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

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

(a) commences—

(i) in the case of an eligible transaction that is the building of a home by an owner builder—on the commencement date of the eligible transaction; and

(ii) in any other case—when laying the foundations for the home commences; and

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

(8) In this section—

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.

(9) The Governor may, by regulation—

(a) alter a date or period specified by this section in order to extend an entitlement under this Act; or

(b) determine any other transaction to be a ***special eligible transaction*** under this section,

if to do so is consistent with the extension of the Commonwealth/State scheme for the payment of grants under this Act (and any such regulation may have effect in accordance with its terms and without the need for any other authorisation or appropriation).

Division 4—Application for grant

14—Application for grant

(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.

15—All interested persons to join in application

(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.

16—Application on behalf of person under legal disability

(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

17—Commissioner to decide applications

(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.

18—Amount of grant

(1) Subject to this section, 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) If an eligible transaction is a special eligible transaction, the amount of the first home owner grant will be increased by an additional payment of—

(a) in the case of a special eligible transaction that is a contract for the purchase of a home other than a new home—

(i) if the commencement date of the special eligible transaction is between 14 October 2008 and 30 September 2009 (both dates inclusive)—$7 000; and

(ii) if the commencement date of the special eligible transaction is between 1 October 2009 and 31 December 2009 (both dates inclusive)—$3 500; and

(b) in the case of any other special eligible transaction—

(i) if the commencement date of the special eligible transaction is between 14 October 2008 and 30 September 2009 (both dates inclusive)—$14 000; and

(ii) if the commencement date of the special eligible transaction is between 1 October 2009 and 31 December 2009 (both dates inclusive)—$7 000.

(3) The Governor may, by regulation—

(a) alter a date or amount specified by subsection (2) in order to extend an entitlement under this Act; or

(b) prescribe the additional amount payable in respect of a special eligible transaction,

if to do so is consistent with the extension of the Commonwealth/State scheme for the payment of grants under this Act (and any such regulation may have effect in accordance with its terms and without the need for any other authorisation or appropriation).

(4) A regulation under this section may make different provision according to the matters or circumstances to which the regulation is expressed to apply.

(5) In this section—

special eligible transaction—see section 13A.

18B—Bonus grant for transactions before 17 September 2010

(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 5 June 2008 but before 17 September 2010; and

(b) the market value of the home to which the eligible transaction relates is less than $450 000.

(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.

(10) This section does not give rise to an entitlement to a first home bonus grant if the Commissioner is satisfied that the contract that formed the basis of the eligible transaction replaces a contract made before 5 June 2008 (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.

18BA—Bonus grant for transactions on or after 17 September 2010

(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 17 September 2010; 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.

(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—$8 000;

(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 $8 000

C is 16

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) This section does not give rise to an entitlement to a first home bonus grant if the Commissioner is satisfied that the contract that formed the basis of the eligible transaction replaces a contract made before 17 September 2010 (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.

18BB—Market value of homes

(1) For the purposes of sections 7, 18B and 18BA, but subject to subsections (2) and (3), the market value of the home to which an eligible transaction relates (the ***market value***) will be determined as follows:

(a) in the case of an eligible transaction constituted by a contract under section 13(1)(a)—the market value will be taken to be—

(i) unless subparagraph (ii) applies—the consideration for the eligible transaction;

(ii) if the Commissioner considers that the consideration for the eligible transaction may be less than the market value—the market value of the property on which the home is situated, as at the time when the contract is made, as determined by the Commissioner for the purposes of this provision;

(b) in the case of an eligible transaction constituted by a comprehensive home building contract under section 13(1)(b)—the market value will be taken to be the sum of the following:

(i) —

(A) unless subsubparagraph (B) applies—the consideration for the comprehensive home building contract under section 13(7);

(B) if the Commissioner considers that the total consideration payable for the relevant building work may be less than the actual costs to build the home—the actual costs to build the home, as determined by the Commissioner for the purposes of this provision; and

(ii) the market value of the property on which the home is to be built, as at the time when the building contract is made, as determined by the Commissioner for the purposes of this provision;

(c) in the case of an eligible transaction constituted by the building of a home by an owner builder under section 13(1)(c)—the market value will be taken to be the market value of the property on which the home is situated, as at the time when the eligible transaction is completed, as determined by the Commissioner for the purposes of this provision.

(2) For the purposes of subsection (1), if an eligible transaction relates to a home on a genuine farm, the relevant component of the farm will be taken to constitute the property on which the home is situated, or is to be built.

(3) If a person is entitled to a first home owner grant by virtue of the operation of section 5(4)—

(a) if the relevant interest relates to a comprehensive home building contract for the construction of a home—the market value of the home to which the eligible transaction relates will be taken to be the consideration for the comprehensive home building contract;

(b) in any other case—the market value of the home to which the eligible transaction relates will be determined in accordance with—

(i) the method prescribed by regulation for the purposes of subsection (6)(b) of section 18B immediately before the repeal of that subsection by the *Statutes Amendment (Budget 2010) Act 2010*; or

(ii) if another method is prescribed by regulation for the purposes of this subsection—that method.

(4) The Commissioner may adopt or approve any method the Commissioner considers reasonable for the purposes of determining any value or costs under a preceding subsection, including by requiring that a valuation of property be made by a person appointed or approved by the Commissioner.

(5) If the Commissioner requires a valuation of property to be made for the purposes of determining the value of any property under this section, the Commissioner may, having regard to the merits of the case, charge the whole or any part of the expenses of, or incidental to, the making of the valuation to the applicant or applicants and may recover the amount so charged from the applicant or applicants as a debt due to the Crown.

(6) To avoid doubt, the market value of any property on which a home is situated will, for the purposes of this section, be the market value of the land, the home and any other improvements.

(7) In this section—

genuine farm means land as to which the Commissioner is satisfied—

(a) the land is to be used for primary production by the person seeking the benefit of this section; and

(b) the land is, by itself, or in conjunction with other land owned by that person, capable of supporting economically viable primary production operations;

relevant component of a genuine farm means the part of the farm constituted by the home and its curtilage, or the part of the land that is to constitute the site and curtilage of a home that is to be built.

18C—Amount of grant must not exceed consideration

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

19—Payment of grant

(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.

20—Payment in anticipation of compliance with residence requirement

(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 with the residence requirement, intends to so comply.

(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

(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.

(3a) However, if the Commissioner has varied the applicant's residence requirement under section 12(3), the following provisions apply:

(a) a reference in subsection (2) or (3) to the residence requirement is a reference to the residence requirement as varied;

(b) the applicant is exempt from the requirement to comply with the condition prescribed by subsection (2) insofar as the condition relates to the original residence requirement;

(c) the exemption will be taken to have come into force when the application was first determined.

(4) A person who fails to comply with the condition prescribed by subsection (2) is guilty of an offence.

Maximum penalty: $5 000.

21—Conditions generally

(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.

22—Death of applicant

(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, complied with the residence requirement but the Commissioner is satisfied that he or she intended to do so, the residence requirement is satisfied.

23—Power to correct decision

(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.

24—Notification of decision

(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

25—Objections

(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.

26—Reference of objection to Crown Solicitor for advice

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

27—Powers of the Treasurer on objection

(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.

28—Appeal

(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.

29—Determination of appeal

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.

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

(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

31—Administration

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

32—Delegation

(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

33—Authorised investigations

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.

34—Cross-border investigation

(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.

35—Power of investigation

(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.

36—Powers of entry and inspection

(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.

37—Self incrimination

(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.

Part 4—Miscellaneous

38—False or misleading statements

(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 false or misleading statement in or in connection with an application for a first home owner grant.

Maximum penalty: $5 000.

(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.

39—Power to require repayment and impose penalty

(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 the making of a false or misleading statement by an applicant, 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.

40—Power to recover amount paid in error etc

(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, on application by an applicant (or former applicant) for a first home owner grant, or on his or her own initiative, 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 (but the Commissioner is under no obligation to consider whether to act under this subsection unless or until such an application is made or it otherwise appears necessary for him or her to do so).

40A—Extensions of time

(1) If the Commissioner is authorised to extend a time limit, or to shorten a minimum period, under this Act, the Commissioner may, if to do so is consistent with the provisions of this Act, extend the time limit or shorten the period even if it has already expired.

(2) This section applies to any time limit, whether it expired before or after the commencement of this section.

41—Protection of confidential information

(1) In this section—

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.

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 or domestic partner;

(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.

42—Evidence

(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.

(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.

43—Time for commencing prosecution

Proceedings for an offence against this Act may only be commenced within 3 years after the date on which the offence is alleged to have been committed.

44—Standing appropriation

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

45—Protection of officers etc

(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.

46—Regulations

(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.

(4) A regulation made for the purposes of section 13A or 18 may operate retrospectively provided that it does not do so to the prejudice of any person.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2000	25	*First Home Owner Grant Act 2000*	29.6.2000	1.7.2000: s 2
2000	64	*First Home Owner Grant (New Zealand Citizens) Amendment Act 2000*	9.11.2000	1.7.2000: s 2
2001	26	*First Home Owner Grant (New Homes) Amendment Act 2001*	26.7.2001	9.3.2001 except s 4—30.5.2001: s 2
2002	35	*Statutes Amendment (Stamp Duties and Other Measures) Act 2002*	28.11.2002	Pt 3 (ss 5—10)—28.11.2002: s 2(1)
2004	49	*First Home Owner Grant (Miscellaneous) Amendment Act 2004*	16.12.2004	1.1.2005 (*Gazette 16.12.2004 p4592*)
2006	43	*Statutes Amendment (Domestic Partners) Act 2006*	14.12.2006	Pt 37 (ss 105—110)—1.6.2007 (*Gazette 26.4.2007 p1352*)
2008	34	*Statutes Amendment (Budget 2008) Act 2008*	31.7.2008	Pt 2 (s 4)—5.6.2008: s 2(2) & Sch 1—31.7.2008: s 2(4)
2009	53	*First Home Owner Grant (Special Eligible Transactions) Amendment Act 2009*	5.11.2009	14.10.2008 except ss 4 & 10—12—5.11.2009: s 2
2010	**22**	***Statutes Amendment (Budget 2010) Act 2010***	**18.11.2010**	**Pt 4 (ss 11—17)—17.9.2010: s 2(3)**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.1.2005*
s 3		
Australian citizen	amended by 64/2000 s 3(a)	1.7.2000

close personal relationship	inserted by 43/2006 s 105(1)	1.6.2007
domestic partner	inserted by 43/2006 s 105(2)	1.6.2007
new home	*inserted by 26/2001 s 3*	*9.3.2001*
	deleted by 35/2002 s 5	*28.11.2002*
new home	**inserted by 22/2010 s 11(1)**	**17.9.2010**
permanent resident	substituted by 64/2000 s 3(b)	1.7.2000
residence requirement	amended by 49/2004 s 4	1.1.2005
substantially renovated home	**inserted by 22/2010 s 11(2)**	**17.9.2010**
s 6		
s 6(1)	substituted by 43/2006 s 106	1.6.2007
s 6(1a)	inserted by 43/2006 s 106	1.6.2007
Pt 2		
s 7		
s 7(1a)	**inserted by 22/2010 s 12**	**17.9.2010**
s 8A	inserted by 26/2001 s 4	30.5.2001
s 8A(2)	amended by 49/2004 s 5	1.1.2005
s 10		
s 10(1)	amended by 43/2006 s 107(1)	1.6.2007
s 10(2)	substituted by 49/2004 s 6	1.1.2005
s 10(3)	amended by 43/2006 s 107(2)	1.6.2007
s 11		
s 11(1)	amended by 43/2006 s 108(1)	1.6.2007
s 11(3)	amended by 49/2004 s 7	1.1.2005
	amended by 43/2006 s 108(2)	1.6.2007
s 12		
s 12(1)	amended by 49/2004 s 8	1.1.2005
	amended by 53/2009 s 4(1), (2)	5.11.2009
s 12(3) and (4)	inserted by 53/2009 s 4(3)	5.11.2009
s 13A	inserted by 26/2001 s 5	9.3.2001
	substituted by 35/2002 s 6	28.11.2002
	substituted by 53/2009 s 5	14.10.2008
s 13A(8)		
new home	***deleted by 22/2010 s 13***	***17.9.2010***
substantially renovated home	***deleted by 22/2010 s 13***	***17.9.2010***
s 18		
s 18(1)	s 18 redesignated as s 18(1) by 26/2001 s 6	9.3.2001
	amended by 53/2009 s 6(1)	14.10.2008
s 18(2)	inserted by 26/2001 s 6	9.3.2001
	deleted by 35/2002 s 7	28.11.2002
	inserted by 53/2009 s 6(2)	14.10.2008

s 18(3)—(5)	inserted by 53/2009 s 6(2)	14.10.2008
s 18A	*inserted by 35/2002 s 8*	*28.11.2002*
	deleted by 53/2009 s 7	*14.10.2008*
s 18B	inserted by 34/2008 s 4	5.6.2008
s 18B(1)	**amended by 22/2010 s 14(1)**	**17.9.2010**
s 18B(2)	amended by 53/2009 s 8(1)	14.10.2008
	amended by 22/2010 s 14(2)	**17.9.2010**
s 18B(3)	*deleted by 53/2009 s 8(2)*	*14.10.2008*
s 18B(4)—(9)	***deleted by 22/2010 s 14(3)***	***17.9.2010***
s 18B(11)	***deleted by 22/2010 s 14(4)***	***17.9.2010***
ss 18BA and 18BB	**inserted by 22/2010 s 15**	**17.9.2010**
s 18C	inserted by 53/2009 s 9	14.10.2008
	amended by 22/2010 s 16	**17.9.2010**
s 20		
s 20(1)	amended by 49/2004 s 9	1.1.2005
s 20(3a)	inserted by 53/2009 s 10	5.11.2009
s 22		
s 22(3)	substituted by 49/2004 s 10	1.1.2005
s 25(3)	substituted by 26/2001 s 7	9.3.2001
Pt 4		
s 38		
s 38(2)	amended by 49/2004 s 11(1), (2)	1.1.2005
s 39		
s 39(2)	amended by 49/2004 s 12	1.1.2005
s 40		
s 40(6)	amended by 53/2009 s 11(1), (2)	5.11.2009
s 40A	inserted by 53/2009 s 12	5.11.2009
s 41		
s 41(1)		
protected information	amended by 43/2006 s 109	1.6.2007
s 43	amended by 49/2004 s 13	1.1.2005
s 46		
s 46(3)	inserted by 26/2001 s 8	9.3.2001
s 46(4)	inserted by 35/2002 s 9	28.11.2002
	amended by 53/2009 s 13	14.10.2008

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Stamp Duties and Other Measures) Act 2002

10—Validation for payment of increased grants

The payment of an amount as first home owner grant under the principal Act before the commencement of this Part, and anything done under the principal Act or the *Taxation Administration Act 1996*, is validated to the extent that it would have been valid if this Part had been enacted when the payment was made or the thing was done.

First Home Owner Grant (Miscellaneous) Amendment Act 2004 Sch 1

1—Application of amendments

An amendment to the *First Home Owner Grant Act 2000* effected by a provision of this Act only applies in relation to an application under that Act if—

(a) in the case of an amendment effected by section 11, 12, or 13—the application is made after the commencement of the provision; or

(b) in any other case—the application is made in respect of an eligible transaction with a commencement date (within the meaning of that Act) occurring after the commencement of that provision.

Statutes Amendment (Domestic Partners) Act 2006

110—Transitional provision

An amendment made by this Act to the *First Home Owner Grant Act 2000* applies only in relation to an application for a first home owner grant made after the commencement of the amendment.

Statutes Amendment (Budget 2008) Act 2008, Sch 1

1—Transitional provisions

(1) If—

(a) a person is entitled to a first home bonus grant under section 18B of the *First Home Owner Grant Act 2000*, as enacted by this Act (the ***relevant entitlement***); and

(b) the person has—

(i) in respect of a conveyance that relates to the land on which the home under that Act is situated or is to be built (as the case may be), received a benefit under section 71C of the *Stamp Duties Act 1923*; or

(ii) received a benefit constituted by an *ex gratia* payment by the State in order to provide for the first home bonus grant envisaged by this Act for the period between 5 June 2008 and the date of enactment of this Act,

the amount of the relevant entitlement will be reduced by the amount of the benefit provided under section 71C of the *Stamp Duties Act 1923* or by the amount of the *ex gratia* payment, or both (including so as to fully set off the amount of the relevant entitlement).

(2) If—

(a) a person has received a benefit constituted by an *ex gratia* payment by the State in order to provide for the first home bonus grant envisaged by this Act for the period between 5 June 2008 and the date of the enactment of this Act; and

(b) the person has also, in respect of a conveyance that relates to the land on which the home that is relevant to the *ex gratia* payment is situated, or is to be built, (as the case may be), received a benefit under section 71C of the *Stamp Duties Act 1923* (the ***relevant benefit***),

the Commissioner of State Taxation may recover the amount of the relevant benefit from any person who claimed that benefit as a debt due to the Crown.

(3) If—

(a) a person has received a benefit under section 71C of the *Stamp Duties Act 1923* (the ***relevant benefit***); and

(b) the conveyance on which the benefit is based falls within the ambit of subsection (8) of section 71C of the *Stamp Duties Act 1923* (as enacted by this Act),

the Commissioner of State Taxation may recover the amount of the relevant benefit from any person who claimed that benefit as a debt due to the Crown.

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

Statutes Amendment (Budget 2010) Act 2010

17—Transitional provisions

(1) If a person has, before the date of the enactment of this Act, received a first home owner grant in respect of an application on which a first home owner grant is not payable under subsection (1a) of section 7 of the principal Act (as inserted by section 12 of this Act), the Commissioner may recover the amount of the grant as a debt due to the Crown.

(2) If a person has, before the date of the enactment of this Act, received a payment under section 18B of the principal Act in respect of an eligible transaction with a commencement date that is on or after 17 September 2010, the Commissioner may recover the amount of the payment from the person as a debt due to the Crown.

(3) If—

(a) a person is entitled to a first home bonus grant under section 18BA of the principal Act, as enacted by this Act (the ***relevant entitlement***); and

(b) the person has received a benefit constituted by an *ex gratia* payment by the State in order to provide for the first home bonus grant under section 18BA envisaged by this Act for the period between 17 September 2010 and the date of the enactment of this Act,

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) To avoid doubt, any set off or right of recovery under this section extends to a benefit obtained before the commencement of this section.

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

(6) In this section—

principal Act means the *First Home Owner Grant Act 2000*.

Historical versions

Reprint No 1—9.11.2000

Reprint No 2—26.7.2001

Reprint No 3—28.11.2002

1.1.2005

1.6.2007

5.6.2008

14.10.2008 (electronic only)

5.11.2009