

South Australia

First Home Owner Grant (Special Eligible Transactions) Amendment Act 2009

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 12—Criterion 5—Residence requirement
 - 5 Substitution of section 13A
 - 13A Special eligible transactions
 - 6 Amendment of section 18—Amount of grant
 - 7 Repeal of section 18A
 - 8 Amendment of section 18B—Bonus grant
 - 9 Insertion of section 18C
 - 18C Amount of grant must not exceed consideration
 - 10 Amendment of section 20—Payment in anticipation of compliance with residence requirement
 - 11 Amendment of section 40—Power to recover amount paid in error etc
 - 12 Insertion of section 40A
 - 40A Extensions of time
 - 13 Amendment of section 46—Regulations
-

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 (Special Eligible Transactions) Amendment Act 2009*.

2—Commencement

- (1) Subject to subsection (2), this Act (except sections 4, 10, 11 and 12) will be taken to have come into operation on 14 October 2008.

- (2) Sections 4, 10, 11 and 12 come into operation on the day on which this Act is assented to by the Governor.

3—Amendment provisions

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

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

4—Amendment of section 12—Criterion 5—Residence requirement

- (1) Section 12(1)—after "(or a shorter period approved by the Commissioner)" insert:
(the *residence period*)
- (2) Section 12(1)—after "(or within a longer period approved by the Commissioner)" insert:
(the *completion period*)
- (3) Section 12—after subsection (2) insert:
- (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.

5—Substitution of section 13A

Section 13A—delete the section and substitute:

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;
- new home*** means a home that has not been previously occupied or sold as a place of residence and includes a substantially renovated home;
- 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.
- (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).

6—Amendment of section 18—Amount of grant

- (1) Section 18(1)—delete "The amount" and substitute:

Subject to this section, the amount

- (2) Section 18—after subsection (1) insert:
- (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.

7—Repeal of section 18A

Section 18A—delete the section

8—Amendment of section 18B—Bonus grant

- (1) Section 18B(2)—delete "Subject to subsection (3), the" and substitute:

The

- (2) Section 18B(3)—delete subsection (3)

9—Insertion of section 18C

After section 18B insert:

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, 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.

10—Amendment of section 20—Payment in anticipation of compliance with residence requirement

Section 20—after subsection (3) insert:

- (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.

11—Amendment of section 40—Power to recover amount paid in error etc

- (1) Section 40(6)—after "The Commissioner may" insert:

, on application by an applicant (or former applicant) for a first home owner grant, or on his or her own initiative,

- (2) Section 40(6)—after "unwarranted" insert:

(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)

12—Insertion of section 40A

After section 40 insert:

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.

13—Amendment of section 46—Regulations

Section 46(4)—delete "18A" and substitute:

18