

First Home Owner Grant Bill

Circulation Print

EXPLANATORY MEMORANDUM

General

This Bill introduces the first home owner grant scheme. The grant is designed to encourage and assist home ownership and to offset the effect of the Goods and Services Tax (GST) on first home buyers. The core principles have the support of the Commonwealth and all State and Territory jurisdictions, as agreed to in late June 1999.

Clause Notes

PART 1—PRELIMINARY

Part 1 of the Bill contains the introductory provisions which include the purpose and commencement provisions and the definitions of words for the purposes of this Bill.

Clause 1 states the purpose of the Bill.

Clause 2 provides that the Bill will come into operation on 1 July 2000.

Clause 3 provides definitions for all parts of the Bill.

Clause 4 provides that a home is a building affixed to land that may lawfully be used as a place of residence and is a suitable building for use as a place of residence.

Clause 5 Sub-clause (1) provides that a person is an owner of a home if he or she has a "relevant interest" in land on which a home is built.

Sub-clause (2) is a non-exclusive list of relevant interests in land. An example of a common "relevant interest" is a proprietary interest in land.

Sub-clause (3) excludes certain interests from being "relevant interests". By way of example, an interest is not a relevant interest if, in general, there is no immediate right of occupation to the home, or the interest is held subject to a trust.

Sub-clause (4) allows the regulations to provide for interests to be recognised as relevant interests, irrespective of whether they conform with sub-clause (3). Granny flats are an example of an interest that could be so prescribed.

- Clause 6 provides a definition of "spouse" which includes de facto spouses of the opposite sex. If an applicant is legally married but not cohabiting with his or her spouse, and does not have any intention of doing so, the spouse may be disregarded in deciding an application for the grant.

PART 2—FIRST HOME OWNER GRANT

Part 2 of the Bill covers entitlement to the grant, the eligibility criteria, what constitutes an eligible transaction, and how an application should be made. This Part also covers payment of the grant and objections and reviews.

Division 1—Entitlement to the Grant

- Clause 7 Sub-clauses (1) and (2) provide that a grant becomes payable if the applicant complies with the eligibility criteria (clauses 8–12) subject to certain exemptions under the Act; and if the transaction is an eligible transaction (clause 13) and has been completed.

Sub-clause (3) provides that only one grant is payable for the same eligible transaction.

Division 2—Eligibility Criteria (Applicants)

- Clause 8 provides that the applicant must be a "natural person".
- Clause 9 provides that the applicant must be an Australian citizen or a permanent resident. If there are joint applicants, at least one must be a citizen or permanent resident.
- Clause 10 Sub-clauses (1) and (2) provide that an applicant is ineligible if the applicant or applicant's spouse has previously been a successful applicant. If an earlier grant was later paid back under the grant's conditions, an applicant is not ineligible.

Sub-clause (3) provides that an applicant is ineligible for a grant if the applicant or applicant's spouse could have successfully applied for a grant in respect of an earlier transaction to which he or she was a party but, for whatever reason, he or she failed to apply.

Clause 11 provides that an applicant is ineligible if the applicant or applicant's spouse, held a relevant interest in residential property in Australia, whether or not occupied by the parties before 1 July 2000. One effect of this clause is that a relevant interest in residential investment property renders a person ineligible for a grant if held before 1 July 2000.

Clause 12 Sub-clause (1) provides that an applicant must occupy the property to which the application relates as his or her principal place of residence within 12 months of the completion of the eligible transaction, or such longer period as is approved.

Sub-clause (2) provides an exemption from the residence requirement for joint applicants if at least 1 of them occupies the residence and there is good reason to exempt an applicant who is not in occupation.

Division 3—Eligible Transactions

Clause 13 defines "eligible transaction", the commencement and completion dates of such a transaction and what constitutes the "consideration" for an eligible transaction.

Sub-clause (1) defines "eligible transaction" as a contract for the purchase of a home in Victoria or comprehensive home building contract made by the owner of land in Victoria or the person who will on completion of the contract be the owner of such land, to have a home built on the land. A contract must be made on or after 1 July 2000 to be eligible. Also included is the building of a home in Victoria by an owner builder if the building work commences on or after 1 July 2000.

Sub-clause (2) states that a contract to purchase a home is a contract if it is a contract for the acquisition of a relevant interest in land upon which a home is built.

Sub-clause (3) provides that a contract made on or after 1 July 2000 for the purchase of a home will not be an eligible transaction if 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 buy the home granted before that date. Ineligibility occurs unless the option or right does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a grant.

Sub-clause (4) lists the commencement date of eligible transactions, which in the usual case of a contract is the date on which the contract is made.

Sub-clause (5) lists the completion date of eligible transactions, which for home purchases is generally when the purchaser becomes entitled to possession; and for homes to be built is generally when the home is ready for occupation.

Sub-clause (6) applies to a moveable building which a purchaser buys with the intention of using it as a residence on land in which the purchaser has a relevant interest but which is not yet on that land. The proposed Act applies as if the purchaser were an owner builder building a home on the land.

Sub-clause (7) provides that the consideration for an eligible transaction is the consideration for the purchase of a home or the total consideration payable on the building work or the actual costs to an owner-builder of carrying out the work (excluding any allowance for the owner builder's own labour).

Division 4—Application for Grant

Clause 14 Sub-clause (1) provides that an application for a grant must be made to the Commissioner of State Revenue.

Sub-clauses (2) and (3) provide that the application must be in the form approved by the Commissioner, contain such information about the applicant or his or her spouse as is required and be signed by them.

Sub-clause (4) requires an applicant or his or her spouse to sign a statutory declaration verifying the information provided or provide other supporting evidence.

Sub-clauses (5) and (6) require an application to be made within a period starting on the commencement date of the eligible transaction and ending 12 months after its completion, but with discretion for the Commissioner to allow an application before or after that period.

Sub-clause (7) allows an applicant to amend an application.

Clause 15 has the effect of requiring anyone who was or will be, on completion of the eligible transaction, an owner of the relevant home to be an applicant, unless excluded under the regulations.

Clause 16 enables a guardian, on behalf of a person under a legal disability, to make an application but clarifies that the person under the legal disability will be regarded as the applicant. This provision allows a court-appointed guardian, holding property on trust for an intellectually disabled person, to make an application on behalf of that person.

Division 5—Decision on Application

Clause 17 Sub-clause (1) requires the Commissioner to authorise payment of the grant if satisfied that the grant is payable under clause 7.

Sub-clause (2) provides for payment of the grant before the eligible transaction is completed if there are good reasons for doing so and repayment conditions adequately protect the interests of the State.

Clause 18 provides that the amount of the grant will be the lesser of the consideration for the eligible transaction or \$7000.

Clause 19 Sub-clause (1) provides that payment of the grant can be by electronic funds transfer, cheque or any other appropriate form.

Sub-clause (2) provides for payment to the applicant, or joint applicants, or to some other person whom the applicant(s) nominates in writing. Possible nominations allowed by this provision may include the vendor of a home being purchased, the builder of a home or the financial institution providing finance to the applicant(s).

Sub-clause (3) provides that the grant may be applied to any stamp duty liability of the applicant arising from the purchase of, or a mortgage relating to the purchase of, the property for which the grant is payable, if the applicant so requests.

Clause 20 Sub-clause (1) gives the Commissioner discretion to authorise payment of the grant in anticipation of compliance with the residence requirement under clause 12.

Sub-clause (2) provides that failure to comply with the residence requirement obliges the applicant to give written notice of the failure to comply and repay the grant within 14 days after the end of the period allowed for compliance or be subject to a maximum penalty of 60 penalty units for commission of an offence.

Clause 21 provides that appropriate conditions may be imposed on the payment of the grant and may require the applicant(s) to give notice of non-compliance with the condition and repay the grant.

In the case of joint applicants, each applicant is individually liable to comply with these requirements, but compliance by 1 or more is regarded as compliance by both or all.

Failure to comply with an imposed condition may be subject to a maximum penalty of 60 penalty units.

Clause 22 clarifies entitlement to the grant where an applicant dies before an application is decided or after payment is made but before the residence requirement can be satisfied.

Clause 23 allows the Commissioner to vary or reverse an incorrect decision (independently of an objection) within five years of the date of the decision.

Clause 24 provides that the Commissioner may direct that a decision on an application for the grant made by an approved computer program is to be a decision of the Commissioner. This provision clarifies that decisions made without human intervention by an "expert system" using a computer program approved by the Commissioner are reviewable by the Victorian Civil and Administrative Tribunal (VCAT).

Clause 25 provides that the Commissioner must give notice of a decision on an application either by payment of the grant (if there are no conditions) or with reasons for the decision if a grant is refused, a decision is varied or reversed or conditions are imposed on payment.

Division 6—Objections and Reviews

Clause 26 Sub-clauses (1) and (4) provide that an applicant can object in writing, within 60 days of the date of the notice of decision, if he or she is dissatisfied with the decision. This includes a decision to vary or reverse an earlier decision.

Sub-clause (2) requires that the grounds for the objection are fully stated.

Sub-clause (3) places the onus of proof of the objector's case on the objector.

Sub-clause (5) allows an objection to be lodged outside the 60 day period if the applicant has a reasonable excuse for missing the deadline.

Clause 27 Sub-clause (1) provides that the Commissioner must allow an objection in whole or part or disallow it.

Sub-clause (2) provides that an objection that is subject to a right of review may be determined any time by the Commissioner before those proceedings commence.

Sub-clause (3) and (4) require notice in writing of the outcome of the objection and reasons for disallowing or allowing it in part to be given to the objector.

Clause 28 provides that if an objector, or some other person, fails to provide information requested that is relevant to the objection, the determination of the objection may be suspended until the information is provided. Written notice of the suspension must be given.

Clause 29 Sub-clause (1) provides for an objection to be referred to VCAT if the objector is either dissatisfied with the Commissioner's decision on the objection or if 90 days (excluding any period of suspension) have passed since the objection was received and a determination has not been made.

Sub-clause (2) provides that if a determination with which the objector disagrees has been made, the objector has 60 days to request that the matter be referred. If a determination is not made within 90 days, the objector may request that the matter be referred.

Sub-clause (3) provides that if further and better particulars of the objection are given, the Commissioner must refer the matter for review within 60 days after the request.

Clause 30 Sub-clause (1) provides that the Commissioner may request further and better particulars 30 days after receiving a request to refer a matter for review.

Sub-clause (2) provides that once full particulars are provided within 30 days of the request, there is a further 30-day period before the matter must be referred. The Commissioner must not refer the matter if full particulars are not given.

Clause 31 provides that on a review, unless VCAT orders otherwise, the objector's case is limited to the grounds of the objection and the Commissioner's case is limited to the grounds on which the objection was disallowed.

Clause 32 provides that the onus of proving the objector's case is on the objector.

Clause 33 Sub-clause (1) provides for VCAT to review a matter referred to it, and empowers it to confirm or vary the decision on the application.

Sub-clause (2) requires VCAT to confirm the decision if the objector does not appear, although, if good cause is shown, the VCAT may re-open and review the matter.

Clause 34 Sub-clause (1) requires the Commissioner to take any action necessary to give effect to VCAT's decision within 60 days of that decision becoming final.

Sub-clause (2) deems that the date of that decision becomes final is 30 days after the day of the decision, if no appeal to a court is made.

PART 3—ADMINISTRATION

Part 3 confers the Commissioner with general administration of this Act and the regulations. Additionally, this Part contains provisions relating to investigations, including powers of entry and inspection and search warrants. These are akin to provisions in the **Taxation Administration Act 1997**. Penalties are set out in respect of failure to comply with certain provisions.

Division 1—Administration Generally

- Clause 35 confers general administration of the proposed Act and the regulations on the Commissioner.
- Clause 36 provides that the Commissioner and those persons appointed under the **Taxation Administration Act 1997** are authorised officers for the purposes of the proposed Act.
- Clause 37 confers on the Commissioner the power to delegate any of the functions or powers (other than this power) to any person employed or engaged in the administration or enforcement of the proposed Act or another law under the general administration of the Commissioner.
- Clause 38 enables the Commissioner to enter into administration agreements for the purpose of carrying out functions related to administration of the grant scheme. Such agreements may be terminated by the Commissioner at any time.

The clause also provides that an administration agreement must include any conditions prescribed by the regulations and that contravention of a prescribed condition by a person carrying out administrative functions under such an agreement may attract a maximum penalty of 120 penalty units.

Division 2—Investigations

- Clause 39 defines the allowable purposes of an authorised investigation. Such investigations may involve a compliance check following the making of a grant.
- Clause 40 provides for cross-border investigations by the Commissioner for other authorities administering corresponding laws and for the Commissioner to delegate his powers of investigation to other

authorities administering corresponding laws or to their nominees.

Clause 41 Sub-clause (1) empowers the Commissioner, by written notice, to require a person to provide information, produce documents or attend and give evidence.

Sub-clause (2) enables the Commissioner to require evidence not given orally to be verified by statutory declaration.

Sub-clause (3) enables the Commissioner to require oral evidence to be given on oath.

Sub-clause (4) requires a person to comply with a notice given under this provision within a specified time. A maximum penalty of 120 penalty units for a body corporate and 60 penalty units in any other case is provided for a breach of this provision.

Clause 42 sets out the powers of entry and inspection for the purposes of an authorised investigation, including the power to inspect premises, require a person to produce a document, retain a document, answer questions and give an authorised officer other reasonable assistance. The authorised officer can enter premises with the consent of the occupier or on the authority of a warrant issued under clause 43. The occupier must immediately be given a copy of his or her signed consent. An authorised officer must produce his or her identity card.

Maximum penalties of 60 penalty units for a natural person and 120 penalty units for a body corporate may be imposed for hindering or obstructing an authorised officer, abusing or threatening them or using insulting language, or failing without reasonable excuse to comply with a requirement made by an authorised officer.

Clause 43 makes provision for obtaining a search warrant.

Sub-clause (1) enables an authorised officer to apply for the issue of a search warrant if the officer believes there is or will be in the next 72 hours on the premises a thing relevant to the administration of the proposed Act.

Sub-clause (2) empowers a magistrate to issue a search warrant if satisfied by evidence on oath there is or will be in the next 72 hours a relevant thing on the premises. The warrant can

authorise the officer to enter the premises, search for and seize the things named in the warrant and break open any receptacle if necessary.

Sub-clause (3) requires a search warrant to state the premises to be searched, a description of the thing to be searched for, any conditions of the warrant, any restrictions on time of entry and the day the warrant ceases to have effect.

Sub-clause (4) provides that a search warrant must be issued in accordance with the **Magistrates' Court Act 1989**.

Sub-clause (5) provides for the rules that are to be observed in the **Magistrates' Court Act 1989** relating to search warrants to extend and apply to warrants issued under this clause.

Clause 44 requires an authorised officer or assistant to announce his or her authority to enter under the warrant before executing it, unless the officer or assistant believes on reasonable grounds that immediate entry is necessary for any person's safety or so that effective execution is not frustrated.

Clause 45 requires that, if the occupier or his or her apparent representative is present when the warrant is being executed, an authorised officer must identify himself or herself by producing his or her identity card for inspection and give the occupier or representative a copy of the execution copy of the warrant.

Clause 46 removes a person's privilege against self-incrimination under the proposed Act, save that, if a person objects to answering a question, providing information or producing a document or thing on the grounds that it might incriminate the person, the answer, information, document or thing is admissible only in proceedings for an offence against the proposed Act or for perjury.

PART 4—MISCELLANEOUS

Part 4 contains miscellaneous provisions relating to such matters as the making of dishonest or misleading statements, confidentiality and the protection of information in relation to applicants and their spouses.

Clause 47 Sub-clauses (1) and (2) provide that it is an offence to dishonestly make a false or misleading statement or to make a misleading statement in or in connection with an application for a grant. Penalties are prescribed for both offences.

Sub-clause (3) provides a statutory defence to the lesser offence if the defendant can establish that the contravention was neither intentional nor negligent.

Clause 48 provides that the Commissioner may, by written notice, require the repayment of a grant if the grant was paid in error or the decision under which the grant was paid is reversed. If it was the applicant's dishonesty which led to the grant being paid, or the applicant fails to make a repayment, the Commissioner may impose a penalty not exceeding the amount the applicant is required to repay. A written notice must be sent to the applicant.

Clause 49 Sub-clause (1) limits the scope of the power to recover amounts under this clause from an applicant or former applicant to part or all of an overpayment or an amount of a penalty.

Sub-clause (2) imposes a liability to pay the amount on an applicant, or on applicants jointly and severally.

Sub-clause (3) provides that a liability is a first charge on the applicant's interest in the home for which the grant was sought.

Sub-clause (4) enables the Commissioner to recover an amount as a debt due to the State.

Sub-clause (5) allows for payment of an outstanding liability by instalments.

Sub-clause (6) enables the Commissioner to write off the whole or part of the outstanding liability if recovery is impracticable or unwarranted.

Clause 50 imposes a duty of confidentiality on a person engaged in the administration or enforcement of the proposed Act or a person who has access to "protected information" from a person who is, or has been, so engaged. Accordingly, a person is prevented from disclosing protected information except at the request, or with the consent, of the person to whom the information relates. Protected information may be disclosed in connection with the administration or enforcement of the proposed Act, a

corresponding law or a taxation law; for the purposes of legal proceedings; or as authorised under the regulations. A maximum penalty of 60 penalty units is provided for unauthorised disclosure of information.

Sub-clause (1) defines "protected information" as information obtained under the proposed Act about an applicant for a grant or about an applicant's spouse.

Sub-clause (5) provides that protected information is information of a kind to which section 38 of the **Freedom of Information Act 1982** applies.

- Clause 51 provides that a certificate signed by the Commissioner stating that a grant was paid to a person named on the certificate on a specified date is admissible in legal proceedings as evidence of the payment. Also admissible are copies of notices issued by the Commissioner imposing a penalty under the proposed Act and requiring payment or repayment of a specified amount.
- Clause 52 provides that any prosecution for an offence under the proposed Act must be commenced within three years of the alleged commission of the offence.
- Clause 53 provides that any amount required to be paid under the proposed Act must be appropriated and paid from the Consolidated Fund.
- Clause 54 provides that the Governor in Council may make regulations for or with respect to any matter in the proposed Act. A regulation may create an offence with a penalty not exceeding 20 penalty units.

PART 5—CONSEQUENTIAL AMENDMENT

Part 5 contains one consequential amendment relating to the **Victorian Civil and Administrative Tribunal Act 1998**, with the effect that applications for review by VCAT must be dealt with under the statutory provisions specific to taxing Acts.

- Clause 55 provides for the insertion of the proposed Act into the definition of "taxing Act" in clause 2 in Part 1 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**.

