



Queensland

# Building Boost Grant Act 2011

Reprinted as in force on 17 February 2012

Reprint No. 1B

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This Act is reprinted as at 17 February 2012. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes in earlier reprints.**

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Queensland

# Building Boost Grant Act 2011

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# Building Boost Grant Act 2011

[as amended by all amendments that commenced on or before 17 February 2012]

**An Act to assist housing affordability, increase housing supply, and support employment in the housing construction industry, by establishing a scheme for the payment of grants to persons building or purchasing new homes**

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

This Act may be cited as the *Building Boost Grant Act 2011*.

#### 2 Commencement

- (1) The following provisions are taken to have commenced on 1 August 2011—
  - (a) part 1, divisions 2 to 4, other than section 9(1)(h) and (4);
  - (b) part 2, other than sections 18(e)(vii), 29, 32(2)(c)(iii) and 38(1)(a) and (b)(i) and (iii);
  - (c) sections 94, 95(1) to (3), 102, 103, 105, 106 and 107;
  - (d) schedule 2.
- (2) Part 7 commences immediately after the commencement of this section.

## **Division 2                      Purpose of the Act**

### **3                      Purpose of Act and its achievement**

- (1) The purpose of this Act is to stimulate the housing market in Queensland in the following ways—
  - (a) assisting the affordability of housing;
  - (b) increasing the supply of housing;
  - (c) supporting employment in the housing construction industry.
- (2) The purpose is achieved mainly by establishing a scheme for payment of a building boost grant.

## **Division 3                      Interpretation**

### **Subdivision 1                  Dictionary**

#### **4                      Definitions**

The dictionary in the schedule defines particular words used in this Act.

### **Subdivision 2                  Basic concepts**

#### **5                      What is a *building boost grant***

- (1) Generally, a *building boost grant* is the grant payable under part 2.
- (2) A reference to a *building boost grant* for a home is a reference to a building boost grant for an eligible transaction relating to the home.

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## 6 What is an *eligible transaction*

- (1) An *eligible transaction* is any of the following—
  - (a) an eligible home purchase contract;
  - (b) an eligible home building contract;
  - (c) an eligible owner-builder arrangement.
- (2) Subsection (1) is subject to section 18.

## 7 Meaning of *home*

- (1) A building is a *home* if—
  - (a) it is designed, or approved by a local government, for human habitation by a single family unit; and
  - (b) it is suitable for use, and lawfully able to be used, as a place of residence; and
  - (c) it is used or intended to be used mainly for residential purposes; and
  - (d) it is fixed to land; and
  - (e) the land on which it is fixed is used or intended to be used—
    - (i) mainly for residential purposes; or
    - (ii) mainly for primary production and for residential purposes.
- (2) Despite subsection (1), if an application is made for a building boost grant for a transaction for which the first home owner grant is paid or payable, a *home*, in relation to the application, has the same meaning as in the First Home Owner Grant Act.
- (3) Despite subsection (1)(c) and (e), a display home is also a *home*.

## 8 Meaning of *new home*

- (1) A *new home* is a home that—

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- (a) has not been previously occupied or transferred as a place of residence; or
  - (b) is a substantially renovated home.
- (2) For subsection (1)(b), a home is a substantially renovated home if—
- (a) the home is the subject of a home purchase contract; and
  - (b) the sale of the home under the contract is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), a taxable supply as a sale of new residential premises as defined under section 40-75(1)(b) of that Act; and
  - (c) the home, as renovated, has not been previously occupied or transferred as a place of residence.

## 9 Meaning of *relevant interest*

- (1) A *relevant interest* in land is—
- (a) an estate in fee simple in the land; or
  - (b) an interest as purchaser under—
    - (i) a contract for the purchase from the Commonwealth or the State, or any Commonwealth or State instrumentality or authority, of an estate in fee simple in the land by instalments; or
    - (ii) an instalment contract under the *Property Law Act 1974*, part 6, division 4 for the purchase of an estate in fee simple in the land; or
  - (c) a person's right, given by a relative of the person, to occupy a home that is a detached dwelling built or to be built on land that is a part of land owned by the relative—
    - (i) under a contract entered into by the person; or
    - (ii) under an owner-builder arrangement; or

- 
- (d) a manufactured home owner's interest in a site agreement for a site on which a manufactured home is positioned; or
  - (e) a leasehold interest in the land granted by the Commonwealth or the State for which building a home is permitted under the terms of the lease or the Act under which the lease is granted; or
  - (f) a sublessee's interest under a lease mentioned in paragraph (e) that is for a term of at least 10 years; or
  - (g) an interest in a lease granted under—
    - (i) the *Aboriginal Land Act 1991*, section 119(1)(a); or
    - (ii) the *Torres Strait Islander Land Act 1991*, section 84(1)(a); or
  - (h) another interest declared under a regulation to be a relevant interest.
- (2) Despite subsection (1), if an application is made for a building boost grant for a transaction for which the first home owner grant is paid or payable, a ***relevant interest***, in relation to the application, has the same meaning as in the First Home Owner Grant Act.
- (3) Despite subsections (1) and (2), an interest is not a relevant interest at a particular time unless the holder of the interest has, or will have within 1 year after that time, a right to immediate occupation of the land.
- (4) A regulation under subsection (1)(h) may declare an interest to be a relevant interest in land even though the interest may not be recognised at law or in equity as an interest in land.
- (5) In this section—
- manufactured home owner*** means a home owner under the *Manufactured Homes (Residential Parks) Act 2003*, section 8.
- relative***, of a person, means—
- (a) a parent, grandparent, child, stepchild, brother or sister of the person or the person's spouse; or

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(b) the spouse of anyone mentioned in paragraph (a).

*site agreement* see the *Manufactured Homes (Residential Parks) Act 2003*, section 14.

*sublessee* includes a sub-sublessee.

## 10 Meaning of *unencumbered value*

(1) The *unencumbered value* of property is the value of the property determined without regard to—

(a) any encumbrance to which the property is subject, whether contingently or otherwise; or

(b) any arrangement—

(i) the parties to which are not dealing with each other at arm's length; and

(ii) that results in the reduction of the value of the property; or

(c) any arrangement for which a significant purpose of any party to the arrangement was, in the commissioner's opinion, the reduction of the value of the property.

(2) Also, the *unencumbered value* of property held by a person on trust must be determined without regard to the liabilities of the trust, including the liability to indemnify the trustee.

(3) In this section—

*property* means—

(a) a home; or

(b) land; or

(c) a relevant interest in land.

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## **Division 4 Administration**

### **11 Commissioner's functions and powers**

- (1) The commissioner is responsible for the administration and enforcement of this Act.
- (2) The commissioner has the power to do all things necessary or convenient to be done for performing the commissioner's functions.
- (3) Without limiting subsection (2), the commissioner may, on behalf of the State—
  - (a) enter into an agreement (an *administration agreement*) with a financial institution or other person for performing functions relating to administering the scheme for applications for and payment of building boost grants under this Act; and
  - (b) revoke an administration agreement.

## **Part 2 Building boost grants**

### **Division 1 Entitlement to grant**

#### **12 Entitlement of applicants to building boost grants**

The applicant for a building boost grant is entitled to be paid a building boost grant only if—

- (a) the transaction for which the grant is sought—
  - (i) is an eligible transaction; and
  - (ii) has been completed; and

*Note—*

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However, for authorisation of payment of the grant before the completion of the eligible transaction, see section 33(2).

- (b) the applicant or, if there are 2 or more of them, each of the applicants, complies with the eligibility criteria under division 3; and
- (c) the application for the grant is properly made.

## **Division 2            Eligibility for transactions**

### **Subdivision 1        Preliminary**

#### **13        What is the *transaction commencement day***

The *transaction commencement day* is—

- (a) for a home purchase contract or home building contract—the day the contract is made; or
- (b) for an owner-builder arrangement for a home—the day the laying of the foundations for the home starts.

### **Subdivision 2        Home purchase contracts**

#### **14        What is an *eligible home purchase contract***

A home purchase contract is an *eligible home purchase contract* if—

- (a) it is for the purchase of a new home that is, or is to be, built on land in the State; and
- (b) the transaction commencement day is on or after 1 August 2011 and before 1 May 2012; and
- (c) either—
  - (i) it is for the acquisition of a relevant interest in the land on which the home has been built; or

- (ii) it is for the acquisition of a relevant interest in the land on which the home is to be built, before completion of the contract, by or for the seller of the home and at the expense of the seller; and
- (d) it has been entered into by each person who on completion of the contract will have a relevant interest in the land; and
- (e) the total of the following is less than \$600000—
  - (i) the unencumbered value of the home;
  - (ii) the unencumbered value of the relevant interest in the residential land at the transaction commencement day for the contract; and
- (f) for a contract to purchase a new home on a proposed lot on an unregistered plan of subdivision of land—
  - (i) the contract provides that the building work must start before 1 May 2013 and be completed before 1 May 2015; or

*Note—*  
See section 120.

  - (ii) if subparagraph (i) does not apply, the building work under the contract is—
    - (A) started before 1 February 2013; and
    - (B) completed before 1 February 2015, or within a longer period allowed by the commissioner.

### **Subdivision 3      Home building contracts and owner-builder arrangements**

#### **15      Definition for sdiv 3**

In this subdivision—

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***prescribed building period***, for a contract to have a home built or an owner-builder arrangement for a home, means the period—

- (a) starting on the day the laying of the foundations for the home starts; and
- (b) ending 18 months after that day.

## **16 What is an *eligible home building contract***

A home building contract is an ***eligible home building contract*** if—

- (a) it is a comprehensive home building contract to have a new home built on land in the State; and
- (b) the transaction commencement day is on or after 1 August 2011 and before 1 May 2012; and
- (c) it has been entered into by each person who will, on completion of the contract, have a relevant interest in the land; and
- (d) the laying of the foundations for the home starts within—
  - (i) 26 weeks after the transaction commencement day; or
  - (ii) the longer period allowed by the commissioner; and
- (e) either—
  - (i) it provides for the home being ready for occupation as a place of residence within the prescribed building period; or
  - (ii) if subparagraph (i) does not apply, the home is ready for occupation as a place of residence within the prescribed building period or the longer period allowed by the commissioner; and
- (f) the total of the following is less than \$600000—
  - (i) the consideration for the transaction;

- (ii) the unencumbered value of the relevant interest in the residential land on the transaction commencement day.

## **17 What is an *eligible owner-builder arrangement***

An owner-builder arrangement is an *eligible owner-builder arrangement* if—

- (a) it is for the building of a new home on land in the State; and
- (b) the transaction commencement day is on or after 1 August 2011 and before 1 May 2012; and
- (c) the home is ready for occupation as a place of residence within the prescribed building period or the longer period allowed by the commissioner; and
- (d) the total of the following is less than \$600000—
  - (i) the consideration for the transaction;
  - (ii) the unencumbered value of the relevant interest in the residential land on the transaction commencement day.

## **Subdivision 4 Ineligible transactions**

### **18 Transactions that are not eligible transactions**

The following transactions are not eligible transactions—

- (a) a transaction for which the consideration is \$600000 or more;
- (b) a transaction between the applicant and a related person of the applicant, unless the first home owner grant is paid or payable for the transaction;
- (c) a home purchase contract for which transfer duty is not payable under the *Duties Act 2001*, other than because of—

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- (i) the concession for first homes under section 92 of that Act; or
  - (ii) the exemption for manufactured homes under section 138 of that Act; or
  - (iii) the exemption for charitable institutions under section 414 of that Act;
- (d) a legally binding arrangement made on or after 14 June 2011 for which the sole or main purpose is to defer the transaction commencement day for a home purchase contract or home building contract to 1 August 2011 or a later day before 1 February 2012 (the *post-eligibility period*), including, for example—
- (i) terminating a home purchase or building contract made before 1 August 2011 and, making, in the post-eligibility period, a home purchase or building contract for the same or a substantially similar home; and
  - (ii) granting, before 1 August 2011, an option to enter into a home purchase or building contract and exercising the option in the post-eligibility period;

*Editor's note—*

The building boost grant was publicly announced on 14 June 2011.

- (e) a transaction for which financial assistance is given by or for the Commonwealth or the State, other than the following assistance—
- (i) a first home owner grant;
  - (ii) a concession for transfer duty for first homes under the *Duties Act 2001*, section 92;
  - (iii) a Commonwealth First Home Saver Account contribution;
  - (iv) a National Rental Affordability Scheme incentive;
  - (v) a loan on commercial terms;

- (vi) assistance given to mitigate the effects of a natural disaster;
- (vii) other assistance under a financial assistance scheme prescribed under a regulation;
- (f) a transaction that the commissioner is satisfied forms part of a scheme or arrangement to circumvent limitations on, or requirements affecting, eligibility or entitlement to the building boost grant.

## Division 3                    Eligibility for applicants

### Subdivision 1            Preliminary

#### 19            Meaning of *substantially Australian owned*

- (1) An entity is *substantially Australian owned* if it is—
  - (a) a listed corporation; or
  - (b) another corporation (a *relevant entity*) in which a significant proportion of the shares in the corporation is directly or ultimately owned, other than as a trustee, by an Australian entity; or
  - (c) a listed unit trust; or
  - (d) another trust (also a *relevant entity*) in which a significant proportion of trust interests in the trust are directly or ultimately owned, other than as a trustee, by an Australian entity.
- (2) Subsection (3) applies if the commissioner can not reasonably decide if shares or trust interests in a relevant entity are ultimately owned by an Australian entity, including, for example, because of the complexity of the arrangements under which the shares or trust interests are held.
- (3) Despite subsection (1)(b) and (d), the relevant entity is *substantially Australian owned* if the commissioner is

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reasonably satisfied the shares or trust interests are probably ultimately owned by an Australian entity.

- (4) Despite subsections (1) to (3), a relevant entity is not ***substantially Australian owned*** if the commissioner considers, having regard to the relevant factors, that an ineligible individual may significantly benefit financially, other than as a trustee, from the relevant entity.
- (5) For subsection (4), the relevant factors are as follows—
- (a) the terms of the documents constituting the relevant entity;
  - (b) the circumstances in which the relevant entity was established;
  - (c) the operation of the relevant entity, including, for example, the way money and other assets of the entity are, and are likely to be, dealt with and distributed;
  - (d) the relationship between the ineligible individual and any other person in establishing or operating the relevant entity;
  - (e) if the relevant entity is a trust—
    - (i) whether the trustee is a listed corporation, a corporation to which subsection (1)(b) applies, an Australian citizen or a permanent resident; and
    - (ii) whether the trustee is accustomed to acting, or likely to act, in accordance with the directions or wishes of the ineligible individual;
  - (f) if the relevant entity is a corporation or a trust for which the trustee is a corporation, whether the corporation or its executive officers or shareholders are accustomed to acting, or likely to act, in accordance with the directions or wishes of the ineligible individual;
  - (g) other relevant matters.
- (6) In this section—

***Australian entity*** means—

- (a) a listed corporation; or
- (b) a listed unit trust; or
- (c) an individual who is an Australian citizen or a permanent resident.

***ineligible individual*** means an individual other than an Australian citizen or permanent resident.

***listed corporation*** means a corporation in which a significant proportion of the shares in the corporation are quoted on the market operated by the Australian Securities Exchange.

***listed unit trust*** means a unit trust in which a significant proportion of the units in the trust are quoted on the market operated by the Australian Securities Exchange.

***reasonably satisfied*** means to be satisfied on grounds that are reasonable in the circumstances.

***significant proportion***—

- (a) of shares in a corporation—means the number of shares comprising at least 75% of the value of all the shares in the corporation; or
- (b) of trust interests or units in a trust—means trust interests or units comprising at least 75% of the value of all the trust interests or units in the trust.

## 20 Meaning of *ultimately owned*

Shares in a corporation (the ***relevant property***) or trust interests in a trust (also the ***relevant property***) are ***ultimately owned*** by an entity (the ***ultimate owner***) if, through a series of entities owning shares in corporations or trust interests in trusts, or a combination of any of them, there is a connection between the relevant property and the ultimate owner.

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## **Subdivision 2 Particular eligibility criteria**

### **21 Eligible applicants**

- (1) Without limiting division 1, 2 or 4, to be eligible for a building boost grant for a transaction, an applicant must—
  - (a) have a relevant interest in the land on which the home is, or is to be, built; and
  - (b) comply with the occupancy requirement; and
  - (c) be any of the following—
    - (i) if applying as a trustee—a trustee of a trust that is substantially Australian owned;
    - (ii) an individual who is—
      - (A) at least 18 years of age at the transaction commencement day; and
      - (B) an Australian citizen or a permanent resident;
    - (iii) a corporation that is substantially Australian owned.
- (2) This section is subject to sections 22 and 26.

### **22 General restriction on eligibility**

A building boost grant is payable only once for the following—

- (a) a particular eligible transaction;
- (b) a transaction relating to a particular home;
- (c) a particular relevant interest held in land on which a new home is, or is to be, built.

*Example for paragraph (c)—*

A person has a home (the *first home*) built on a parcel of land (the *original parcel*) owned by the person, for which a building boost grant is paid. The original parcel is subdivided and the person has another home (the *second home*) built on the

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subdivided part of the original parcel on which the first home is built. Because the grant has already been paid for the relevant interest in the original parcel, the grant is not payable for the same relevant interest for the building of the second home.

## 23 Eligibility for multiple grants

- (1) Subject to subsections (2) and (3), this Act does not prevent the same person from being entitled to receive 2 or more building boost grants for separate transactions.
- (2) Subsection (3) applies if—
  - (a) either—
    - (i) a person or a related person of that person has made 4 applications for building boost grants that have not been decided by the commissioner; or
    - (ii) the commissioner has previously paid, or authorised payment of, a building boost grant to a person or a related person of that person at least 4 times; and
  - (b) the person makes another application for a building boost grant for a transaction (the *relevant transaction*).
- (3) The applicant is entitled to receive a building boost grant for the relevant transaction only if the commissioner is satisfied, having regard to the relevant factors, that the transaction—
  - (a) has been entered into for a purpose that advances the purpose of the Act; and
  - (b) is not an artificial, blatant or contrived arrangement; and
  - (c) has not been entered into for the sole or main purpose of obtaining a building boost grant.
- (4) For subsection (3), the relevant factors are as follows—
  - (a) the relationship between the applicant and the following persons—
    - (i) the other party to the relevant transaction;

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- (ii) a person providing financial assistance for the transaction;
    - (iii) a person with whom the applicant has entered, or is likely to enter, into a related arrangement;
  - (b) the form and substance of the relevant transaction and any related arrangement, including, for example—
    - (i) legal rights and obligations arising from the transaction or arrangement; and
    - (ii) the commercial nature of the transaction or arrangement;
  - (c) the way in which the relevant transaction and any related arrangement have been entered into or carried out;
  - (d) whether or not the applicant has carried out similar transactions before 1 August 2011 and, if so, the way in which the transactions were carried out;
  - (e) any change in a person's financial position that has happened or may reasonably be expected to happen because of the relevant transaction or related arrangement.
- (5) In this section—

*related arrangement* means an arrangement made between the applicant and another person under which a person may obtain a financial benefit from the applicant's acquisition or occupation of the home.

## **24 Application for ruling for eligibility of particular transactions**

- (1) A person may apply to the commissioner for a ruling on whether a transaction satisfies the matters mentioned in section 23(3)(a), (b) and (c).
- (2) The application must be—
  - (a) in the approved form; and

- (b) accompanied by enough information to enable the commissioner to make a ruling.
- (3) The commissioner must give the person who applied for the ruling—
  - (a) a notice of the ruling; and
  - (b) if the ruling is that the commissioner is not satisfied of the matters mentioned in section 23(3)(a), (b) and (c)—a decision notice for the ruling.

## **25 Occupancy requirement**

- (1) An applicant for a building boost grant for a home must ensure the home is occupied as a place of residence for a total of at least 3 months before the first of the following happens—
  - (a) the end of 1 year after the completion of the transaction;
  - (b) the applicant transfers the applicant's relevant interest in the land on which the home is, or is to be, built.
- (2) For subsection (1)—
  - (a) the home need not be occupied by the applicant; and
  - (b) the 3 months need not be continuous.
- (3) Despite subsection (1), if a first home owner grant is paid or payable for the relevant transaction for the home and the applicant satisfies the residence requirements under the First Home Owner Grant Act for the home, the applicant is taken to have complied with the occupancy requirement.

## **26 Particular entities not eligible for grant**

- (1) The following entities are not eligible for a building boost grant for a transaction—
  - (a) a person who carries on a business involving building homes and enters into the transaction in carrying on the business;

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- (b) the Commonwealth, the State or another State;
  - (c) a government agency.
- (2) In this section—
- government agency*** means any of the following —
- (a) a government entity under the *Public Service Act 2008*, section 24;
  - (b) a government owned corporation;
  - (c) a local government;
  - (d) a local government owned corporation, or a subsidiary of a local government owned corporation, under the *Local Government Act 2009*;
  - (e) a department or administrative office of the government of the Commonwealth or another State;
  - (f) a statutory body representing the Commonwealth or another State.

## **Division 4            Application for grant**

### **Subdivision 1        General provisions**

#### **27        Application for grant**

- (1) An application for a building boost grant must be made to the commissioner or an agent of the commissioner.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) supported by the information required by the commissioner.
- (3) The application may be made only within the period (the ***application period***)—

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- (a) starting on the transaction commencement day of the eligible transaction to which the application relates; and
  - (b) ending 1 year after the completion of the eligible transaction to which the application relates.
- (4) However, the commissioner may allow an application to be made before or after the application period.
- (5) This section is subject to section 29.

## **28 Each interested person must apply**

- (1) An application for a building boost grant for a transaction for a home can be made only if each interested person is an applicant.
- (2) For subsection (1), a person is an interested person in a home if the person will have, on completion of the transaction, a relevant interest in the land on which the home is, or is to be, built.
- (3) However, if an applicant for a building boost grant is the holder of a coexisting relevant interest in the land on which a home is, or is to be, built, the holder of another relevant interest in the land is not an interested person in the home for subsection (1).
- (4) In this section—

*coexisting relevant interest* means a relevant interest in land mentioned in section 9(1)(c), (d), (f) or (g).

## **Subdivision 2 Notice of intention to apply**

### **29 Prospective applicant must give notice of intention to apply for grant**

- (1) This section applies if an applicant—
  - (a) has entered into a transaction for a home; and

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- (b) does not intend to make, or has not made, an application for a building boost grant for the transaction before the later of the following days (the *notice day*)—
    - (i) 1 September 2012;
    - (ii) a later day, if any, allowed by the commissioner; and
  - (c) intends to apply for a building boost grant for the transaction after the notice day.
- (2) The applicant must, before the notice day, give the commissioner or an agent of the commissioner a notice (a *preliminary notice*), in the approved form, of intention to apply for a building boost grant for the transaction.
- (3) If the applicant does not give the preliminary notice before the notice day, the applicant can not apply for a building boost grant for the transaction.
- (4) However, subsections (2) and (3) do not apply if—
- (a) a first home owner grant for the transaction is paid or payable to the applicant; and
  - (b) the applicant applies for a building boost grant for the transaction no later than applying for the first home owner grant.

## **Division 5                      Decision on application**

### **30                      Additional information for application**

- (1) The commissioner may, by notice, ask an applicant to give the commissioner further reasonable information or documents about the application in the following period (the *information period*)—
- (a) the period of at least 5 business days stated in the notice;
  - (b) any longer period agreed between the commissioner and the applicant.

- (2) The commissioner may refuse the application if the applicant does not give the commissioner the information or documents in the information period, without reasonable excuse.

### **31 Commissioner to decide applications**

- (1) The commissioner must—
- (a) consider each application for a building boost grant; and
  - (b) either—
    - (i) if satisfied a building boost grant is payable—decide to authorise payment of the grant; or
    - (ii) otherwise—refuse the application.
- (2) If the commissioner decides to authorise payment of the grant, the commissioner may impose a reasonable condition on the grant.
- (3) The commissioner must give the applicant notice of—
- (a) the decision; and
  - (b) if a condition is imposed—the condition.
- (4) However, if the commissioner has authorised payment of the grant with no conditions, the payment of the grant is taken to be notice of the decision for subsection (3)(a).
- (5) If the commissioner decides to refuse the application or impose a condition on the grant, the notice of the decision must include or be accompanied by a decision notice for the decision.

## **Division 6 Payment of grant**

### **32 Amount of grant**

- (1) The amount of a building boost grant for a home is the lesser of the following—

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- (a) the consideration for the transaction;
  - (b) \$10000.
- (2) For working out the amount of the consideration under subsection (1)(a), the amount must be reduced by the amount for any of the following that the applicant for the grant has received or is entitled to receive—
- (a) a Commonwealth First Home Saver Account contribution used, or to be used, for the transaction;
  - (b) a National Rental Affordability Scheme incentive relating to the home for the financial year starting on 1 July 2011;
  - (c) any of the following paid or payable for the transaction—
    - (i) the first home owner grant;
    - (ii) an amount relating to the consideration for the transaction, including, for example, an insurance payment to build the home;
    - (iii) an amount paid or payable under another financial assistance scheme prescribed under a regulation.
- (3) However, the amount of the consideration under subsection (1)(a) must not be reduced by the amount of any assistance that the Commonwealth or State has given the applicant to mitigate the effects of a natural disaster.

### **33 When grant is payable**

- (1) A building boost grant for a transaction for a home is payable—
- (a) if the transaction is completed before the application for the grant is decided—when payment of the grant is authorised; or
  - (b) otherwise—after the transaction is completed.

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- (2) However, the commissioner may pay the grant before the transaction is completed if the commissioner is satisfied it is appropriate to pay the grant in the circumstances.

### **34 How grant must be paid**

- (1) A building boost grant must be paid—
- (a) by electronic funds transfer, cheque or in any other way the commissioner considers appropriate; and
  - (b) to—
    - (i) the applicant; or
    - (ii) someone else to whom the applicant directs the commissioner in writing to pay the grant.
- (2) If the applicant requests, the commissioner can apply the amount of a building boost grant, or part of the amount, towards a liability for State taxes, fees or charges.

## **Division 7 Repayment of grant**

### **Subdivision 1 Particular grounds for repayment**

#### **35 Contravention of consideration requirement on completion**

- (1) This section applies if—
- (a) a building boost grant is paid for a home purchase contract (the *relevant transaction*) mentioned in section 14(c)(ii) before the transaction is completed; and
  - (b) on completion of the relevant transaction, the unencumbered value of the home results in it not being an eligible transaction under section 14(e).
- (2) This section also applies if—

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- (a) a building boost grant is paid for a home building contract or owner-builder arrangement (each, also the *relevant transaction*) before the transaction is completed; and
  - (b) on completion of the relevant transaction, the consideration for the transaction results in it not being an eligible transaction under section 16(f) or 17(d).
- (3) The applicant for the grant is required within 28 days after completion of the relevant transaction to—
- (a) give the commissioner notice of the ineligibility of the transaction; and
  - (b) repay the amount of the grant.
- (4) The applicant must not contravene the requirement under subsection (3) unless the applicant has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (5) For a joint application, each applicant is individually liable to comply with subsection (3), but compliance by any 1 or more of them must be regarded as compliance by both or all.

### **36 Contravention of occupancy requirement**

- (1) This section applies if a building boost grant for a home is paid to an applicant before the applicant has complied with the occupancy requirement for the home.
  - (2) If the occupancy requirement is contravened or the applicant knows, or reasonably ought to know, it will be contravened, the applicant is required within 14 days after the relevant day to—
    - (a) give notice of the contravention to the commissioner; and
    - (b) repay the amount of the grant.
  - (3) The applicant must not contravene the requirement under subsection (2) unless the applicant has a reasonable excuse.
- Maximum penalty—40 penalty units.

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- (4) For a joint application, each applicant is individually liable to comply with subsection (2), but compliance by any 1 or more of them must be regarded as compliance by both or all.
- (5) In this section—  
*relevant day* means the earlier of the following—
- (a) the day when it first becomes apparent, or reasonably ought to be apparent, to the applicant that the occupancy requirement can not be complied with;
  - (b) the end of 1 year after the completion of the transaction.

### **37 Contravention of repayment requirement under condition of grant**

- (1) This section applies if a condition imposed on a building boost grant states a requirement (a *repayment requirement*) that, if the condition is contravened, the applicant for the grant must—
- (a) give the commissioner notice of the contravention within a stated period; and
  - (b) repay the grant within a stated period.
- (2) The applicant must not contravene the repayment requirement unless the applicant has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (3) For a joint application, each applicant is individually liable to comply with the repayment requirement but, compliance by any 1 or more of them must be regarded as compliance by both or all.

## **Subdivision 2 Notice to repay**

### **38 Repayment notice**

- (1) This section applies if—

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- (a) a person contravenes section 35(3) or 36(2) or a repayment requirement; or
  - (b) a building boost grant has been wrongly paid to a person because of—
    - (i) a contravention of section 81; or
    - (ii) a mistake to which the person has not contributed; or

*Example—*

an administrative or clerical error

    - (iii) another reason.
- (2) The commissioner may give the applicant or recipient a notice (a **repayment notice**)—
- (a) stating—
    - (i) the circumstances under subsection (1) for which the notice is given; and
    - (ii) that the person is required to repay the amount of the building boost grant within a stated period of at least 60 days; and
  - (b) including or accompanied by a decision notice for the decision to issue the repayment notice.

*Note—*

A repayment notice may also be given under section 115(3).

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## **Part 3                      Enforcement**

### **Division 1                      Authorised investigations**

#### **39                      Powers on investigation**

- (1) For carrying out an authorised investigation, the commissioner may, by notice, require a person to do 1 or more of the following—
  - (a) give the commissioner written information stated in the notice;
  - (b) attend at a stated time and place before the commissioner, or a stated authorised officer, to answer questions relevant to the investigation;
  - (c) produce a document relevant to the investigation to the commissioner at a reasonable stated time and place.
- (2) The commissioner may require information given, or to be given, under this section to be verified on oath or by statutory declaration.
- (3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.  
Maximum penalty—40 penalty units.
- (4) A person who, having attended before the commissioner or officer in response to a notice under subsection (1)(b), must not fail to answer a question relevant to the investigation unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (5) It is a reasonable excuse for an individual to fail to comply with a requirement under subsection (3) to give information or produce a document or to answer a question under subsection (4) if complying with the requirement or answering the question might tend to incriminate the individual.

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#### **40 Access to particular records without fee**

For carrying out an authorised investigation, the commissioner may, without payment of a fee, inspect and take copies of any record relevant to the investigation that is kept by a public sector unit or local government.

### **Division 2 General provisions about authorised officers**

#### **Subdivision 1 Appointment**

#### **41 Authorised officers under divs 2–6**

This division and divisions 3 to 6 include provision for the appointment of authorised officers, and give authorised officers particular powers.

#### **42 Appointment and qualifications**

- (1) The commissioner may, by instrument in writing, appoint a public service employee as an authorised officer.
- (2) However, the commissioner may appoint a person as an authorised officer only if the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **43 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer’s instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.

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- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers.
  - (3) In this section—  
*signed notice* means a notice signed by the commissioner.

#### **44 When office ends**

- (1) The office of a person as an authorised officer ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised officer's resignation under section 45 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised officer holds office.

#### **45 Resignation**

An authorised officer may resign by signed notice given to the commissioner.

### **Subdivision 2 Identity cards**

#### **46 Authorised officer's identity card**

- (1) The commissioner must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer;and

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- (b) contain a copy of the authorised officer's signature; and
  - (c) identify the person as an authorised officer under this part; and
  - (d) state an expiry day for the card.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

#### **47 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised officer must—
- (a) produce the authorised officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 51(1)(b) or (d).

#### **48 Return of identity card**

If the office of a person as an authorised officer ends, the person must return the person's identity card to the commissioner within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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## **Subdivision 3      Miscellaneous powers**

### **49      References to exercise of powers**

If—

- (a) a provision of this Act refers to the exercise of a power by an authorised officer; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officers' powers under this Act or a warrant, to the extent the powers are relevant.

### **50      Reference to document includes reference to reproductions from electronic document**

A reference in this Act to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 3              Entry of places by authorised officers**

### **Subdivision 1      Power to enter**

#### **51      General power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 54 has been complied with for the occupier; or

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- (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 61 has been complied with for the occupier; or
  - (d) it is a place of business and the entry is made when the place is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry.
- (2) For subsection (1)(d), a *place of business* does not include a part of the place where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (5) In this section—
- public place* means a place, or part of a place, the public is entitled to use or is open to, or used by, the public, whether or not on payment of an admission fee.

## Subdivision 2      Entry by consent

### 52      Application of sdiv 2

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 51(1)(a).

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**53 Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

**54 Matters authorised officer must tell occupier**

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

**55 Consent acknowledgement**

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) the occupier is not required to consent;
    - (iii) the consent may be given subject to conditions and may be withdrawn at any time; and

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- (c) that the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **Subdivision 3      Entry under warrant**

#### **56      Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

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## **57 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised officer's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the day and time of the warrant's issue; and
  - (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **58 Electronic application**

- (1) An application under section 56 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—

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- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
- (a) may not be made before the authorised officer prepares the written application under section 56(2); but
  - (b) may be made before the written application is sworn.

## **59 Additional procedure if electronic application**

- (1) For an application made under section 58, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
- (a) it was necessary to make the application under section 58; and
  - (b) the way the application was made under section 58 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the information mentioned in section 57(2); and
    - (ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 57(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

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- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
    - (a) the written application complying with section 56(2) and (3); and
    - (b) if the authorised officer completed a form of warrant under subsection (2)(b), the completed form of warrant.
  - (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
    - (a) attach the documents to the original warrant; and
    - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
  - (6) Despite subsection (3), if—
    - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
    - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
  - (7) This section does not limit section 56.
  - (8) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 60 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or
  - (b) compliance with this subdivision;unless the defect affects the substance of the warrant in a material particular.

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(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 59(3).

## **61 Entry procedure**

(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

*warrant* includes a duplicate warrant mentioned in section 59(3).

## **Division 4                      General powers of authorised officers after entering places**

### **62 Application of div 4**

(1) The powers under this division may be exercised if an authorised officer enters a place under section 51(1).

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- (2) However, the powers under this division are subject to any conditions of any consent or terms of any warrant.

### **63 General powers**

- (1) The authorised officer may do any of the following (each a *general power*)—
- (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) place an identifying mark in or on anything at the place;
  - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (e) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (f) take to, into or onto the place and use, any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer's powers under this division;
  - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may take a necessary step to allow the exercise of a general power.
- (3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable.
- (4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—

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*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

#### **64 Power to require reasonable help**

- (1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised officer must warn the person that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with it.

#### **65 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual.

#### **66 Evidential immunity for individuals complying with help requirement**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under a help requirement.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or

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document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual in the proceeding.

- (3) Subsection (2) does not apply to—
- (a) a proceeding about the false or misleading nature of the information or anything in the document; or
  - (b) a proceeding in which the false or misleading nature of the information or document is relevant evidence.

## **Division 5                    Seizure by authorised officers**

### **Subdivision 1            Power to seize**

#### **67            Seizing evidence at a place that may be entered without consent or warrant**

An authorised officer who enters a place the authorised officer may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

#### **68            Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
- (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised officer enters the place after obtaining the consent or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—

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- (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place under a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may also seize anything else at the place if the authorised officer reasonably believes—
- (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

## **69 Seizure of property subject to security**

- (1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the authorised officer.

## **Subdivision 2 Powers to support seizure**

### **70 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised officer may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.

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- (2) For subsection (1)(a), the authorised officer may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or
- Example of making equipment inoperable—*
- dismantling it or removing a component without which the equipment can not be used
- (c) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised officer could do under subsection (1)(a).

## **71 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 70(2)(c) unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

## **72 Offence to interfere**

- (1) If access to a seized thing is restricted under section 70, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an authorised officer’s approval; or
  - (b) a reasonable excuse.Maximum penalty—40 penalty units.
- (2) If access to a place is restricted under section 70, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
  - (a) an authorised officer’s approval; or

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(b) a reasonable excuse.

Maximum penalty—40 penalty units.

## **Subdivision 3      Safeguards for seized things**

### **73      Receipt and decision notice for seized thing**

- (1) This section applies if an authorised officer seizes anything under this division unless—
  - (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.
- (2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) a decision notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and decision notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and decision notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised officer may delay giving the receipt and decision notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this Act.

- (6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

#### **74 Access to seized thing**

- (1) Until a seized thing is returned, the authorised officer who seized the thing must allow an owner of the thing—
- (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

#### **75 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value.
- (2) The authorised officer must return the seized thing to an owner—
- (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the authorised officer is satisfied—
- (a) its continued retention as evidence is no longer necessary; and
  - (b) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Division 6                      Other information-obtaining powers of authorised officers**

### **76            Power to require information**

- (1) This section applies if an authorised officer reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by notice given to the person, require the person to give the authorised officer information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

### **77            Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.  
  
Maximum penalty—40 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual.

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## Division 7                      Miscellaneous provisions

### Subdivision 1                  Damage

#### 78            Duty to avoid inconvenience and minimise damage

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 80 (Compensation).

#### 79            Notice of damage

- (1) This section applies if—
  - (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- (2) However, this section does not apply to damage the authorised officer reasonably considers is trivial or if the authorised officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised officer must give notice of the damage to the person who appears to the authorised officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.

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- (5) The authorised officer may delay complying with subsection (3) or (4) if the authorised officer reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the authorised officer.
- (6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised officer believes the damage was caused by a latent defect in the thing, or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 80.

## **Subdivision 2 Compensation**

### **80 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer, including a loss arising from compliance with a requirement made of the person under division 3, 4 or 5.
- (2) However, subsection (1) does not include loss arising from a lawful seizure.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.

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- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
  - (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
  - (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
  - (7) Section 78 does not provide for a statutory right of compensation other than is provided by this section.
  - (8) In this section—  
*loss* includes costs and damage.

### **Subdivision 3      Other offences**

#### **81      Giving false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give the commissioner or an authorised officer information, or a document containing information, that the person knows is false or misleading in a material particular.  
Maximum penalty—70 penalty units.
- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person who, when giving a document—
  - (a) tells the commissioner or officer, to the best of the person's ability, how the information is false or misleading; and

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- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the commissioner or officer.
- (4) In this section—  
*giving*, information to a person, includes stating information to the person.

## **82 Obstructing authorised officer**

- (1) A person must not obstruct an authorised officer, or someone helping an authorised officer, exercising a power unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (2) If a person has obstructed an authorised officer, or someone helping an authorised officer, and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person’s conduct an obstruction.
- (3) In this section—  
*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

## **83 Impersonating authorised officer**

A person must not impersonate an authorised officer.  
Maximum penalty—40 penalty units.

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## Division 8                      Imposition of penalty

### 84            Commissioner may impose penalty

- (1) This section applies if—
  - (a) either—
    - (i) the applicant (the *recipient*) for a building boost grant contravenes section 35(3) or 36(2) or a repayment requirement; or
    - (ii) the commissioner wrongly pays a building boost grant to the applicant for the grant or another person (each, also the *recipient*); and
  - (b) either or both of the following apply—
    - (i) the commissioner gives the recipient a repayment notice for the amount of the grant and the recipient does not pay the amount within the period stated in the notice;
    - (ii) the building boost grant is wrongly paid because of a contravention of section 81 in relation to the application for the grant.
- (2) The commissioner may give the recipient a notice (a *penalty notice*) stating—
  - (a) the grounds on which the commissioner is satisfied of the contravention; and
  - (b) the facts and circumstances that are the basis for the grounds; and
  - (c) that the recipient must pay a penalty of no more than the amount of the wrongly paid grant (the *penalty amount*) within a period of at least 60 days.

*Note—*

A penalty notice may also be given under section 116(2).

- (3) The penalty notice must also include or be accompanied by a decision notice for the decision to issue the penalty notice.

## Division 9                      Recovery of amounts

### Subdivision 1              Debt payable

#### 85              Recovery of wrongly paid amounts

- (1) This section applies if a person is required to—
  - (a) repay an amount of a grant—
    - (i) under section 35(3) or 36(2) or a repayment requirement; or
    - (ii) because of a contravention of section 81; or
    - (iii) under a repayment notice; or
  - (b) pay a penalty amount.
- (2) If the requirement attaches to 2 or more persons, the liability arising from the requirement is joint and several.
- (3) The amount is a debt payable to the commissioner and may be claimed and ordered in a proceeding brought in a court with jurisdiction for the recovery of the amount claimed.
- (4) The commissioner may enter into an arrangement for payment of the amount by instalments.
- (5) The arrangement may include provision for the payment of interest at an annual rate equal to the sum of the bank bill yield rate, rounded to the nearest second decimal place, and 8%.
- (6) In this section—

**bank bill yield rate**, for a particular day, means the monthly average yield for 90-day bank accepted bills published by the Reserve Bank of Australia for the month of May in the financial year immediately before the financial year in which the day occurs.

*Editor's note—*

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The monthly average yield for 90-day bank accepted bills is published in the Reserve Bank of Australia Bulletin and can be accessed on the internet at <www.rba.gov.au>.

## **Subdivision 2      Charge over land**

### **86      Registration of charge over land**

- (1) This section applies if an applicant for a building boost grant for a home who is liable to pay an amount mentioned in section 85(1) has an interest in the land where the home is built.
- (2) The liability is a first charge on the applicant's interest in the land.
- (3) The charge has priority over all other encumbrances over the applicant's interest in the land.
- (4) The registrar must register the charge over the land if the commissioner lodges with the registrar—
  - (a) a request to register the charge in the appropriate form over the land; and
  - (b) a certificate stating that—
    - (i) there is a charge over the land under this section; and
    - (ii) the amount stated in the certificate is owing in relation to the charge over the land.
- (5) If the amount of the charge is paid—
  - (a) the commissioner must, as soon as practicable, give the registrar—
    - (i) a request to release the charge in the appropriate form; and
    - (ii) a certificate stating that the amount owing in relation to the charge over the land has been paid; and

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- (b) the registrar must register the release of the charge over the land.
- (6) The applicant must pay the fee for registration of the charge and release of the charge.
- (7) If the commissioner pays the fee, the commissioner may recover the amount of the fee from the applicant.
- (8) In this section—  
*registrar* means the registrar of titles or another person responsible for keeping a register for dealings in land.

## Subdivision 3      Garnishee

### 87      Collection of amounts from a garnishee

- (1) This section applies if—
  - (a) under section 85, a debt is payable by an applicant to the commissioner; and
  - (b) the commissioner reasonably believes a person (the *garnishee*)—
    - (i) holds or may receive an amount for or on account of the applicant; or
    - (ii) is liable or may become liable to pay an amount to the applicant; or
    - (iii) is authorised to pay an amount to the applicant.
- (2) Subsection (1)(b) applies even if the applicant's entitlement to the amount may be subject to conditions that have not been satisfied.
- (3) The commissioner may give a notice (the *garnishee notice*) to the garnishee requiring the garnishee to pay a stated amount (the *garnishee amount*) to the commissioner by a stated day.
- (4) Without limiting subsection (3), the garnishee notice may require the garnishee to pay the commissioner an amount out

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of each payment the garnishee is liable, or from time to time becomes liable, to make to the applicant.

- (5) However, subsection (6) applies if, on the day for payment under the garnishee notice, the garnishee amount is not held for, or is not liable to be paid to, the applicant by the garnishee.
- (6) The garnishee notice has effect as if the day for payment were immediately after the day the amount is held for, or is liable to be paid to, the applicant by the garnishee.
- (7) The garnishee amount must not be more than the applicant's debt.
- (8) The garnishee must comply with the garnishee notice unless the garnishee has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (9) The commissioner must give the applicant—
  - (a) a copy of the garnishee notice; and
  - (b) details in writing of the debt to which the notice relates.

## **88 Duration of garnishee notice**

The garnishee notice has effect until the garnishee amount is paid or the commissioner, by notice given to the garnishee, withdraws the notice.

## **89 Effect of discharge of debt on garnishee notice**

- (1) This section applies if—
  - (a) the applicant's debt to which the garnishee notice relates is discharged, whether completely or partly, before the day for payment of the garnishee amount; and
  - (b) the discharge affects the amount to be recovered from the garnishee.
- (2) The commissioner must give notice to the garnishee and the applicant—

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- (a) informing them of the extent of the discharge of the debt; and
- (b) stating the amount payable under the garnishee notice is reduced accordingly; and
- (c) if the applicant's debt is fully discharged—withdrawing the garnishee notice.

## **90 Effect of payment by garnishee**

If the garnishee pays an amount to the commissioner under a garnishee notice, the garnishee—

- (a) is taken to have acted under the authority of the applicant or an authorisation mentioned in section 87(1)(b)(iii); and
- (b) if the garnishee is under an obligation to pay an amount to the applicant—is taken to have satisfied the obligation to the extent of the payment.

## **Subdivision 4 Other provisions**

### **91 Effect of writing off liability**

- (1) This section applies if all or part of an applicant's liability to pay an amount under section 85 or costs ordered by a court or QCAT is written off under the *Financial Accountability Act 2009*, section 21.
- (2) The writing off does not extinguish the applicant's liability or prevent a later proceeding against the applicant to recover the amount of the liability.

### **92 Penalty amounts must be alternative to prosecution**

- (1) This section applies if a person becomes liable to pay a penalty amount, or part of a penalty amount, because of the person's act or omission.

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- (2) If a relevant proceeding is started against the person and the penalty amount has not been paid to the commissioner, the penalty amount is payable only if the commissioner withdraws the proceeding.
  - (3) If the penalty amount has been paid to the commissioner and a relevant proceeding is started against the person, the penalty amount must be refunded by the commissioner.
  - (4) Despite subsection (3), if the penalty amount is refunded under that subsection and the commissioner withdraws the relevant proceeding, the person again becomes liable to pay the penalty amount.
  - (5) In this section—  
*relevant proceeding*, in relation to an act or omission mentioned in subsection (1), means a proceeding for an offence against a provision of this Act relating to the act or omission.

### **93 Court may order repayment etc.**

- (1) This section applies if—
  - (a) a building boost grant is paid to a person; and
  - (b) a court convicts the person of an offence against section 35(4), 36(3), 37(2) or 81(1) in relation to the grant.
- (2) The court may order the person to repay the grant.
- (3) Subsection (4) applies if the court is satisfied the circumstances of the offence formed part of a scheme or arrangement to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant.
- (4) The court may order the person to pay the commissioner an amount that is twice the amount of the grant.
- (5) This section does not limit the court's powers under another law.

## Part 4                      Objections and reviews

### Division 1                Objections

#### 94            Making objection

- (1) This section applies if an applicant for a building boost grant is dissatisfied with a decision (the *original decision*) of the commissioner for which the applicant has been given, or is entitled to be given, a decision notice.
- (2) The applicant may give the commissioner an objection.
- (3) The objection must—
  - (a) be in writing; and
  - (b) state the grounds of objection in full detail; and
  - (c) be given to the commissioner within the following period (the *required period*)—
    - (i) if a decision notice has been given for the decision—60 days after the decision notice is given;
    - (ii) otherwise—90 days after the original decision is made.
- (4) Despite subsection (3)(c), if the commissioner is satisfied the applicant has a reasonable excuse for failing to give an objection within the required period, the commissioner may extend the time for giving the objection.

#### 95            Deciding objection

- (1) After considering the objection, the commissioner must decide (the *objection decision*) to—
  - (a) confirm the original decision; or
  - (b) set aside the original decision and substitute another decision.

- 
- (2) If the original decision was made by a delegate of the commissioner, the objection must not be decided by—
    - (a) the delegate; or
    - (b) a person in a less senior office than the delegate.
  - (3) The commissioner must give the applicant notice of the decision and the reasons for the decision.
  - (4) The notice must comply with the QCAT Act, section 157(2).

## **Division 2                    Review of objection decisions**

### **96            Right of review by QCAT**

An applicant who is dissatisfied with an objection decision may apply, within 60 days after receiving notice of the decision, and as otherwise provided under the QCAT Act, to QCAT for a review of the decision.

### **97            QCAT to decide review on evidence before the commissioner**

- (1) This section applies to a proceeding for a review by QCAT of an objection decision.
- (2) QCAT must—
  - (a) hear and decide the review of the objection decision by way of a reconsideration of the evidence before the commissioner when the decision was made, unless QCAT considers it necessary in the interests of justice to allow new evidence; and
  - (b) decide the review of the decision under the same law that applied to the making of the relevant original decision.
- (3) The grounds on which the application for review is made are limited to the grounds of the relevant objection unless QCAT otherwise orders.

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- (4) If QCAT decides, under the QCAT Act, section 139, that the proceeding should be reopened, the issues in the proceeding that are reheard must be—
- (a) heard and decided by way of a reconsideration of the evidence given in the proceeding for the review of the objection decision; and
  - (b) decided in accordance with the same law that applied to the making of the relevant original decision.

- (5) In this section—

*new evidence* means evidence that was not before the commissioner when the objection decision was made.

*relevant objection* means the objection to which the objection decision relates.

*relevant original decision* means the original decision that was the subject of the relevant objection.

## **98 Representation of parties before QCAT**

- (1) This section applies to a party in a proceeding before QCAT relating to an application under section 96.
- (2) The party may be represented by a lawyer.

# **Part 5 Miscellaneous provisions**

## **Division 1 Legal proceedings**

### **99 Statements in complaint**

In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

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## **100 Evidentiary certificates**

A certificate purporting to be signed by the commissioner stating any of the following matters is evidence of the matter—

- (a) on a stated day—
  - (i) a stated person was liable to pay, or paid, a stated amount; or
  - (ii) a stated person made, gave or signed a stated document; or
  - (iii) a stated document was given to a stated person in a stated way; or
  - (iv) the commissioner had not received a stated document or information;
- (b) a stated document is a copy of, or part of, another document.

## **101 Summary proceedings for offences**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for an offence must start within 5 years after the commission of the offence.

## **Division 2 Other provisions**

### **102 Delegations**

The commissioner may delegate the commissioner's powers under this Act to an appropriately qualified officer or employee of the department.

### **103 Protection from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

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- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the commissioner; or
  - (b) an authorised officer; or
  - (c) an officer or employee of the department to whom the commissioner has, under section 102, delegated powers.

#### **104 Offence to disclose confidential information**

- (1) This section applies to a person who—
  - (a) is or has been engaged in the administration of this Act, including an employee of an agent of the commissioner; or
  - (b) has obtained access to confidential information, whether directly or indirectly, from a person mentioned in paragraph (a).
- (2) The person must not disclose confidential information acquired by the person to anyone else other than under subsection (3) or (5).

Maximum penalty—100 penalty units.

- (3) The person may disclose confidential information—
  - (a) with the written consent of the person to whom the information relates or someone else authorised by the person; or
  - (b) if the disclosure is authorised under an Act or another law; or
  - (c) in connection with the administration or enforcement of this Act or a revenue law; or
  - (d) for a legal proceeding under this Act.
- (4) Subsection (5) applies if the commissioner becomes aware, from information obtained or held by the commissioner in the

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course of administering this Act, of a particular offence or suspected offence, whether against this Act or another law.

- (5) The commissioner may disclose confidential information about the offence or suspected offence to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding, including for starting an investigation or proceeding.
- (6) For a proceeding other than a legal proceeding under this Act, the person can not be compelled to disclose to a court or QCAT or to a party—
  - (a) confidential information; or
  - (b) whether or not the person has received particular confidential information; or
  - (c) the identity of the source of particular confidential information.
- (7) If, under subsection (3)(c), confidential information is disclosed to another person in connection with the administration or enforcement of a law, the person must not disclose the information to anyone else other than in connection with that purpose.

Maximum penalty—100 penalty units.

- (8) In this section—

*confidential information* means information, held by the commissioner, relating to a particular application for a building boost grant, whether the information was obtained before, on or after assent.

*Example—*

information given by an applicant under section 27

## 105 Use of information obtained under revenue laws

The commissioner may use information obtained in the administration or enforcement of a revenue law for the administration or enforcement of this Act.

## 106 Valuation or evidence of value of property

- (1) This section applies to the commissioner for deciding whether a transaction relating to a property is an eligible transaction for a building boost grant.
- (2) The commissioner may—
  - (a) by notice given to the applicant, require the applicant to give the commissioner—
    - (i) a valuation of the property prepared by a registered valuer; or
    - (ii) other evidence of the value of the property the commissioner considers appropriate; or
  - (b) have the property valued; or
  - (c) rely on a valuation (an *existing valuation*) of the property prepared by a registered valuer or other appropriately qualified person.
- (3) If the applicant gives the commissioner a valuation or evidence under subsection (2)(a) with which the commissioner is not satisfied, the commissioner may—
  - (a) have the property valued; or
  - (b) rely on an existing valuation of the property.
- (4) The commissioner may recover from the applicant the cost of obtaining a valuation under this section.
- (5) In this section—

*appropriately qualified person*, for giving evidence of the value of a property, means a person whom the commissioner is satisfied is properly qualified to give evidence of the value of the property.

*property* means—

  - (a) a home; or
  - (b) land; or
  - (c) a relevant interest in land.

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*registered valuer* means a valuer registered under the *Valuers Registration Act 1992*.

**107 Approved forms**

The commissioner may approve forms for use under this Act.

**108 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## **Part 6 Transitional provisions for Act No. 36 of 2011**

### **Division 1 Preliminary**

**109 Definition for pt 6**

In this part—

*retrospectively applied provisions* means the following—

- (a) part 1, divisions 2 to 4, other than section 9(1)(h) and (4);
- (b) part 2, other than sections 18(e)(vii), 29, 32(2)(c)(iii) and 38(1)(a) and (b)(i) and (iii);
- (c) sections 94, 95(1) to (3) and 106.



- 
- (b) the applicant for the grant has—
    - (i) contravened section 36(2); and
    - (ii) not repaid the grant to the commissioner.
  - (2) Despite section 36, the applicant—
    - (a) is not liable for the offence against section 36(3); and
    - (b) is taken to have never been liable for the offence.
  - (3) The applicant is required within 28 days after assent to—
    - (a) give the commissioner notice of the contravention; and
    - (b) repay the amount of the grant.
  - (4) The applicant must not contravene the requirement under subsection (3) unless the applicant has a reasonable excuse.  
Maximum penalty—40 penalty units.
  - (5) If 2 or more applicants have jointly applied for the grant, each applicant is individually liable to comply with subsection (3), but compliance by any 1 or more of them must be regarded as compliance by both or all.

## **112 Liability to repay for contravention of repayment requirement**

- (1) This section applies if, before assent—
  - (a) the commissioner imposed a condition on a building boost grant stating a repayment requirement; and
  - (b) the applicant has—
    - (i) contravened the repayment requirement; and
    - (ii) not repaid the grant to the commissioner.
- (2) Despite section 37, the applicant—
  - (a) is not liable for the offence against section 37(2); and
  - (b) is taken to have never been liable for the offence.
- (3) The applicant is required within 28 days after assent to—

[s 113]

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- (a) give the commissioner notice of the contravention; and
  - (b) repay the amount of the grant.
- (4) The applicant must not contravene the requirement under subsection (3) unless the applicant has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (5) If 2 or more applicants have jointly applied for the grant, each applicant is individually liable to comply with subsection (3), but compliance by any 1 or more of them must be regarded as compliance by both or all.

## **Division 3                      False or misleading information**

### **113      Requirement to correct false or misleading information**

- (1) This section applies if, before assent—
- (a) in relation to the administration or purported administration of the retrospectively applied provisions, a person gave the commissioner information, or a document containing information, that the person knew was false or misleading in a material particular; and
  - (b) if the person gave a document—the person did not, when giving the document—
    - (i) tell the commissioner, to the best of the person's ability, how the information was false or misleading; or
    - (ii) if the person had, or was reasonably able to get, the correct information—give the commissioner the correct information.
- (2) The person is required within 28 days after assent to give the commissioner—
- (a) a written statement about how the information was false or misleading; or

- (b) the correct information.
- (3) The person must not contravene the requirement under subsection (2) unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

#### **114 Evidential immunity for individuals correcting false or misleading information**

- (1) Subsection (2) applies if an individual gives the commissioner a statement or information under section 113(2).
- (2) Evidence of the statement or information, and other evidence directly or indirectly derived from the statement or information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual in the proceeding.

### **Division 4                      Repayment of grants**

#### **115 Repayment notice**

- (1) This section applies if a person has not repaid an amount of a building boost grant in contravention of section 110(3), 111(3) or 112(3).
- (2) This section also applies if—
  - (a) before the assent—
    - (i) a person gave the commissioner information of a type, or in a way, mentioned in section 113(1); and
    - (ii) a building boost grant was wrongly paid to the person because of the information; and
  - (b) the person has not repaid the amount of the grant to the commissioner within 28 days after assent.
- (3) The commissioner may give the person a repayment notice for the amount of the grant.

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- (4) The repayment notice must include or be accompanied by a decision notice for the decision to issue the repayment notice.

## **Division 5                    Imposition of penalties**

### **116    Commissioner may impose penalty**

- (1) This section applies if—
- (a) a person contravenes section 110(3), 111(3), 112(3) or 113(2) in relation to a building boost grant; and
  - (b) the commissioner gives the person a repayment notice for the amount of the grant; and
  - (c) the person does not pay the amount within the period stated in the notice.
- (2) The commissioner may give the person a penalty notice for the contravention.

## **Division 6                    Objection and review**

### **117    Extension of time for objection for particular original decisions made before assent**

- (1) This section applies if—
- (a) before assent, the commissioner—
    - (i) made an original decision about an application for, or payment of, a building boost grant; and
    - (ii) did not give the applicant a decision notice for the decision; and
  - (b) the applicant for the grant is dissatisfied with the decision.
- (2) The applicant may give the commissioner an objection to the decision within 90 days after assent.

- 
- (3) Subject to subsection (2), part 4, division 1 applies to making and deciding the objection.

### **118 Review of particular objection decisions**

- (1) This section applies if, before assent, the commissioner made an objection decision about an application for, or payment of, a building boost grant, that—
- (a) confirmed an original decision; or
  - (b) set aside an original decision and substituted another decision, other than in a way requested by the applicant for the grant.
- (2) The commissioner must, within 28 days after assent, give the applicant notice of the objection decision complying with the QCAT Act, section 157(2).
- (3) Part 4, division 2 applies to reviewing the objection decision.

## **Division 7 Other matters**

### **119 Transitional regulation-making power**

- (1) A transitional regulation may provide about a matter that—
- (a) it is necessary to provide for, to allow or facilitate the doing of anything to properly administer this Act in relation to matters arising from the application, or purported application, of the retrospectively applied provisions to events that happened before assent; and
  - (b) this Act does not provide for or sufficiently provide for.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than assent.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 1 year after assent.

## **Part 7**

# **Transitional provision for Building Boost Grant Amendment Act 2012**

### **120 Application of s 14 to particular home purchase contracts**

To remove any doubt, it is declared that section 14(f)(i) as in force on and from 1 February 2012 applies, and is taken to always have applied, to a home purchase contract made on or after 1 August 2011 and before 1 May 2012.

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# Schedule Dictionary

## section 4

***administration agreement*** see section 11(3)(a).

***agent***, of the commissioner for an application for a building boost grant, means a financial institution or other person with whom the commissioner has made an administration agreement.

***applicant*** means a person who is applying, or has applied, for a building boost grant.

***appropriately qualified***, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the public service

***approved form*** means a form approved under section 107.

***assent*** means the date of assent of this Act.

***Australian citizen*** see the *Australian Citizenship Act 2007* (Cwlth), section 4.

***Australian Securities Exchange*** means ASX Limited (ACN 008 624 691).

***authorised investigation*** means an investigation to decide—

- (a) whether an application for a building boost grant has been properly made; or
- (b) whether an objection to a decision made under this Act should be upheld; or
- (c) whether an applicant to whom, or for whose benefit, a building boost grant has been paid under this Act was eligible for the grant; or
- (d) whether a condition on which a building boost has been paid under this Act has been complied with; or

- (e) another matter reasonably related to the administration or enforcement of this Act.

**authorised officer** means a person who holds office under part 3, division 2.

**building** includes part of a building.

**building boost grant** see section 5.

**built**, in relation to a manufactured home, means positioned on a site.

**commissioner** means the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*.

**Commonwealth First Home Saver Account contribution** means the Government FHSA contribution under the *First Home Saver Accounts Act 2008* (Cwlth).

**completed** means—

- (a) for a contract for the purchase of a home—
- (i) when 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 built—the purchaser's title is registered; or
- (b) for a contract to have a home built or an owner-builder arrangement—
- (i) when the building is ready for occupation as a home; and
  - (ii) if there are any other requirements for completion of the contract or arrangement prescribed under a regulation—the requirements are complied with.

**comprehensive home building contract** means a contract under which a builder undertakes to build a home from the start of building work to the point where the home is ready for occupation and, if for any reason, the work to be carried out under the contract is not completed, includes any further contract under which the work is to be completed.

**consideration**, for an eligible transaction, means—

- (a) for an eligible home purchase contract—the consideration for the purchase to which the contract relates; or
- (b) for an eligible home building contract—the total consideration payable for the building work to which the contract relates; or
- (c) for an eligible owner-builder arrangement—the actual costs to the owner-builder of carrying out the work relating to the arrangement, excluding any allowance for the owner-builder’s own labour.

**contract** means a written contract.

**corporation** see the Corporations Act, section 57A.

**court** means a Magistrates court.

**decision notice**, for a decision of the commissioner, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the applicant may, within 60 days after receiving the notice, object to the decision; and
- (d) how to object.

**display home** means a building that—

- (a) is fixed to land; and
- (b) is designed, or approved by a local government, for human habitation by a single family unit; and
- (c) is suitable for use, and lawfully able to be used, as a place of residence; and
- (d) is available for inspection to encourage persons to enter contracts to build similar buildings.

**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

***eligible home building contract*** see section 16.

***eligible home purchase contract*** see section 14.

***eligible owner-builder arrangement*** see section 17.

***eligible transaction*** see section 6.

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

***first home owner grant*** means the grant payable under the First Home Owner Grant Act, part 3.

***garnishee*** see section 87(1)(b).

***garnishee amount*** see section 87(3).

***garnishee notice*** see section 87(3).

***general power*** see section 63(1).

***help requirement*** see section 64(1).

***home*** see section 7.

***home building contract*** means a contract entered into by a person to have a home built by another person.

***home purchase contract*** means a contract entered into by a person to purchase a home and a relevant interest in the land on which the home is built, or is expected to be built, on or before the completion of the contract.

***identity card***, for a provision about authorised officers, means an identity card issued under section 46(1).

***information requirement*** see section 76(3).

***manufactured home*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

***National Rental Affordability Scheme*** means the scheme prescribed under a regulation for the *National Rental Affordability Scheme Act 2008* (Cwlth), section 5.

***National Rental Affordability Scheme incentive*** means an incentive under the *National Rental Affordability Scheme Act 2008* (Cwlth) for the National Rental Affordability Scheme.

***new home*** see section 8.

**notice** means a written notice.

**objection** means an objection given under section 94.

**objection decision** see section 95(1).

**occupancy requirement** means the requirement under section 25.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**original decision** see section 94(1).

**owner** means—

- (a) for a home—a person who has a relevant interest in the land on which the home is built; or
- (b) for land—a person who has a relevant interest in the land; or
- (c) for a thing that has been seized under part 3, division 5, includes a person who would be entitled to possession of the thing had it not been seized.

**owner-builder** means a person who has a relevant interest in land and builds a home, or has a home built, on the land under an owner-builder arrangement.

**owner-builder arrangement** means an arrangement under which a person who has a relevant interest in land builds a home on the land by—

- (a) carrying out the building work personally; or
- (b) arranging for the building work to be carried out by another person, other than by entering into a comprehensive building contract with the other person; or

- (c) a combination of carrying out the building work under paragraph (a) and arranging for the work to be carried out under paragraph (b).

**penalty amount** see section 84(2)(c).

**penalty notice** see section 84(2).

**permanent resident** means—

- (a) the holder of a permanent visa as defined by the *Migration Act 1958* (Cwlth), section 30(1); or
- (b) a New Zealand citizen who is the holder of a special category visa as defined by the *Migration Act 1958* (Cwlth), section 32.

**person in control**, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

**premises** includes the following—

- (a) a building or structure of any kind;
- (b) the land on which a building or structure is situated.
- (c) a caravan or vehicle.

**prescribed building period**, for part 2, division 2, subdivision 3, see section 15.

**properly made**, for an application for a building boost grant, means complying with the requirements under part 2, division 4.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***related person*** see the *Duties Act 2001*, section 61.

***relevant interest*** see section 9.

***repayment requirement*** see section 37(1).

***repayment notice*** see section 38(2).

***residential land*** means—

- (a) for land that is used mainly for primary production and for residential purposes—the part of the land on which a home is, or is to be, built and the curtilage attributable to the home if the curtilage is used for residential purposes; or
- (b) otherwise—the land on which a home is, or is to be, built.

***revenue law*** means—

- (a) a law of the Commonwealth or a State about the assessment or imposition of a tax, fee, duty or other impost; or
- (b) the First Home Owner Grant Act; or
- (c) the *Taxation Administration Act 2001*.

***site*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 13.

***structure*** includes part of a structure.

***substantially Australian owned*** see section 19.

***transaction*** means—

- (a) a home purchase contract; or
- (b) a home building contract; or
- (c) an owner-builder arrangement.

***transaction commencement day*** see section 13.

***transfer*** includes sell.

***trust interest***—

- 1 Generally, *trust interest* means an entity's interest, whether vested or contingent, as a beneficiary of a trust.
- 2 For a trust that is a discretionary trust, each entity that may benefit under the trust has a trust interest and each trust interest is of equal value.
- 3 Also, for a trust that is a superannuation fund, a member of the fund has a trust interest in the fund.

***ultimately owned*** see section 20.

***unencumbered value*** see section 10.

***unit***, in a unit trust, means a right or interest (however described) of a beneficiary under the trust, and includes an interest in a unit in the trust.

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

***wrongly paid*** includes paid in error.

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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 17 February 2012. Future amendments of the Building Boost Grant Act 2011 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	1 August 2011	certain provs commenced
1	2011 Act No. 36	4 November 2011	
1A	2012 Act No. 4	1 February 2012	
1B	2012 Act No. 4	17 February 2012	

### 5 List of legislation

#### Building Boost Grant Act 2011 No. 36

date of assent 4 November 2011

ss 1–2 commenced on date of assent

pt 1 divs 2–4 (other than s 9(1)(h), (4)), pt 2 (other than ss 18(e)(vii), 29, 32(2)(c)(iii), 38(1)(a), (b)(i), (iii)), ss 94, 95(1)–(3), 102–103, 105–107, sch 2 commenced 1 August 2011 (see s 2(1))

pt 7 commenced 4 November 2011 immediately after the commencement of s 2 (see s 2(2))

remaining provisions commenced on date of assent

amending legislation—

**Building Boost Grant Act 2011 No. 36 ss 1, 2(2), pt 7**

date of assent 4 November 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 4 November 2011 immediately after the commencement of s 2 (see s 2(2))

**Building Boost Grant Amendment Act 2012 No. 4**

date of assent 17 February 2012

ss 1–2 commenced on date of assent

ss 4(1)–(3), 5–7 commenced 1 February 2012 (see s 2)

remaining provisions commenced on date of assent

## 6 List of annotations

**Long title** amd 2011 No. 36 s 121

**Definitions**

**s 4** amd 2011 No. 36 s 122

**What is an “eligible home purchase contract”**

**s 14** amd 2012 No. 4 s 4(1)–(3) (retro), (4)

**What is an “eligible home building contract”**

**s 16** amd 2012 No. 4 s 5 (retro)

**What is an “eligible owner-builder arrangement”**

**s 17** amd 2012 No. 4 s 6 (retro)

**Prospective applicant must give notice of intention to apply for grant**

**s 29** amd 2012 No. 4 s 7 (retro)

**PART 6—TRANSITIONAL PROVISIONS FOR ACT No. 36 of 2011**

**pt hdg** sub 2012 No. 4 s 8

**Transitional regulation-making power**

**s 119** exp November 2012 (see s 119(4))

**PART 7—TRANSITIONAL PROVISION FOR BUILDING BOOST GRANT AMENDMENT ACT 2012**

**pt hdg** prev pt 7 hdg om R1 (see RA ss 7(1)(k) and 37)

pres pt 7 hdg ins 2012 No. 4 s 9

**Application of s 14 to particular home purchase contracts**

**s 120** prev s 120 om R1 (see RA ss 7(1)(k) and 37)  
pres s 120 ins 2012 No. 4 s 9

**Amendment of long title**

**s 121** om R1 (see RA ss 7(1)(k) and 37)

**Amendment of s 4 (Definitions)**

**s 122** om R1 (see RA ss 7(1)(k) and 37)

**Amendment of sch 2 (Dictionary)**

**s 123** om R1 (see RA ss 7(1)(k) and 37)

**PART 8—AMENDMENT OF STATE DEVELOPMENT AND PUBLIC WORKS  
ORGANISATION ACT 1971**

**pt 8 (ss 124–135)** om R1 (see RA s 7(1)(k) and 40)

**SCHEDULE—DICTIONARY**

**sch hdg** (prev sch 2) amd 2011 No. 36 s 123

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS OF STATE  
DEVELOPMENT AND PUBLIC WORKS ORGANISATION ACT 1971**

**sch 1** om R1 (see RA s 40)

## **7 Information about retrospectivity**

Retrospective amendments that have been consolidated are noted in the list of legislation and list of annotations. Any retrospective amendment that has not been consolidated is noted in an editor's note to the text.