

Queensland



# **FIRST HOME OWNER GRANT ACT 2000**

**Reprinted as in force on 3 July 2000  
(includes amendments up to Act No. 20 of 2000)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 3 July 3000. 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.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit the enacting words (s 42A)
- correct minor errors (s 44).

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including a table of corrected minor errors.**

# Queensland



## FIRST HOME OWNER GRANT ACT 2000

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# **FIRST HOME OWNER GRANT ACT 2000**

[as amended by all amendments that commenced on or before 3 July 2000]

**An Act to encourage and help home ownership, and to offset the effect of the GST on home ownership, by establishing a scheme for the payment of grants to first home owners**

## **PART 1—PRELIMINARY**

### **Short title**

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

### **Commencement**

2. This Act commences on 1 July 2000.

## **PART 2—INTERPRETATION**

### *Division 1—General*

### **Definitions**

3. The dictionary in schedule 1 defines particular words used in this Act.

***Division 2—Basic concepts*****Meaning of “eligibility criteria”**

**4.** The “**eligibility criteria**” are the criteria, under part 3, division 2, for deciding whether an applicant for a first home owner grant is eligible for the grant.

**Meaning of “eligible transaction”**

**5.(1)** An “**eligible transaction**” is—

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

**(2)** For subsection (1)(a), a contract is a contract for the purchase of a home if the contract is a contract for the acquisition of a relevant interest in land—

- (a) on which a home is built; or
- (b) on which a home is to be built, before completion of the contract, by or for the vendor and at the expense of the vendor.

**(3)** If, on or after 1 July 2000, a person purchases a building and intends to use it as a place of residence on land in which the person has a relevant interest but on which it is not situated at the time of purchase, the contract for the purchase of the building is taken to be a contract to have a home built.

**(4)** However, a contract is not an eligible transaction if the commissioner is satisfied it forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant.

**(5)** Unless satisfied to the contrary, the commissioner must presume the existence of a scheme mentioned in subsection (4) if—

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- (a) for a contract to purchase a home—the purchaser had an option to purchase the home granted before 1 July 2000 or the vendor had an option to require the purchaser to purchase the home granted before that date; or
- (b) for a comprehensive home building contract—either party had a right or option granted before 1 July 2000 to require the other to enter into the contract.

**Meaning of “home”**

**6.** A “**home**” is a building, fixed to land, that—

- (a) may lawfully be used as a place of residence; and
- (b) is a suitable building for use as a place of residence.

**Meaning of “home owner” or “owner” of a home**

**7.** A person is a “**home owner**” or “**owner**” of a home if the person has a relevant interest in the land on which the home is built.

**Meaning of “relevant interest”**

**8.(1)** A “**relevant interest**” in land<sup>1</sup> is—

- (a) an estate in fee simple in the land; or
- (b) a life estate in the land; or
- (c) a perpetual lease of the land granted by the Commonwealth or the State; or
- (d) a leasehold interest in the land granted by the Commonwealth or the State that may be converted into an estate in fee simple under the terms of the lease or the Act under which the lease is granted; or
- (e) a term lease for pastoral purposes granted under the *Land Act 1994*; or

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<sup>1</sup> Also, see definition “residential property” and section 14 (Criterion 4—Applicant or applicant’s spouse must not have had relevant interest in residential property).

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- (f) 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
- (g) a licence or right of occupancy granted by the Commonwealth or the State, or any Commonwealth or State instrumentality or authority, that gives, in the commissioner's opinion, the licensee or the holder of the right reasonable security of tenure; or
- (h) an interest in a company's shares if the commissioner is satisfied that—
  - (i) the interest entitles the holder of the interest to exclusive occupation of a specified home owned by the company; and
  - (ii) the value of the shares is not less than the value of the company's interest in the home; or
- (i) another interest declared by regulation to be a relevant interest.

**(2)** However—

- (a) 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; and
- (b) an interest is not a relevant interest in the hands of a person who holds it subject to a trust.

**(3)** A regulation under subsection (1)(i) 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.

**(4)** If a person holds an interest in land on trust as guardian for a person under a legal disability and the interest would be a relevant interest if it were not for subsection (2)(b)—

- (a) the person under the legal disability is taken to be the person who holds a relevant interest in the land; and
- (b) the guardian is taken not to hold the interest.

### **Meaning of “spouse”**

**9.(1)** Subject to subsections (4) and (5), a “**spouse**” is a person who is—

- (a) married; or
- (b) a de facto spouse.

**(2)** For subsection (1)(b), a de facto spouse is either 1 of 2 persons, whether of the same or the opposite sex, who are living or have lived together as a couple for at least 2 years.

**(3)** For subsection (2)—

- (a) 2 persons are a couple if they live together on a genuine domestic basis in a relationship based on intimacy, trust and personal commitment to each other; and
- (b) 2 persons are not a couple only because they are cotenants.

**(4)** Subsection (5) applies if the commissioner is satisfied, when deciding an application for a first home owner grant, an applicant for the grant—

- (a) is married but is living apart from the person to whom the applicant is married; and
- (b) they have no intention of again living together as a couple.

**(5)** The person to whom the applicant is married must not be regarded as the applicant’s spouse.

## **PART 3—FIRST HOME OWNER GRANTS**

### *Division 1—Entitlement to grant*

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

**10.(1)** A first home owner grant is payable on an application under this Act if—

- (a) the applicant or, if there are 2 or more of them, each of the applicants complies with the eligibility criteria; and
- (b) the transaction for which the grant is sought—
  - (i) is an eligible transaction; and
  - (ii) has been completed.<sup>2</sup>

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

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

### *Division 2—Eligibility criteria—applicants*

#### **Criterion 1—Applicant to be a natural person**

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

#### **Criterion 2—Applicant to be Australian citizen or permanent resident**

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

**(2)** If an application is made by joint applicants and 1 of the applicants is

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<sup>2</sup> For authorisation of payment of the grant before the completion of the eligible transaction, see section 19(2).

an Australian citizen or a permanent resident, it is not necessary for the other or others to be Australian citizens or permanent residents.

**Criterion 3—Applicant or applicant’s spouse must not have received an earlier grant**

**13.(1)** An applicant is ineligible if—

- (a) the applicant or the applicant’s spouse has been a party to an earlier application under this Act or a corresponding law; and
- (b) a grant was paid on the application.

**(2)** However, an applicant is not ineligible if the grant was paid but later paid back under the conditions on which the grant was made.

**Criterion 4—Applicant or applicant’s spouse must not have had relevant interest in residential property**

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

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

**(2)** However, the applicant is not ineligible if—

- (a) the relevant interest is an interest as purchaser of an estate in fee simple in land under a contract mentioned in section 8(1)(f); and
- (b) the contract was terminated within 1 year after the contract was entered into; and
- (c) the applicant or applicant’s spouse did not acquire an estate in fee simple in the land.

**(3)** For subsection (1), in deciding whether an applicant held a relevant interest, under this Act or a corresponding law, in residential property at a particular time, any deferment of the applicant’s right of occupation, because the property was subject to a lease, must be disregarded.

**(4)** An applicant is ineligible if the applicant or the applicant’s spouse has, on or after 1 July 2000 and before the date on which the application is made,

held an interest in property (other than the property to which the application relates) used at any time on or after 1 July 2000 as the residence of the applicant or the applicant's spouse, being—

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

### **Criterion 5—Residence requirement**

**15.(1)** An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence within 1 year after completion of the eligible transaction or a longer period approved by the commissioner.

**(2)** The commissioner may exempt an applicant from the residence requirement if—

- (a) the applicant is 1 of 2 or more joint applicants for a first home owner grant; and
- (b) at least 1 of the applicants complies with the residence requirement; and
- (c) the commissioner is satisfied there are good reasons to exempt the applicant from the residence requirement.

### *Division 3—Application for grant*

#### **Application for grant**

**16.(1)** An application for a first home owner 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 only be made within a period (the “**application period**”)—

- (a) starting on the commencement date 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.

### **All interested persons to join in application**

**17.(1)** All interested persons must be applicants.

(2) For subsection (1), an interested person is a person who is, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home, other than a person prescribed under a regulation.

### **Application on behalf of person under legal disability**

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

(2) For deciding eligibility, the person under the legal disability must be regarded as the applicant.

## ***Division 4—Decision on application***

### **Commissioner to decide applications**

**19.(1)** If the commissioner is satisfied a first home owner grant is payable on an application, the commissioner must authorise the payment of the grant.

(2) The commissioner may authorise the payment of the grant before the completion of the eligible transaction if the commissioner is satisfied it is appropriate in particular circumstances.

**Amount of grant**

**20.** The amount of a first home owner grant is the lesser of the following—

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

**Payment of grant**

**21.(1)** A first home owner grant must be paid by electronic funds transfer, cheque or in any other way the commissioner considers appropriate.

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

- (a) the applicant; or
- (b) someone else to whom the applicant directs in writing the grant be paid.

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

**Payment in anticipation of compliance with residence requirement**

**22.(1)** The commissioner may authorise payment of a first home owner grant in anticipation of compliance with the residence requirement if the commissioner is satisfied each applicant intends to occupy the home as his or her principal place of residence within 1 year after completion of the eligible transaction or a longer period allowed by the commissioner.

**(2)** If a first home owner grant is paid in anticipation of compliance with the residence requirement, the payment is made on condition that, if the residence requirement is not complied with, the applicants must within 14 days after the relevant date—

- (a) give written notice of that fact to the commissioner; and
- (b) repay the amount of the grant.

**(3)** For subsection (2), the relevant date is the earlier of the following—

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- (a) the end of the period allowed for compliance with the residence requirement;
- (b) the date on which it first becomes apparent that the residence requirement will not be complied with during the period allowed for compliance.

(4) For a joint application, each applicant is individually liable to comply with the requirements under subsection (2)(a) and (b) but compliance by any 1 or more of them must be regarded as compliance by both or all.

(5) A person must not, without reasonable excuse, fail to comply with a condition mentioned in subsection (2).

Maximum penalty—40 penalty units.

**Conditions generally**

**23.(1)** The commissioner may authorise the payment of a first home owner grant on the reasonable conditions the commissioner considers appropriate.

(2) A condition imposed by the commissioner, under this section or another provision of this Act, may require a person on whose application the first home owner grant is paid—

- (a) to give notice of non-compliance with the condition within a period stated in the condition; and
- (b) to repay the grant within a period stated in the condition.

(3) For a joint application, each applicant is individually liable to comply with a requirement under subsection (2) but compliance by any 1 or more of them must be regarded as compliance by both or all.

(4) A person must not, without reasonable excuse, fail to comply with a condition imposed by the commissioner, under this section or another provision of this Act.

Maximum penalty—40 penalty units.

**Death of applicant**

**24.(1)** An application for a first home owner grant does not lapse because

an applicant dies before the application is decided.

(2) If an applicant dies before the application is decided, the following provisions apply—

- (a) if the deceased was 1 of 2 or more applicants and 1 or more applicants survive—the application must be dealt with as if the surviving applicants were the sole applicants;
- (b) if paragraph (a) does not apply—a first home owner grant, if payable on the application, must be paid to the deceased's personal representative.

(3) If—

- (a) a deceased applicant for a first home owner grant had not, by the date of death, occupied the home to which the application relates as the applicant's principal place of residence; but
- (b) the commissioner is satisfied he or she intended to do so within 1 year after completion of the eligible transaction or a longer period allowed by the commissioner;

the residence requirement is taken to be satisfied.

### **Notice of decision**

**25.(1)** If the commissioner decides an application, or decides to vary or reverse an earlier decision on an application, the commissioner must give the applicant written notice of the decision.

(2) If the decision authorises the payment of a first home owner grant without conditions, payment of the grant is sufficient notice of the decision.

(3) If the decision is to refuse an application, or to vary or reverse an earlier decision on an application, the notice must state the following—

- (a) the reasons for the decision;
- (b) the person may, within 60 days after receiving the notice, object to the decision;
- (c) how to object.<sup>3</sup>

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<sup>3</sup> See part 5 (Objections and appeals).

## **PART 4—AUTHORISED OFFICERS, INVESTIGATIONS AND ENFORCEMENT**

### *Division 1—Authorised officers*

#### **Appointment**

**26.(1)** The commissioner may appoint as an authorised officer—

- (a) a public service employee; or
- (b) an officer or employee of the authority responsible for the administration of a corresponding law.

**(2)** The commissioner may appoint a person as an authorised officer only if the commissioner is satisfied the person has the necessary expertise or experience to be an authorised officer.

#### **Limitation of authorised officer's powers**

**27.(1)** For this Act, an authorised officer has the powers given under this Act.

**(2)** An authorised officer is subject to the directions of the commissioner in exercising the powers.

**(3)** An authorised officer's powers may be limited—

- (a) under a regulation; or
- (b) by notice given by the commissioner to the authorised officer.

#### **Authorised officer's appointment conditions**

**28.(1)** An authorised officer holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised officer—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and

- (b) if the conditions of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment conditions; and
- (c) may resign by signed notice given to the commissioner.

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

**29.(1)** The commissioner must give each authorised officer an identity card.

**(2)** The identity card must—

- (a) contain a recent photograph of the authorised officer; and
- (b) be signed by the authorised officer; and
- (c) identify the person as an authorised officer; and
- (d) state an expiry date.

**(3)** A person who ceases to be an authorised officer must return the identity card to the commissioner as soon as practicable, but within 21 days, after the person ceases to be an authorised officer, unless the person has a reasonable excuse for not returning it in the 21 days.

Maximum penalty—40 penalty units.

**(4)** This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

### **Production or display of authorised officer's identity card**

**30.(1)** An authorised officer may exercise a power in relation to a person only if the authorised officer—

- (a) first produces the authorised officer's identity card for the person's inspection; or
- (b) has the authorised officer's identity card displayed so it is clearly visible to the person.

**(2)** However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card as soon as it is practicable.

***Division 2—Investigations******Subdivision 1—Cross-border investigations*****Commissioner may carry out investigations under corresponding laws**

**31.** If asked by an authority responsible for administering a corresponding law, the commissioner may carry out an authorised investigation for the corresponding law.

***Subdivision 2—General powers on investigations*****Powers on investigation**

**32.(1)** For carrying out an authorised investigation, the commissioner may, by written notice, require a person—

- (a) to give the commissioner written information stated in the notice; or
- (b) to attend at a stated time and place before the commissioner, or a stated authorised officer, to answer questions relevant to the investigation; or
- (c) to 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 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 a person 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 person.

### *Subdivision 3—Entry of places*

#### **Authorised officer's power to enter places**

**33.(1)** An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is a place where a business is conducted and the entry is made when—
  - (i) the place is open for the conduct of business; or
  - (ii) is otherwise open for entry; or
- (d) the entry is authorised by warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, 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 the occupier.

(3) For subsection (1)(c), a place of business does not include a part of the place where the person resides.

#### **Entry with consent**

**34.(1)** This section 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 33(1)(a).

(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) A court must find the occupier did not consent to an authorised officer entering the place under this subdivision if—

- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry; and
- (b) an acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **Application for warrant**

**35.(1)** An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) 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 application to be given by statutory declaration.

### **Issue of warrant**

**36.(1)** The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or within the next 7 days, may be at the place.

**(2)** The warrant must state the following—

- (a) the authorised officer may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the authorised officer’s powers under this division;
- (b) the offence for which the warrant is sought;
- (c) the hours of the day or night when the place may be entered;
- (d) the date, within 14 days after the warrant’s issue, the warrant ends;
- (e) the purpose for which the warrant is issued.

### **Special warrants**

**37.(1)** An authorised officer may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised officer’s remote location.

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(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

(a) the magistrate must tell the authorised officer—

(i) what the terms of the warrant are; and

(ii) the date and time the warrant is issued; and

(b) the authorised officer must complete a form of warrant (a **“warrant form”**) and write on it—

(i) the magistrate’s name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the authorised officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—

(a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and

- (b) the warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the warrant.

### **Warrants—procedure before entry**

**38.(1)** This section applies if an authorised officer named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

**(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, and anyone else helping the authorised officer, to a person present at the place who is an occupier of the place by producing the authorised officer's identity card;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 37(6), a copy of the facsimile warrant or warrant form;
- (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 immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### ***Subdivision 4—Powers of authorised officers on entry to places***

#### **General powers for places**

**39.(1)** An authorised officer who enters a place under subdivision 3 may exercise any of the following powers—

- (a) search any part of the place;

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- (b) inspect, examine, photograph or film a document or anything in the place;
- (c) take extracts from, and make copies of, any document in the place;
- (d) take into the place any equipment and materials the authorised officer reasonably requires for exercising a power under this division;
- (e) require a person in the place to—
  - (i) give the authorised officer reasonable help to exercise the powers mentioned in paragraphs (a) to (d); or
  - (ii) answer questions relevant to the investigation.

(2) When making a requirement mentioned in subsection (1)(e), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person required to give reasonable help under subsection (1)(e)(i) or answer a question under subsection (1)(e)(ii) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) If a person is required under subsection (1)(e)(i) to give reasonable help by answering a question or producing a document, or under subsection (1)(e)(ii) to answer a question, it is a reasonable excuse if complying with the requirement might tend to incriminate the person.

*Subdivision 5—General enforcement matters***Notice of damage**

**40.(1)** This section applies if—

- (a) an authorised officer damages property when exercising or purporting to exercise a power under this division; or
- (b) a person (the “**other person**”) acting under the direction of an authorised officer damages property.

(2) The authorised officer must promptly give written notice of

particulars of the damage to the person who appears to the authorised officer to be the owner of the property.

(3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the control of the authorised officer, contractor or other person, the authorised officer may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised officer reasonably believes is trivial.

(6) In subsection (2)—

“owner”, of property, includes the person in possession or control of it.

### **Compensation**

41.(1) A person may claim from the commissioner the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this division.

(2) The cost may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount claimed; or
- (b) for an offence against this Act brought against the person claiming the amount.

(3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **False or misleading documents**

42.(1) A person must not give to the commissioner or an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—70 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) tells the commissioner or officer, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the commissioner or officer.

(3) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the document was, without specifying which, 'false or misleading'.

### **False or misleading statements**

**43.(1)** A person must not state anything to the commissioner or an authorised officer the person knows is false or misleading in a material particular.

Maximum penalty—70 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, 'false or misleading'.

### **Obstruction of authorised officers**

**44.(1)** A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If a person has obstructed 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 obstruct the authorised officer, unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person's conduct is an obstruction.

**Impersonation of authorised officer**

**45.** A person must not pretend to be an authorised officer.

Maximum penalty—40 penalty units.

**Access to particular records without fee**

**46.** 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 3—Repayments and penalties***Commissioner may require repayment and impose penalty**

**47.(1)** The commissioner may, by written notice, require an applicant or former applicant for a first home owner grant to repay an amount paid on the application if the amount was paid in error (the “**error amount**”).

**(2)** If the error amount was paid because of a contravention of section 42 or 43 in relation to the application for the grant, the commissioner may, by written notice, impose a penalty of not more than the error amount (a “**penalty amount**”).

**(3)** If an applicant or former applicant for a first home owner grant fails to make a repayment required under subsection (1) or the conditions of the grant, the commissioner may, by written notice impose a penalty of not more than the error amount (also a “**penalty amount**”).

**(4)** If the error amount was paid to a third party, the commissioner, may by written notice, require the third party to repay the amount to the commissioner.

**(5)** A notice under this section must state the following—

- (a) the reasons for the decision to require the payment;
- (b) the person may, within 60 days after receiving the notice, object to the decision;
- (c) how to object.

**Recovery of amount paid in error etc.**

**48.(1)** This section applies to the following amounts—

- (a) an amount an applicant or former applicant for a first home owner grant is required to repay under the conditions of the grant or under a requirement under this Act;
- (b) a penalty amount imposed on an applicant or former applicant for a first home owner grant under section 47(2) or (3);
- (c) an amount a third party is required, under section 47(4), to pay to commissioner.

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

**(3)** An amount to which this section applies is a debt payable to the commissioner and may be recovered in a court of competent jurisdiction.

**(4)** The commissioner may enter into an arrangement for payment of a liability outstanding under this section by instalments.

**(5)** The arrangement may include provision for the payment of interest.

**Registering charge over land**

**49.(1)** This section applies if an applicant or former applicant who is liable to pay an amount to which section 48 applies has an interest in the land on which the home, for which the first home owner grant was sought, is fixed.

**(2)** The liability is a charge on the applicant's interest in the land.

**(3)** 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) the amount stated in the certificate is owing in relation to the charge over the land; and
  - (ii) there is a charge over the land under this section.

(4) The commissioner must, as soon as practicable after payment of the amount, lodge with the registrar—

- (a) a request to release the charge in the appropriate form; and
- (b) a certificate stating that the amount owing in relation to the charge over the land has been paid.

(5) The registrar must register the release of the charge over the land.

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

**50.** If all or part of an applicant's liability under section 48, including the applicant's liability to pay court ordered costs, is written off under the *Financial Administration and Audit Act 1977*, section 106, 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.

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

**51.(1)** This section applies if a penalty amount, including a part of a penalty amount, becomes payable under section 47 by a person because of an act or omission of the person.

(2) If a proceeding is started against the person for an offence against a provision of this Act relating to the act or omission, 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, but a proceeding is started against the person for an offence against a provision of this Act arising out of the act or omission, the penalty amount must be refunded by the commissioner.

(4) Despite subsection (3), if the commissioner withdraws the proceeding for the offence, the person again becomes liable to pay the penalty amount.

***Division 4—Legal proceedings*****Statements in complaint**

**52.** 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.

**Evidentiary certificates**

**53.** 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 executed 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.

**Summary proceedings for offences**

**54.** A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

**When proceedings must start**

**55.** A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

## **PART 5—OBJECTIONS AND APPEALS**

### *Division 1—Objections*

#### **Lodging objection**

**56.(1)** An applicant or former applicant for a first home owner grant who is dissatisfied with the commissioner's decision on an application for a first home owner grant or, under section 47, to require payment of an amount, may lodge a written objection with the commissioner.

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

(3) The objection must be lodged within 60 days after the objector receives notice of the decision.

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

#### **Deciding objection**

**57.(1)** After considering the objection, the commissioner may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision.

(2) If the decision the subject of the objection was made by a delegate of the commissioner, the delegate must not decide the objection.

#### **Notice of decision**

**58.(1)** The commissioner must give written notice to the objector of the commissioner's decision on the objection.

- (2) The notice must state the following—
- (a) the reasons for the decision;

- (b) the objector may, within 60 days after receiving the notice, appeal against the decision;
- (c) how to appeal.

### *Division 2—Appeals*

#### **Right of appeal**

**59.** An objector who is dissatisfied with the commissioner's decision on the objection, may appeal against the decision.

#### **How to start appeal**

**60.(1)** The appeal is started by—

- (a) filing notice of appeal with the clerk of the court of the Magistrates Court nearest the place where the objection was lodged; and
- (b) giving a copy of the notice of appeal to the commissioner.

**(2)** The notice of appeal must be filed within 60 days after the appellant receives notice of the commissioner's decision on the objection.

**(3)** The court may at any time extend the time for filing the notice of appeal.

**(4)** The notice of appeal must state fully the grounds of the appeal and the facts relied on.

#### **Grounds of appeal**

**61.** The grounds of the appeal are limited to the grounds of objection unless the Magistrates Court otherwise orders.

#### **Hearing procedures**

**62.(1)** In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and

- (b) must comply with natural justice; and
  - (c) may hear the appeal in court or chambers.
- (2) An appeal is by way of rehearing.

### **Decision on appeal**

**63.(1)** On the appeal, the Magistrates Court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the commissioner with the directions the court considers appropriate.

(2) If the court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be the commissioner's decision.

### **Appeals to District Court**

**64.** An appeal lies to the District Court from a decision of the Magistrates Court, but only on a question of law.

## **PART 6—MISCELLANEOUS PROVISIONS**

### **Delegations**

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

(2) In addition, the commissioner may delegate the commissioner's powers under part 4 to the authority responsible for administering a corresponding law or an appropriately qualified officer or employee of the authority.

**Administration agreements**

**66.(1)** The commissioner may, on behalf of the State, enter into an agreement with a financial institution or other person for performing functions related to administering the scheme for payment of first home owner grants established under this Act.

(2) The commissioner may, at any time, revoke the agreement.

**Protection from liability**

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

(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 65, delegated powers.

**Offence to disclose confidential information**

**68.(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).

Maximum penalty—100 penalty units.

(3) The person may disclose confidential information—

- (a) at the request, or with the consent of, the person to whom the information relates or someone else acting on the person's behalf; or
- (b) if the disclosure is expressly permitted or required under another Act; or
- (c) in connection with the administration or enforcement of—
  - (i) this Act or a corresponding law; or
  - (ii) a taxation law of the Commonwealth or a State; or
- (d) for any legal proceeding.

(4) In this section—

**“confidential information”** means information—

- (a) given in an application for a first home owner grant; or
- (b) given, under section 16(2)(b), in support of an application for a first home owner grant.

### **Use of information obtained under taxation laws**

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

### **Approved forms**

**70.(1)** The commissioner may approve forms for use under this Act.

**(2)** The approved form of application for a first home owner grant, or part of the form, may be required to be completed or signed by the spouse of the applicant.

### **Regulation-making power**

**71.(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.

## SCHEDULE 1

### DICTIONARY

section 3

**“administration agreement”** means an agreement made under section 66.

**“agent”**, of the commissioner for an application for a first home owner grant, means a financial institution or other person with whom the commissioner has made an administration agreement.

**“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 70.

**“Australian citizen”** means an Australian citizen under the *Australian Citizenship Act 1948* (Cwth), part 3.

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

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made; or
- (b) whether an objection to a decision made under this Act or a corresponding law should be upheld; or
- (c) whether an applicant to whom, or for whose benefit, a first home owner grant has been paid under this Act or a corresponding law was eligible for the grant; or
- (d) whether a condition on which a first home owner grant has been paid under this Act or a corresponding law has been complied with; or
- (e) another matter reasonably related to the administration or enforcement of this Act or a corresponding law.

## SCHEDULE 1 (continued)

**“authorised officer”** means a person appointed as an authorised officer under section 26.

**“building”** includes part of a building.

**“commencement date”**, for an eligible transaction, means—

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

**“commissioner”** means the commissioner of stamp duties under the *Stamp Act 1894*.

**“completed”**, for an eligible transaction, 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—when the building is ready for occupation as a home and any prescribed completion requirements are complied with; or
- (c) for the building of a home by an owner builder—when the building is ready for occupation as a home and any prescribed completion 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.

## SCHEDULE 1 (continued)

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

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

**“corresponding law”** means an Act of another State corresponding to this Act.

**“eligibility criteria”** see section 4.

**“eligible transaction”** see section 5.

**“first home owner grant”** means a grant payable under part 3.

**“guardian”**, of a person under a legal disability, includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

**“home”** see section 6.

**“home owner”** see section 7.

**“obstruct”** includes hinder and attempt to obstruct or hinder.

**“occupier”**, of a place, includes the person apparently in charge of the place.

**“option”**, to purchase, includes a right of pre-emption and right of first refusal.

**“owner”** means—

- (a) for a home—see section 7; or
- (b) for land—a person who has a relevant interest in the land.

**“owner builder”** means an owner of land who builds a home, or has a home built, on the land without entering into a comprehensive home building contract.

**“penalty amount”** see section 47(2) and (3).

## SCHEDULE 1 (continued)

**“permanent resident”** means—

- (a) the holder of a permanent visa as defined by the *Migration Act 1958* (Cwth), 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* (Cwth), section 32.

**“place”** includes the following—

- (a) vacant land;
- (b) premises;
- (c) a vehicle;
- (d) a boat;
- (e) an aircraft.

**“premises”** includes the following—

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

**“prescribed completion requirements”**, for completion of an eligible transaction, means requirements prescribed under a regulation.

**“public place”** means 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.

**“registrar”** means the registrar of titles or another person responsible for keeping a register for dealings in land.

**“relevant interest”** see section 8.

**“residence requirement”** means the requirement that an applicant for a first home owner grant must occupy the home to which the application relates as the applicant’s principal place of residence within 1 year after the completion of the eligible transaction or a longer period approved by the commissioner (see section 15).

**“residential property”** means land in Australia that, at a particular time, has a building on it that is lawfully occupied as a place of residence or is suitable for occupation as a place of residence.

## SCHEDULE 1 (continued)

**“spouse”** see section 9.

**“structure”** includes part of a structure.

**“taxation law”** means a law for the assessment or imposition of a tax, fee, duty or other impost.

## 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 3 July 2000. Future amendments of the First Home Owner Grant Act 2000 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

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	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

## 4 List of legislation

### **First Home Owner Grant Act 2000 No. 14**

date of assent 26 May 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2)

as amended by—

### **GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

## 5 List of annotations

### **SCHEDULE 1—DICTIONARY**

def “**permanent resident**” sub 2000 No. 20 s 29 sch 3

## 6 Table of corrected minor errors

### TABLE OF CORRECTED MINOR ERRORS under the Reprints Act 1992 s 44

Provision	Description
pt 4, second div 2 hdg	om ‘2’ ins ‘3’
pt 4, div 3 hdg	om ‘3’ ins ‘4’