

Western Australia

First Home Owner Grant Amendment Act 2009

As at 17 Nov 2009

No. 27 of 2009

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First Home Owner Grant Amendment Act 2009

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Western Australia

First Home Owner Grant Amendment Act 2009

No. 27 of 2009

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

[Assented to 17 November 2009]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *First Home Owner Grant Amendment Act 2009*.

2. Commencement

This Act comes into operation, or is deemed to have come into operation, as follows —

- (a) sections 1 and 2 come into operation on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 3 and Part 2 are deemed to have come into operation on 14 October 2008;
- (c) Part 3 comes into operation on a day fixed by proclamation;
- (d) Part 4 comes into operation on the day after assent day.

3. Act amended

This Act amends the *First Home Owner Grant Act 2000*.

Part 2 — Amendments for first home owners boost

4. Section 14A replaced

Delete section 14A and insert:

14A. Terms used

In this Subdivision —

cut-off date, of a special eligible transaction that is a class 6 or class 7 eligible transaction, means whichever is the later of —

- (a) 31 December 2009; or
- (b) such date, if any, as is prescribed for the purposes of this definition;

established home means a home that is not a new home or a substantially renovated home;

new home means a home that has not been previously occupied or sold as a place of residence;

relevant date of a special eligible transaction means —

- (a) in relation to a class 1 eligible transaction —
1 May 2003; or
- (b) in relation to a class 2 eligible transaction —
1 January 2004; or
- (c) in relation to a class 3 eligible transaction —
1 July 2004; or
- (da) in relation to a class 5 eligible transaction —
1 April 2011; or
- (d) in relation to a class 7 eligible transaction —
the date that is 18 months after the cut-off date applicable at the commencement date of the eligible transaction;

special eligible transaction means an eligible transaction of a class referred to in section 14B;

substantially renovated home means a renovated home that is the subject of a contract for purchase where —

- (a) the sale of the home under that contract is, under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth), a taxable supply as a sale of new residential premises within the meaning of section 40-75(1)(b) of that Act; and
- (b) the home, as so renovated, has not been previously occupied or sold as a place of residence.

5. Section 14B amended

- (1) Delete section 14B(2) to (4) and insert:
 - (2) A ***class 4 eligible transaction*** is an eligible transaction the commencement date of which is not before 14 October 2008 and not after 30 September 2009 that is a contract for the purchase of an established home.
 - (3) A ***class 5 eligible transaction*** is an eligible transaction the commencement date of which is not before 14 October 2008 and not after 30 September 2009 that is —
 - (a) a contract for the purchase of a new home or a substantially renovated home; or
 - (b) a comprehensive home building contract for a new home if —
 - (i) the building work begins within 26 weeks after the commencement date; and
 - (ii) the contract provides to the effect that the building work must be completed within 18 months after it begins or, if

the contract does not provide for a completion date for the building work, it is completed within 18 months after it begins;

or

- (c) the building of a new home by an owner builder if the eligible transaction is completed before the relevant date.

(4A) A **class 6 eligible transaction** is an eligible transaction the commencement date of which is not before 1 October 2009 and not after the cut-off date that is a contract for the purchase of an established home.

(4B) A **class 7 eligible transaction** is an eligible transaction the commencement date of which is not before 1 October 2009 and not after the cut-off date that is —

- (a) a contract for the purchase of a new home or a substantially renovated home; or
- (b) a comprehensive home building contract for a new home if —
 - (i) the building work begins within 26 weeks after the commencement date; and
 - (ii) the contract provides to the effect that the building work must be completed within 18 months after it begins or, if the contract does not provide for a completion date for the building work, it is completed within 18 months after it begins;

or

- (c) the building of a new home by an owner builder if the eligible transaction is completed before the relevant date.

- (4) The Commissioner may extend the period within which building work is to begin under subsection (3)(b)(i) or (4B)(b)(i) or be completed under subsection (3)(b)(ii), (3)(c), (4B)(b)(ii), (4B)(c) or (6)(a) if the Commissioner is satisfied that the delay is caused by circumstances beyond the control of the parties.
- (2) Delete section 14B(6) and insert:
- (6) The following eligible transactions are not special eligible transactions —
- (a) a contract for the purchase of a new home or a substantially renovated home on a proposed lot on a proposed plan of subdivision of land (including a proposed strata plan or survey-strata plan within the meaning of the *Strata Titles Act 1985*) unless the contract provides to the effect that the building work must be completed before the relevant date or, if the contract does not provide for a completion date for the building work, it is completed before the relevant date;
 - (b) a contract that the Commissioner is satisfied replaces a contract to purchase the same home, or replaces a comprehensive home building contract to build the same or a substantially similar home, if the replaced contract was made —
 - (i) before 9 March 2001, in respect of a class 1, class 2 or class 3 eligible transaction; or
 - (ii) before 14 October 2008, in respect of a class 4, class 5, class 6 or class 7 eligible transaction.

6. Section 19 amended

- (1) In section 19(2) delete “section 14B” and insert:

section 14A

- (2) In section 19(3) in the definition of *relevant amount*:

- (a) in paragraph (b) delete “\$10 000.” and insert:

\$10 000; or

- (b) after paragraph (b) insert:

- (c) in the case of a class 4 eligible transaction
within the meaning of section 14B — \$14 000;
or

- (d) in the case of a class 5 eligible transaction
within the meaning of section 14B — \$21 000;
or

- (e) in the case of a class 6 eligible transaction
within the meaning of section 14B — \$10 500;
or

- (f) in the case of a class 7 eligible transaction
within the meaning of section 14B — \$14 000.

7. Section 28 amended

Delete section 28(1) and insert:

- (1) An objection to a decision on the application is to be lodged —

- (a) within 60 days after the date on which notice of
the decision is given to the objector; or

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- (b) in the case of a class 4, class 5, class 6 or class 7 eligible transaction within the meaning of section 14B, within 60 days after the later of —
 - (i) the date on which notice of the decision is given to the objector; or
 - (ii) the day on which the *First Home Owner Grant Amendment Act 2009* receives the Royal Assent.

Part 3 — Amendments to cap value of eligible transactions

8. Section 3 amended

- (1) In section 3(1) delete the definitions of:

commencement date

completed

consideration

- (2) In section 3(1) insert in alphabetical order:

cap amount has the meaning given by section 14AD;

commencement date, in relation to a transaction, has the meaning given by section 14AA;

completed, in relation to a transaction, has the meaning given by section 14AA;

consideration, in relation to a transaction, has the meaning given by section 14AB;

property means —

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

total value, in relation to a transaction, has the meaning given by section 14AC(1);

transaction means —

- (a) a contract for the purchase of a home in the State; or
- (b) a comprehensive home building contract made 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;

unencumbered value has the meaning given by section 14AE(1).

- (3) In section 3(1) in the definition of *the home* delete “relates.” and insert:

relates;

9. Section 14 amended

- (1) Delete section 14(1) and insert:

- (1) An *eligible transaction* is a transaction —
 - (a) with a commencement date on or after 1 July 2000; and
 - (b) that has a total value that is less than or equal to any cap amount that applies —
 - (i) in the case of a contract — on the commencement date; or
 - (ii) in the case of the building of a home by an owner builder — on the date the transaction is completed.

- (2) Delete section 14(5) to (8) and insert:

- (5) If the commencement date of the building of a home by an owner builder is before the date the *First Home Owner Grant Amendment Act 2009* section 9 comes into operation no cap amount applies to the transaction.

10. Sections 14AA to 14AE inserted

At the end of Part 2 Division 3 Subdivision 1 insert:

14AA. Commencement and completion of transaction

- (1) The *commencement date* of a transaction is —
 - (a) in the case of a contract — the date when the contract is made; or
 - (b) in the case of the building of a home by an owner builder —
 - (i) the date when laying the foundations for the home begins; or
 - (ii) another date (on or after 1 July 2000) the Commissioner considers appropriate in the circumstances of the case.
- (2) Subject to any qualifications prescribed by the regulations, a transaction is *completed* when —
 - (a) in the case of a contract for the purchase of a home —
 - (i) the purchaser becomes entitled to possession of the home under the contract; and
 - (ii) if the purchaser is to obtain a registered title to the land on which the home is situated — the necessary steps to obtain registration of the purchaser's title have been taken;
 - or
 - (b) in the case of a contract to have a home built — the building is ready for occupation as a place of residence; or

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- (c) in the case of the building of a home by an owner builder — the building is ready for occupation as a place of residence.
- (3) If a person purchases a movable building and intends to use it as a place of residence on land in which the person has a relevant interest but on which the building is not situated at the time of purchase —
- (a) this Act applies as if the person were an owner builder building a home on the land; and
 - (b) the commencement date of the transaction is taken to be the date of the contract to purchase the movable building; and
 - (c) the transaction is taken to be completed when the movable building is ready for occupation as a place of residence on land in which the purchaser has a relevant interest.

14AB. Term used: consideration

The *consideration* for a transaction is —

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

14AC. Term used: total value

- (1) The *total value* of a transaction is —
- (a) in the case of a contract for the purchase of a home, the greater of —

- (i) the consideration for the transaction;
and
 - (ii) the unencumbered value, at the commencement date, of the property the subject of the transaction;
 - or
 - (b) in the case of a comprehensive home building contract, the amount calculated by adding —
 - (i) the consideration for the transaction;
and
 - (ii) the value, at the commencement date, of the relevant interest in the land on which the home is to be built;
 - or
 - (c) in the case of the building of a home by an owner builder, the amount calculated by adding —
 - (i) the unencumbered value, at the date the transaction is completed, of the home;
and
 - (ii) the value, at the date the transaction is completed, of the relevant interest in the land on which the home is built.
- (2) For the purposes of subsections (1)(b)(ii) and (1)(c)(ii) the value of a relevant interest in land is the greater of —
- (a) the consideration paid for the interest; and
 - (b) the unencumbered value of the interest.

14AD. Term used: cap amount

The *cap amount* that applies in respect of a transaction is —

- (a) in relation to a home south of the 26th parallel of South Latitude, \$750 000; or
- (b) in relation to a home north of the 26th parallel of South Latitude, \$1 000 000,

except that the regulations may prescribe another amount as the cap amount for the purposes of paragraph (a) or (b).

14AE. Term used: 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 scheme or arrangement for which a significant purpose of any party to the scheme or arrangement was, in the opinion of the Commissioner, the reduction of the value of the property; or
 - (d) where the property is held by a person on trust as guardian for another person who is under a legal disability — the liabilities of the trust, including the liability to indemnify the trustee.
- (2) For the purposes of subsection (1)(c), the Commissioner may have regard to —
 - (a) the duration of the scheme or arrangement before the commencement date of the transaction to which the property relates; and

- (b) whether there is any commercial efficacy to the making of the scheme or arrangement other than to reduce the value of the property; and
- (c) any other matters the Commissioner considers relevant.

11. Section 18 amended

(1) Delete section 18(2)(b) and insert:

- (b) the interests of the State can be adequately protected by conditions requiring repayment of the grant if —
 - (i) the transaction is not completed within a reasonable time; or
 - (ii) on completion of the transaction, the total value of the transaction exceeds the cap amount that applies in respect of the transaction.

(2) After section 18(2) insert:

- (3) A payment authorised under subsection (2) is made on condition that, if the applicant becomes aware that the total value of the transaction exceeds, or will exceed, the cap amount that applies in respect of the transaction, the applicant must within 30 days after the day on which the applicant becomes so aware —
 - (a) give written notice of that fact to the Commissioner; and
 - (b) either repay the amount of the grant, or make an application under section 52(2) for the Commissioner to approve an arrangement for the repayment of the amount of the grant.

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- (4) In the case of a joint application, each joint applicant is individually liable to comply with subsection (3)(a) and (b), but compliance by any one or more of the joint applicants is taken to be compliance by both or all of them.
- (5) The Commissioner may, by written notice, impose a penalty on an applicant if the applicant —
 - (a) does not comply with subsection (3)(b) within the 30 day period mentioned in subsection (3); or
 - (b) does not repay the amount of the grant in accordance with an arrangement approved for the purposes of subsection (3)(b).
- (6) The amount of a penalty imposed under subsection (5) is not to exceed the amount that the applicant is required to repay under subsection (3).
- (7) Subject to section 52, the amount of a penalty imposed under subsection (5) must be paid by the applicant within 28 days after the date on which notice of the penalty is given to the applicant.

12. Section 26 amended

In section 26 in the definition of *decision on the application*:

- (a) in paragraph (c) before “21(2)” insert:

18(3) or

- (b) in paragraph (d) before “21(5)” insert:

18(5),

13. Section 41A inserted

After section 40 insert:

41A. Power to have valuation made

- (1) In this section —
applicant, in relation to a transaction, means a person who made an application in respect of the transaction;
licensed valuer means a person licensed under the *Land Valuers Licensing Act 1978*.
- (2) For the purposes of determining whether a transaction is an eligible transaction, the Commissioner may —
 - (a) have a valuation made of any property or consideration; or
 - (b) adopt any available valuation of the property or consideration by a licensed valuer that the Commissioner considers appropriate.
- (3) The Commissioner may have a valuation made, or adopt a valuation, regardless of whether —
 - (a) the Commissioner has required the applicant to provide information under section 40 about the value of the property or consideration; or
 - (b) the applicant has complied with such a requirement.

14. Section 52 amended

In section 52(1)(a) delete “section 21” and insert:

section 18, 21

15. Other provisions amended

In the provisions listed in the Table delete “eligible”.

Table

s. 3(1) def. of <i>de facto partner</i>	s. 7(1)
s. 7A	s. 7B
s. 12(3)	s. 15(5)(a) and (b)
s. 16(3) def. of <i>interested person</i>	s. 19(1)(a)

Part 4 — Other amendments

16. Section 26 amended

In section 26 delete the definition of *decision on the application* and insert:

decision on the application, in relation to an application for a first home owner grant, includes —

- (a) a decision to vary or reverse an earlier decision; and
- (b) a requirement under section 51(1) to repay an amount paid on the application; and
- (c) a requirement to repay an amount paid on an application because of a failure to comply with a condition referred to in section 21(2); and
- (d) an imposition of a penalty under section 21(5) or 51(2) or (3);

17. Section 30 amended

(1) Before section 30(1) insert:

(1A) In this section —

approved, in relation to a date for a payment or repayment, means the date, on or after the date of the decision on the objection, on which the Commissioner approves the payment or repayment.

(2) Delete section 30(3) and insert:

(3) If, as a result of a decision on an objection, a decision not to authorise the payment of a first home owner grant is reversed, interest at the prescribed rate is

payable on the amount of the grant from the date of the decision not to authorise the payment to the date approved for the payment.

- (4) If, as a result of a decision on an objection, an amount of a grant repaid by an applicant is to be repaid to the applicant, the following amounts are payable to the applicant —
- (a) the amount of the grant repaid by the applicant;
 - (b) any interest paid by the applicant in respect of a written arrangement approved by the Commissioner under section 52 that relates to an amount referred to in paragraph (a);
 - (c) any amount paid by the applicant in respect of the registration or cancellation of registration of a memorial as required by section 60 in connection with the repayment of the grant;
 - (d) interest at the prescribed rate on the amounts payable to the applicant under paragraphs (a) to (c) from the date the amount was paid by the applicant to the date approved for the repayment.
- (5) If, as the result of a decision on an objection, an amount of penalty paid by an applicant is to be repaid to the applicant, the following amounts are payable to the applicant —
- (a) the amount of penalty to be repaid;
 - (b) any interest paid by the applicant in respect of a written agreement approved by the Commissioner under section 52 that relates to an amount referred to in paragraph (a);
 - (c) interest at the prescribed rate on the amounts payable to the applicant under paragraphs (a) and (b) from the date the amount was paid by

the applicant to the date approved for the repayment.

18. Section 32 replaced

Delete section 32 and insert:

32. Payment following determination of review

- (1) In this section —
approved, in relation to a date for a payment or repayment, means the date, on or after the date of the decision resulting from the application for review, on which the Commissioner approves the payment or repayment.
- (2) If, as the result of an application for a review of a decision, a decision not to authorise the payment of a first home owner grant is reversed, interest at the prescribed rate is payable on the amount of the grant from the date of the decision not to authorise the payment to the date approved for the payment.
- (3) If, as the result of an application for a review of a decision, an amount of a grant repaid by an applicant is to be repaid to the applicant, the following amounts are payable to the applicant —
 - (a) the amount of the grant repaid by the applicant;
 - (b) any interest paid by the applicant in respect of a written arrangement approved by the Commissioner under section 52 that relates to an amount referred to in paragraph (a);
 - (c) any amount paid by the applicant in respect of the registration or cancellation of registration of a memorial as required by section 60 in connection with the repayment of the grant;

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- (d) interest at the prescribed rate on the amounts payable to the applicant under paragraphs (a) to (c) from the date the amount was paid by the applicant to the date approved for the repayment.
- (4) If, as the result of an application for a review of a decision, an amount of penalty paid by an applicant is to be repaid to the applicant, the following amounts are payable to the applicant —
- (a) the amount of penalty to be repaid;
 - (b) any interest paid by the applicant in respect of a written agreement approved by the Commissioner under section 52 that relates to an amount referred to in paragraph (a);
 - (c) interest at the prescribed rate on the amounts payable to the applicant under paragraphs (a) and (b) from the date the amount was paid by the applicant to the date approved for the repayment.

19. Section 55 amended

- (1) After section 55(1) insert:

- (2A) The Commissioner may lodge with the Registrar a memorial signed by the Commissioner if —
- (a) a payment of a first home owner grant authorised under section 21 has been made to an applicant; and
 - (b) the applicant holds a relevant interest in relation to the home for which the grant was sought; and
 - (c) the Commissioner reasonably believes that the applicant intends to sell the home before the

applicant has complied with the residence requirements.

(2) In section 55(2) delete “the memorial” and insert:

a memorial lodged under subsection (1)

(3) After section 55(2) insert:

(3A) When a memorial lodged under subsection (2A) is registered by the Registrar, a charge for the amount of the first home owner grant that was paid to the applicant is created on the relevant interest.

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