

Western Australia

First Home Owner Grant Act 2000

As at 09 Jun 2000

No. 16 of 2000

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First Home Owner Grant Act 2000

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Meaning of “home”	5
5.	Meaning of “owner” of a home or “home owner”	5
6.	Meaning of “relevant interest”	5
7.	Meaning of an applicant’s “spouse”	7

Part 2 — First home owner grant

Division 1 — Entitlement to grant

8.	Entitlement to grant	8
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Division 2 — Eligibility criteria (applicants)

9.	Criterion 1 — applicant to be a natural person	8
10.	Criterion 2 — applicant to be Australian citizen or permanent resident	8
11.	Criterion 3 — applicant or applicant’s spouse must not have received an earlier grant	9
12.	Criterion 4 — applicant or applicant’s spouse must not have had relevant interest in residential property	9
13.	Criterion 5 — residence requirement	10

Division 3 — Eligible transactions

14.	Eligible transaction	10
-----	----------------------	----

	Division 4 — Application for the grant	
15.	Application for grant	13
16.	Interested persons	14
17.	Application on behalf of person under legal disability	14
	Division 5 — Decision on application	
18.	Commissioner to authorise payment of grant	14
19.	Amount of grant	15
20.	Payment of grant	15
21.	Payment in anticipation of compliance with residence requirement	15
22.	Commissioner may impose conditions	16
23.	Death of applicant	17
24.	Power to correct decision	18
25.	Notice of decision	18
	Division 6 — Objections and appeals	
	Subdivision 1 — Definitions	
26.	Definitions	19
	Subdivision 2 — Objections	
27.	Right to object and procedure for making objections	19
28.	Time for lodging objection	19
29.	Consideration of objection	20
30.	Decision on objection	20
	Subdivision 3 — Appeals	
31.	Right of appeal	21
32.	Hearing and determination of appeals	21
	Subdivision 4 — Basis on which Commissioner may act	
33.	Basis on which Commissioner may act	22
	Part 3 — Administration	
	Division 1 — Administration generally	
34.	Administration of Act	23
35.	Delegation	23
36.	Authorised investigators	24
37.	Administration agreements	24

	Division 2 — Investigations	
38.	Investigations	25
39.	Cross-border investigations	26
40.	Power of investigation	26
41.	Power to require person to attend for examination	27
42.	Entry of premises	28
43.	Powers of authorised investigator on entry of premises	29
44.	Warrants	31
45.	Use of force	31
46.	Self incrimination	32
	Part 4 — Miscellaneous	
	Division 1 — Offences	
47.	False or misleading information and documents	33
48.	Obstructing or misleading Commissioner or authorised investigator	33
	Division 2 — Evidentiary provisions	
49.	Evidence	34
50.	Presumption of regularity	34
	Division 3 — Repayments and penalties	
51.	Commissioner may require repayment and impose penalty	35
52.	Arrangements for instalments and extensions of time	36
53.	Recovery of certain amounts	37
54.	Writing off liability	38
	Division 4 — Charge on interest in home	
55.	Lodgement of memorial and creation of charge	38
56.	Priority of charge	39
57.	Release of relevant interest from charge	40
58.	Order for sale of relevant interest	40
59.	Charge not to limit other means of enforcing payment	42
60.	Commissioner may require fees to be reimbursed	42
	Division 5 — Service of documents	
61.	Service on joint applicants or agent or representative	42
62.	Method of service by Commissioner	43

Contents

63.	Service of court process	44
64.	Other enactments not limited	44
	Division 6 — General	
65.	Confidentiality	44
66.	Time for commencing prosecutions	46
67.	Protection from liability for wrongdoing	47
68.	Appropriation of Consolidated Fund	47
69.	Regulations	47
70.	Review of Act	47

Defined Terms

Western Australia

First Home Owner Grant Act 2000

No. 16 of 2000

An Act to encourage and assist home ownership by establishing a scheme for the payment of grants to first home owners.

[Assented to 9 June 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation on 1 July 2000.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**Australian citizen**” means an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth;

“**authorised investigator**” means a person appointed to be an authorised investigator under section 36;

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

“**commencement date**”, in relation to an eligible transaction, has the meaning given by section 14(5);

“**Commissioner**” means the Commissioner of State Revenue;

“**completed**”, in relation to an eligible transaction, has the meaning given by section 14(6);

“**comprehensive home building contract**” means a contract under which a builder undertakes to build a home on land from the inception of the building work to the point where the home is ready for occupation and if, for any reason, the work to be carried out under such a contract is not completed, includes any further contract under which the work is to be completed;

“**consideration**”, in relation to an eligible transaction, has the meaning given by section 14(8);

“**corresponding law**” means an Act of another State, or a Territory, corresponding to this Act;

“eligibility criteria” means the criteria set out in Part 2

Division 2 for determining whether an applicant for a first home owner grant is eligible for the grant;

“eligible transaction” has the meaning given by section 14(1);

“first home owner grant” means a grant authorised under section 18;

“first home owner grant scheme” means the scheme for payment of first home owner grants established under this Act;

“guardian”, in relation to a person under a legal disability, means —

- (a) 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; or
- (b) an administrator of the person’s estate appointed under the *Guardianship and Administration Act 1990*;

“home” has the meaning given by section 4;

“identity card” means an identity card issued to an authorised investigator under section 36;

“option to purchase” includes a right of pre-emption or a right of first refusal;

“owner”, in relation to —

- (a) a home, has the meaning given by section 5;
- (b) land, means 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;

“permanent resident” means the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth;

“premises” means —

- (a) land (whether built on or not);
- (b) a building or structure on land; or
- (c) a vehicle,

and includes a part of premises;

“Registrar” means the Registrar of Titles or the Registrar of Deeds and Transfers;

“relevant interest” means an interest in land mentioned in a paragraph of subsection (1) of section 6 (as read with subsection (2) of that section);

“relevant material” means an instrument, record or thing relevant to determining —

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made;
- (b) whether an objection to a decision made under this Act or a corresponding law should be upheld;
- (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;
- (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) any other matter related to the administration or enforcement of this Act or a corresponding law;

“repayment arrangement” means an arrangement approved under section 52;

“residence requirement” means the requirement that an applicant for a first home owner grant must satisfy under section 13;

“residential property” has the meaning given by subsection (2);

“**spouse**” has the meaning given by section 7;

“**taxation law**” means a law of the Commonwealth or a State or Territory for the assessment or imposition of a tax.

- (2) For the purposes of this Act, land in Australia is “**residential property**” at a particular time if there is, at that time, a building on the land lawfully occupied as a place of residence or suitable for occupation as a place of residence.

4. Meaning of “home”

A “**home**” is a building, affixed to land, that —

- (a) may lawfully be used as a place of residence; and
- (b) is, in the Commissioner’s opinion, a suitable building for use as a place of residence.

5. Meaning of “owner” of a home or “home owner”

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

6. Meaning of “relevant interest”

- (1) Subject to subsection (2), a “**relevant interest**” in land is —
- (a) an estate in fee simple in the land;
 - (b) a life estate, approved by the Commissioner, in the land;
 - (c) a lease in perpetuity of the land granted by the Commonwealth or the State;
 - (d) a leasehold interest in the land granted by the Commonwealth or the State that may be converted under the terms of the lease or by statute into an estate in fee simple;
 - (e) an interest as purchaser under a contract for the purchase from the Commonwealth or the State of an estate in fee simple in the land by instalments;

- (f) a licence or right of occupancy granted by the Commonwealth or the State that gives, in the Commissioner's opinion, the licensee or the holder of the right reasonable security of tenure;
 - (g) 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
- (h) an interest prescribed by the regulations to be a relevant interest.
- (2) Subject to subsection (3) —
- (a) an interest is not a relevant interest at a particular time unless the holder of the interest has, or will have within 12 months after that time (or a longer time approved by the Commissioner), a right to immediate occupation of the land;
 - (b) an interest held by a person is not a relevant interest if the person holds it subject to a trust; and
 - (c) an equitable interest is not a relevant interest unless it is the interest of a person under a legal disability for whom a guardian holds the interest on trust.
- (3) Without limiting paragraph (h) of subsection (1), regulations referred to in that paragraph may prescribe an interest (a **“non-conforming interest”**) to be a relevant interest —
- (a) even though the interest does not conform with subsection (2); and
 - (b) even though the interest may not be recognised at law or in equity as an interest in land.

- (4) If a first home owner grant is authorised to be paid in consequence of a non-conforming interest being prescribed as a relevant interest, the Commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if any criteria prescribed by the regulations about future conduct or events are not satisfied.

7. Meaning of an applicant's "spouse"

- (1) A person is the "spouse" of an applicant for a first home owner grant if the person is legally married to the applicant or —
- (a) the person is a member of the opposite sex with whom the applicant lives as husband or wife on a genuine domestic basis, although not legally married to the person; and
 - (b) the person has lived on that basis with the applicant for at least 2 years at the time the application is made.
- (2) If the Commissioner is satisfied at the time of deciding an application for a first home owner grant that —
- (a) an applicant is legally married but is living apart from the person to whom the applicant is legally married; and
 - (b) the applicant and that person have no intention of again living together as a couple,

the person to whom the applicant is legally married is taken not to be the applicant's spouse.

Part 2 — First home owner grant

Division 1 — Entitlement to grant

8. Entitlement to grant

- (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.
- (2) Despite subsection (1)(1)(a), an applicant need not comply with the eligibility criteria to the extent the applicant is exempted from compliance by section 10(2) or 13(2).
- (3) Only one first home owner grant is payable for the same eligible transaction.

Division 2 — Eligibility criteria (applicants)

9. Criterion 1 — applicant to be a natural person

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

10. Criterion 2 — applicant to be Australian citizen or permanent resident

- (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 one of the applicants is an Australian citizen or a permanent resident, it is not necessary for any other to be an Australian citizen or permanent resident.

11. Criterion 3 — applicant or applicant’s spouse must not have received an earlier grant

- (1) Subject to subsection (2), 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) An applicant is not ineligible if the grant was paid but later paid back under the conditions on which the grant was made.

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

- (1) An applicant is ineligible if the applicant or the applicant’s spouse has, before 1 July 2000, held —
 - (a) a relevant interest in residential property in the State; or
 - (b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.
- (2) To work out for the purposes of subsection (1) whether an applicant held a relevant interest (within the meaning of 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 is to be disregarded.
- (3) 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 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, that is —
 - (a) a relevant interest in residential property in the State; or

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

13. Criterion 5 — residence requirement

- (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 12 months 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 one of 2 or more joint applicants for a first home owner grant;
 - (b) at least one of the applicants complies with the residence requirement; and
 - (c) there are, in the Commissioner's opinion, good reasons to exempt the applicant from the residence requirement.

Division 3 — Eligible transactions

14. Eligible transaction

- (1) An “eligible transaction” is —
 - (a) a contract made on or after 1 July 2000 for the purchase of a home in the State;
 - (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) if the building work begins on or after 1 July 2000 — the building of a home in the State by an owner builder.

- (6) Subject to any qualifications prescribed by the regulations, an eligible 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;
 - (b) in the case of a contract to have a home built — the building is ready for occupation as a place of residence; or
 - (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.
- (7) 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;
 - (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.
- (8) The **“consideration”** for an eligible transaction is —
- (a) in the case of a contract for the purchase of a home — the consideration for the purchase;

- (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.

Division 4 — Application for the grant

15. Application for grant

- (1) An application for a first home owner grant is to be made to the Commissioner.
- (2) The application —
 - (a) is to be in a form approved by the Commissioner; and
 - (b) is to contain the information required by the Commissioner.
- (3) An applicant must provide the Commissioner with any further information the Commissioner requires to decide the application.
- (4) Information provided by an applicant in or in relation to an application must, if the Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Commissioner.
- (5) The application may only be made within a period —
 - (a) beginning on the commencement date of the eligible transaction to which the application relates; and
 - (b) ending 12 months after the completion of the eligible transaction to which the application relates.
- (6) However, the Commissioner may allow an application to be made before the application period.

- (7) An applicant may, with the Commissioner's consent, amend an application.

16. Interested persons

- (1) All interested persons must be applicants, unless such a person is excluded from the operation of this subsection by the regulations.
- (2) An applicant must be an interested person.
- (3) In this section —
“interested person”, in relation to an application for a first home owner grant, means a person who is, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home.

17. Application on behalf of person under legal disability

- (1) An application may be made on behalf of a person under a legal disability by a guardian.
- (2) For the purpose of determining eligibility, the person under the legal disability is taken to be the applicant.

Division 5 — Decision on application

18. Commissioner to authorise payment of grant

- (1) If the Commissioner is satisfied that a first home owner grant is payable on an application, the Commissioner must authorise the payment of the grant.
- (2) Despite section 8(1)(b)(ii), the Commissioner may authorise the payment of a first home owner grant before the completion of the eligible transaction if the Commissioner is satisfied that —
- (a) there are good reasons for doing so; and

- (b) the interests of the State can be adequately protected by conditions requiring repayment of the grant if the transaction is not completed within a reasonable time.

19. Amount of grant

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

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

20. Payment of grant

- (1) A first home owner grant is to be paid by electronic funds transfer, by cheque or in any other way the Commissioner thinks appropriate.
- (2) A first home owner grant is to be paid to —
 - (a) the applicant; or
 - (b) another person to whom the applicant directs in writing that the grant be paid.

21. Payment in anticipation of compliance with residence requirement

- (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 that each applicant who is required to comply with, but has not yet complied with, the residence requirement intends to occupy the home as his or her principal place of residence within —
 - (a) 12 months after completion of the eligible transaction;
or
 - (b) a longer period approved 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 applicant 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) In subsection (2) —
- “relevant date”** means the earlier of —
- (a) the date on which the period allowed for compliance with the residence requirement ends; or
 - (b) the date on which it first becomes apparent to the applicant (or any joint applicant) that the residence requirement will not be complied with within that period.
- (4) In the case of a joint application, each joint applicant is individually liable to comply with subsection (2)(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) A person who fails to comply with the condition referred to in subsection (2) commits an offence.
Penalty: \$20 000.

22. Commissioner may impose conditions

- (1) The Commissioner may authorise the payment of a first home owner grant on 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 written notice of non-compliance with the condition within a period stated in the condition; and

- (b) to repay the amount of the grant within a period stated in the condition.
- (3) In the case of a joint application, each joint applicant is individually liable to comply with subsection (2)(2)(a) and (2)(b), but compliance by any one or more of the joint applicants is taken to be compliance by both or all of them.
- (4) A person who fails to comply with a condition imposed by the Commissioner (under this section or another provision of this Act) commits an offence.
Penalty: \$20 000.

23. Death of applicant

- (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 one of 2 or more applicants and one or more applicants survive, the application is to be dealt with as if the surviving applicants were the sole applicants;
 - (b) in any other case, a first home owner grant, if payable on the application, is to be paid to the estate of the deceased.
- (3) If 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 the Commissioner is satisfied that he or she intended to do so within 12 months after completion of the eligible transaction or a longer period approved by the Commissioner, the residence requirement is satisfied.

24. Power to correct decision

- (1) If the Commissioner decides an application and is later satisfied, independently of an objection under this Act, that the decision is incorrect, the Commissioner may vary or reverse the decision.
- (2) If, before a first home owner grant is paid to an applicant, the Commissioner is satisfied that —
 - (a) the decision to authorise the payment is incorrect; and
 - (b) the reversal of the decision would prejudice the applicant or another person because of having acted in reliance on that decision,

the Commissioner may authorise the payment to be made on condition that the applicant must within the period stated in the condition repay the amount of the grant.

- (3) Subject to subsection (4), a decision cannot be varied or reversed under this section more than 5 years after it was made.
- (4) If the Commissioner is satisfied that a decision was made on the basis of false or misleading information, the decision may be varied or reversed under this section at any time.

25. Notice of decision

- (1) When 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 is to authorise the payment of a first home owner grant without conditions, the 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 Commissioner must state in the notice the reasons for the decision.

Division 6 — Objections and appeals

Subdivision 1 — Definitions

26. Definitions

In this Division —

“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;
- (b) a requirement under section 51 to repay an amount paid on the application; and
- (c) an imposition of a penalty under section 51;

“objector” means a person who makes an objection under section 27.

Subdivision 2 — Objections

27. Right to object and procedure for making objections

- (1) An applicant for a first home owner grant who is dissatisfied with the Commissioner’s decision on the application may object to the decision.
- (2) An objection —
 - (a) is to be in writing;
 - (b) is to set out fully and in detail the grounds of the objection; and
 - (c) is to be lodged with the Commissioner.

28. Time for lodging objection

- (1) An objection to a decision on the application is to be lodged within 60 days after the date on which notice of the decision is given to the objector.

- (2) However, the Commissioner may, on application by the objector, extend the time for lodging an objection.
- (3) An application for an extension of time is to set out fully and in detail the grounds on which the objector asks for an extension of time.

29. Consideration of objection

- (1) The Commissioner must consider an objection and must make a decision on the objection on the basis of —
 - (a) the grounds set out in the written objection and any other relevant written material submitted by the objector; and
 - (b) any information obtained by the Commissioner in the course of investigating the objection.
- (2) The onus of establishing that the decision on the application to which an objection relates is incorrect lies on the objector.

30. Decision on objection

- (1) The Commissioner may decide an objection by confirming, varying or reversing the decision on the application to which the objection relates.
- (2) The Commissioner must give the objector written notice of the decision on the objection and, if the objection is disallowed, the reasons for the decision on the objection.
- (3) If a decision not to authorise the payment of a first home owner grant is reversed as a result of an objection, interest at the prescribed rate is payable on the amount of the grant from the date of the objection to the date of the decision on the objection.

Subdivision 3 — Appeals

31. Right of appeal

- (1) An objector who is dissatisfied with the Commissioner's decision on the objection may appeal to a Local Court against the decision.
- (2) An appeal is to be commenced within 60 days after the date on which notice of the decision on the objection is given to the objector.
- (3) However, the court may, on application by the objector, extend the time for commencing an appeal.

32. Hearing and determination of appeals

- (1) A Local Court has jurisdiction to hear and determine an appeal and —
 - (a) the proceedings are to be conducted in the manner prescribed by the rules of court or, if no rules of court are applicable, in the manner directed by the court; and
 - (b) unless the court otherwise orders, the appeal is to be in the nature of a rehearing.
- (2) The court may dispose of an appeal by —
 - (a) confirming, varying or reversing the Commissioner's decision on the application; and
 - (b) making any consequential or ancillary orders (including orders for costs) that it considers appropriate.
- (3) The decision on an appeal under this section is final.
- (4) If a decision not to authorise the payment of a first home owner grant is reversed as a result of an appeal, interest at the prescribed rate is payable on the amount of the grant from the date of the objection to the decision on the application to the date of the decision on the appeal.

Subdivision 4 — Basis on which Commissioner may act

33. Basis on which Commissioner may act

- (1) Although a decision on the application is subject to an objection or appeal under this Division, the Commissioner may act on the basis that the decision is correct until the objection or appeal is decided.
- (2) When an objection or appeal is decided, the Commissioner must take any necessary action to give effect to that decision.

Part 3 — Administration

Division 1 — Administration generally

34. Administration of Act

- (1) The Commissioner is responsible to the Minister for applying and giving effect to this Act.
- (2) The Commissioner is not subject to the control or direction of the Minister in relation to —
 - (a) the interpretation of this Act; or
 - (b) the performance of a function under this Act.

35. Delegation

- (1) The Commissioner may, by instrument, delegate the performance of any of the Commissioner's functions under this Act except —
 - (a) this power of delegation; or
 - (b) the power to authorise an authorised investigator under section 42(3), 43(1)(a) or 45(2).
- (2) A delegation under subsection (1) may be made —
 - (a) to a person employed or engaged in the administration or enforcement of this Act or another Act administered by the Commissioner or under which the Commissioner exercises statutory functions;
 - (b) to an authority or person referred to in section 39(2); or
 - (c) in accordance with an agreement entered into by the Commissioner under section 37.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.

- (4) A function performed by a delegate of the Commissioner is taken to be performed by the Commissioner.
- (5) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section or section 37 limits the ability of the Commissioner to act through the Commissioner's officers and agents in the normal course of business.

36. Authorised investigators

- (1) The Commissioner may appoint a person to be an authorised investigator for the purposes of this Act.
- (2) The Commissioner must issue an identity card to each authorised investigator.
- (3) An identity card is to —
 - (a) contain a statement to the effect that the person identified by the card is an authorised investigator for the purposes of this Act; and
 - (b) display a photograph of the authorised investigator.
- (4) If a person to whom an identity card is issued ceases to be an authorised investigator, the person commits an offence if the person does not immediately return the card to the Commissioner.

Penalty: \$20 000.

37. Administration agreements

- (1) Without limiting section 35, the Commissioner may enter into an agreement (an “**administration agreement**”) with a financial institution or other person under which —
 - (a) the Commissioner delegates functions related to the administration of the first home owner scheme to the financial institution or other person; and

- (b) the financial institution or other person is required to carry out the delegated functions in accordance with conditions specified in the agreement.
- (2) The conditions specified in an administration agreement must include any conditions prescribed by the regulations.
- (3) The conditions that may be prescribed by the regulations include —
 - (a) conditions requiring the financial institution or other person to keep specified records for a specified period;
 - (b) conditions relating to the retention of interest on amounts received by the financial institution or other person.
- (4) The Commissioner may at any time, at the Commissioner's discretion, terminate an administration agreement.

Division 2 — Investigations

38. Investigations

An investigation may be carried out under this Division to determine —

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made;
- (b) whether an objection to a decision made under this Act or a corresponding law should be upheld;
- (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;
- (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) any other matter related to the administration or enforcement of this Act or a corresponding law.

39. Cross-border investigations

- (1) The Commissioner may, at the request of an authority responsible for administering a corresponding law, carry out an investigation for the purposes of the corresponding law.
- (2) The Commissioner may, under section 35, delegate powers of investigation under this Division to the authority responsible for the administration of a corresponding law or a person nominated by that authority.

40. Power of investigation

- (1) For the purposes of an investigation, the Commissioner may require a person —
 - (a) to provide oral or written answers to specified questions; or
 - (b) to produce to the Commissioner specified relevant material, or relevant material of a specified class, in the person's possession or control.
- (2) The Commissioner may make the requirement —
 - (a) if an oral answer is required — orally; or
 - (b) if a written answer is required — by written notice given to the person to whom the requirement is addressed.
- (3) A person who is required to provide written answers to questions must, if the notice given to the person so requires, verify the answers by statutory declaration.
- (4) A person who does not comply with a requirement of a notice within the time specified in the notice, or any further time approved by the Commissioner, commits an offence.

Penalty: \$20 000.

41. Power to require person to attend for examination

- (1) For the purposes of an investigation, the Commissioner may require a person to attend at a specified time and place before an authorised investigator for examination on a subject specified in the notice under subsection (2).
- (2) A requirement is to be made by written notice given to the person to whom the requirement is addressed.
- (3) The time and place fixed for the examination of the person to whom a notice is addressed under this section, if practicable, is to be reasonably convenient to that person.
- (4) A notice requiring a person to attend for examination may require the person to bring and produce to the authorised investigator conducting the examination specified relevant material in the person's possession or control relating to the subject of the examination.
- (5) An authorised investigator conducting an examination —
 - (a) may require a person attending for examination to make an oath or affirmation to answer all questions truthfully and may administer the oath or affirmation;
 - (b) may require the person to answer a question relevant to the subject matter of the examination put by the authorised investigator or, with the consent of the authorised investigator, by another person present at the examination; and
 - (c) may require the person to produce for examination by the authorised investigator relevant material in the person's possession at the examination.
- (6) A person who does not comply with a requirement under this section commits an offence.

Penalty: \$20 000.

- (7) The regulations may provide for the payment of witness fees and expenses to persons who attend for examination under this section.

42. Entry of premises

- (1) Subject to subsection (2), an authorised investigator may, for the purposes of an investigation, enter and remain on premises to exercise an investigator's powers of investigation under this Division.
- (2) An authorised investigator may only enter premises that comprise a residential property —
- (a) at any reasonable time with the consent of the occupier of the premises;
 - (b) in accordance with the authorisation conferred by a warrant; or
 - (c) if the authorised investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material —at any time without the consent of the occupier and without a warrant.
- (3) The authorised investigator must not exercise the power in subsection (2)(2)(c) unless the Commissioner has, in the particular case, authorised the investigator to do so.
- (4) The authorised investigator must, at the reasonable request of a person apparently in a position of authority on the premises or any other person on the premises —
- (a) display the investigator's identity card; and
 - (b) if the investigator has entered or is about to enter the premises under a warrant — display the warrant.

43. Powers of authorised investigator on entry of premises

- (1) An authorised investigator who enters premises under section 42 may do any one or more of the following —
- (a) search the premises and examine anything on the premises, opening it if necessary and, if specifically authorised to do so by the Commissioner, breaking it open;
 - (b) take possession of relevant material and retain it for as long as may be necessary —
 - (i) for examining it, or examining and copying it, to determine its evidentiary value;
 - (ii) if it is relevant to an investigation of the eligibility for a first home owner grant of a person —
 - (I) by whom, or on whose behalf, an application for the grant has been made; or
 - (II) to whom, or for whose benefit, the grant has been paid,until the eligibility of the person has been determined; or
 - (iii) if it is relevant to possible legal proceedings — for the purposes of those proceedings;
 - (c) if relevant material found on the premises cannot be conveniently removed, secure it against interference;
 - (d) request any person who is on the premises —
 - (i) to state his or her full name and address;
 - (ii) to answer (orally or in writing) questions put by the authorised investigator relevant to the investigation;
 - (iii) to produce relevant material in the person's possession or control;

- (iv) to operate, or allow the authorised investigator to operate, for investigation purposes equipment or facilities on the premises; or
 - (v) to give other assistance the authorised investigator reasonably requires to carry out the investigation.
- (2) A person who does not comply with an authorised investigator's request under this section commits an offence.
Penalty: \$20 000.
- (3) An authorised investigator is not authorised to take anything from premises unless the investigator —
 - (a) gives the occupier, or another person apparently responsible to the occupier, a receipt for the thing taken, if requested to do so by the occupier or other person; or
 - (b) if the occupier, or a person apparently responsible to the occupier, is not present — leaves a receipt for the thing taken, in an envelope addressed to the occupier, in a prominent position on the premises.
- (4) A receipt is to be in a form approved by the Commissioner.
- (5) The Commissioner must ensure that a person from whom anything is taken under this section and who would otherwise be entitled to possession of the thing is allowed —
 - (a) if the thing taken is a document — reasonable access to it or a copy of it, as the Commissioner considers appropriate; or
 - (b) in any other case — reasonable access to it.
- (6) If an authorised investigator takes possession of anything under this section, the Commissioner must ensure that it is returned to the person entitled to possession of it —
 - (a) if it was taken in connection with the prosecution or possible prosecution of a suspected offence under this Act — as soon as practicable after the relevant

prosecution is completed or discontinued or, if no prosecution is commenced, as soon as practicable after the decision not to prosecute is made;

- (b) if it was taken in connection with the investigation of the eligibility for a first home owner grant of a person referred to in subsection (1)(b)(ii) — as soon as practicable after the eligibility of the person has been determined and any procedures, including legal proceedings, relating to the recovery of the grant have been completed; or
- (c) in any other case — within 28 days after it was taken.

44. Warrants

- (1) If a justice is satisfied by a complaint on oath that it is reasonably necessary for an authorised investigator to enter premises for the purposes of an investigation, the justice may issue a warrant authorising an authorised investigator —
 - (a) to enter the premises at a time or within a period stated in the warrant; and
 - (b) to exercise an investigator's powers of investigation under this Division.
- (2) An authorised investigator who applies to a justice for a warrant under this section must produce to the justice the investigator's identity card.
- (3) The authority conferred by a warrant may be exercised by the authorised investigator on whose application the warrant was issued or by any other authorised investigator.

45. Use of force

- (1) An authorised investigator may use reasonable force —
 - (a) to enter premises under section 42; or
 - (b) to exercise the powers under section 43(1)(a), (b) and (c).

- (2) However, if the use of reasonable force is likely to cause damage to property, the authorised investigator is not entitled to use force under subsection (1) unless the Commissioner has, in the particular case, authorised the investigator to do so.
- (3) No liability is incurred as a result of injury or damage arising from the use of reasonable force under this section.

46. Self incrimination

- (1) A person is not excused from complying with a requirement under this Division to answer a question or produce relevant material on the ground that the answer to the question or the contents of the material might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person answers the question or produces the relevant material after objecting on the ground referred to in subsection (1), evidence of the answer to the question or the production or contents of the material is not admissible against the person in any proceedings other than proceedings for an offence against this Act or arising out of the false or misleading nature of the answer given or material produced.

Part 4 — Miscellaneous

Division 1 — Offences

47. False or misleading information and documents

- (1) A person who provides information, orally or in writing, or a document to the Commissioner or an authorised investigator knowing the information or document to be false or misleading in a material particular commits an offence.

Penalty: \$20 000.

- (2) If a person provides information or a document to the Commissioner or an authorised investigator that is false or misleading in a material particular, the person is to be presumed, in proceedings for an offence against this section, to have known that the information or document was false or misleading in a material particular unless the contrary is proved.

- (3) In this section —

“document” means anything or any process —

- (a) on or by which information is recorded or stored; or
(b) by means of which a meaning can be conveyed in a visible or recoverable form,

whether or not the use or assistance of an electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information.

48. Obstructing or misleading Commissioner or authorised investigator

- (1) A person who hinders or obstructs an authorised investigator in carrying out functions under this Act commits an offence.

Penalty: \$20 000.

- (2) A person who misleads an authorised investigator in a way that may affect the carrying out of the investigator's functions under this Act commits an offence.
Penalty: \$20 000.
- (3) In this section —
“**authorised investigator**” includes the Commissioner.

Division 2 — Evidentiary provisions

49. Evidence

- (1) A certificate signed by the Commissioner stating that a first home owner grant was paid to a person named in the certificate on a specified date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the Commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- (3) A copy of a notice issued by the Commissioner requiring the payment or repayment of a specified amount is admissible in legal proceedings as evidence —
- (a) that the requirement was made; and
 - (b) that the amount specified in the notice was outstanding at the date of the notice.

50. Presumption of regularity

- (1) Proceedings for an offence against this Act that are taken in the name of the Commissioner are presumed, in the absence of evidence to the contrary, to have been duly taken by the Commissioner or under the Commissioner's authority.
- (2) In legal proceedings, compliance by the Commissioner or an authorised investigator with the requirements of this Act is presumed, in the absence of evidence to the contrary.

Division 3 — Repayments and penalties

51. Commissioner may require repayment and impose penalty

- (1) The Commissioner may, by written notice, require an applicant for a first home owner grant to repay an amount paid on the application if —
 - (a) the amount was paid in error;
 - (b) the Commissioner reverses the decision under which the amount was paid for a reason other than that the amount was paid in error; or
 - (c) the Commissioner imposed a condition on the payment of the amount with which the applicant (or any joint applicant) has failed to comply within the period stated in the condition.
- (2) If an amount paid on an application for a first home owner grant was paid in error because of information that the Commissioner considers to be false or misleading given by the applicant in or in relation to the application, the Commissioner may, by written notice, impose a penalty of not more than the amount the applicant is required to pay.
- (3) If an amount required to be repaid under this section by an applicant is not paid within the period mentioned in subsection (4), the Commissioner may, by written notice, impose a penalty of not more than the amount the applicant is required to pay.
- (4) Subject to section 52, a repayment required, or a penalty imposed, under this section must be paid by the applicant within 28 days after the date on which notice of the requirement or penalty is given to the applicant.
- (5) If a person is liable to pay a penalty under both subsections (2) and (3), payment of the penalty under one subsection discharges the person from liability to pay the penalty under the other subsection to the extent of the payment made.

52. Arrangements for instalments and extensions of time

- (1) The Commissioner may approve (with or without amendment) a written arrangement —
 - (a) extending the period for paying a repayment required, or a penalty imposed, under section 51 (a **“required repayment”**); or
 - (b) providing for the required repayment to be made in specified instalments.
- (2) An application for the Commissioner’s approval of a proposed repayment arrangement is to set out fully and in detail the reasons why the applicant wants more time to make the required repayment.
- (3) A repayment arrangement may include —
 - (a) conditions agreed with the applicant providing for the payment (and allowing for the remission) of interest at the prescribed rate or at another rate fixed by or under the arrangement with the agreement of the applicant; and
 - (b) any other conditions the Commissioner considers appropriate.
- (4) The Commissioner may, by written notice given to the person with whom a repayment arrangement has been made, amend the arrangement —
 - (a) by agreement with the person; or
 - (b) as provided in the conditions of the arrangement.
- (5) The Commissioner may, by written notice given to the person with whom a repayment arrangement has been made, cancel the arrangement if —
 - (a) a payment is not made in accordance with the arrangement; or

- (b) the person does not comply with any condition of the arrangement.
- (6) On the cancellation of a repayment arrangement, the whole of the required repayment outstanding under the arrangement, together with interest, becomes due and payable as from the date of the cancellation or the original due date for making the required repayment to which the arrangement applies, whichever is the later.
- (7) Despite the cancellation of a repayment arrangement, interest continues to accrue at the prescribed rate, or the other rate fixed by or under the agreement, until the outstanding required repayment to which the arrangement formerly applied is paid.

53. Recovery of certain amounts

- (1) This section applies to —
 - (a) an amount that is required to be repaid under the conditions of a first home owner grant or by a requirement of the Commissioner under this Act;
 - (b) the amount of a penalty imposed by the Commissioner under this Act;
 - (c) an amount, together with interest, that is due and payable under a repayment arrangement; and
 - (d) an amount that is required to be paid under section 60.
- (2) An applicant for a first home owner grant who is required to repay or pay an amount to which this section applies is liable to pay the amount to the Commissioner and, if there are 2 or more applicants, the liability is joint and several.
- (3) An amount to which this section applies is recoverable by the Commissioner in a court of competent jurisdiction as a debt due to the Crown.

54. Writing off liability

- (1) The Commissioner may write off the whole or part of an outstanding amount to which section 53 applies if satisfied that action, or further action, to recover the amount is impracticable or unwarranted.
- (2) The Commissioner does not, by writing off an outstanding amount —
 - (a) extinguish the liability to pay the amount; or
 - (b) prevent later proceedings to recover the amount.
- (3) A decision by the Commissioner to write off an outstanding amount, or not to write off the amount, cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings.
- (4) This section is subject to the *Financial Administration and Audit Act 1985*.

Division 4 — Charge on interest in home

55. Lodgement of memorial and creation of charge

- (1) The Commissioner may lodge with the Registrar a memorial signed by the Commissioner if an applicant for a first home owner grant —
 - (a) is liable to pay an amount to which section 53 applies; and
 - (b) holds a relevant interest in relation to the home for which the grant was sought.
- (2) When the memorial is registered by the Registrar, a charge for the amount to which section 53 applies is created on the relevant interest.
- (3) If the memorial so provides, the Registrar cannot, after its registration, register a dealing with the relevant interest, and

must reject an instrument submitted for registration relating to such a dealing, unless —

- (a) the Commissioner consents; or
 - (b) the registration of the memorial has been cancelled.
- (4) The Registrar must cancel the registration of the memorial —
- (a) on the application of the Commissioner; or
 - (b) on the application of the person who holds the relevant interest, if the application is accompanied by an instrument signed by the Commissioner releasing the relevant interest from the charge created by the registration of the memorial.
- (5) When the memorial is registered, the Commissioner must notify the holder of any registered encumbrance over the relevant interest of the registration of the memorial, but a failure to do so does not invalidate the registration of the memorial.
- (6) In this section —
- “registered”** means registered under the *Registration of Deeds Act 1856* or *Transfer of Land Act 1893*, as the case requires.

56. Priority of charge

- (1) A charge created by the registration of a memorial referred to in section 55 is a first charge on the relevant interest to which it relates and has priority over all other mortgages, charges and other encumbrances over the relevant interest.
- (2) However, if there is another charge on the relevant interest that ranks as a first charge under another Act, the relative priority of the charge referred to in subsection (1) and the other charge is to be determined according to the order of registration.

57. Release of relevant interest from charge

- (1) The Commissioner must, on payment of the amount secured by a charge on a relevant interest created by the registration of a memorial referred to in section 55, release the relevant interest from the charge.
- (2) The Registrar must, on the production of the instrument of release, cancel the registration of the memorial.

58. Order for sale of relevant interest

- (1) If —
 - (a) an applicant for a first home owner grant —
 - (i) is liable to pay an amount under section 53(2) (the “**outstanding amount**”); and
 - (ii) holds a relevant interest in relation to the home for which the grant was sought;
 - (b) the outstanding amount remains unpaid for 18 months after the registration of the memorial referred to in section 55 to create a charge to secure the amount; and
 - (c) the registration of the memorial has not been cancelled,

the Commissioner may apply to the Supreme Court for an order for the sale of the relevant interest so that the proceeds of sale may be applied towards satisfaction of the outstanding amount.
- (2) At least 6 months before the Commissioner makes an application to the Supreme Court under this section, the Commissioner must —
 - (a) have notice of the intended application published in 2 newspapers —
 - (i) one circulating generally throughout the State; and
 - (ii) the other circulating generally throughout Australia;

- (b) if the whereabouts of the person referred to in subsection (1)(a) are known to the Commissioner — give written notice of the intended application to the person; and
 - (c) give written notice of the intended application to the holder of any registered encumbrance over the relevant interest whose whereabouts are known to the Commissioner.
- (3) On an application under this section, the Supreme Court may order the sale of the relevant interest and make incidental orders —
- (a) about how the sale is to be conducted;
 - (b) authorising an officer of the Court to execute documents, and to do anything else necessary, for the sale and conveyance of the relevant interest;
 - (c) authorising the Registrar to register a transfer to a purchaser without requiring the duplicate (if any) of the certificate of title or any other document;
 - (d) directing (subject to subsection (5)) how the proceeds of sale are to be dealt with; and
 - (e) dealing with the costs of the proceedings and other incidental matters.
- (4) A sale by order of the Supreme Court discharges the relevant interest from any mortgage, charge or other encumbrance securing a monetary obligation, but the relevant interest remains subject to any lease, easement or other encumbrance.
- (5) The proceeds of the sale are to be applied —
- (a) firstly, in payment of the costs of the sale;
 - (b) secondly, in payment of the costs of the proceedings so far as those costs are, by order of the Court, to be paid out of the proceeds of sale;
 - (c) thirdly, in payment of the outstanding amount; and

- (d) fourthly, in discharge of any outstanding monetary liability secured by a mortgage, charge or other encumbrance referred to in subsection (4),

and any remaining balance is to be applied as directed by the Court.

59. Charge not to limit other means of enforcing payment

The existence of a charge created by the registration of a memorial referred to in section 55 does not affect the Commissioner's discretion to proceed for recovery of the amount secured by the charge in proceedings unrelated to the charge.

60. Commissioner may require fees to be reimbursed

- (1) The Commissioner may, by written notice, require an applicant for a first home owner grant, who holds a relevant interest in relation to which a memorial is lodged under section 55, to pay the amount of any fees paid by the Commissioner for the registration, or the cancellation of the registration, of the memorial.
- (2) An amount required to be paid under subsection (1) must be paid by the applicant within 28 days after the date on which notice of the requirement is given to the applicant.

Division 5 — Service of documents

61. Service on joint applicants or agent or representative

- (1) A notice or other document to be served by the Commissioner under this Act on joint applicants for a first home owner grant is taken to have been duly served on both or all of the applicants if duly served on any one of them.

- (2) A notice or other document to be served by the Commissioner under this Act is duly served if served on —
- (a) an agent with apparent authority to accept service of the notice or other document; or
 - (b) a person who lodged the application to which the notice or other document relates.

62. Method of service by Commissioner

- (1) A notice or other document to be served by the Commissioner under this Act is duly served on a particular person if —
- (a) given to the person personally;
 - (b) left for the person at the person's place of residence or business;
 - (c) sent by prepaid post (including document exchange) addressed to the person at an address appearing on correspondence addressed by or on behalf of the person to the Commissioner or otherwise notified to the Commissioner;
 - (d) left for collection by the person, or that person's agent, in a collection box maintained at the Commissioner's office;
 - (e) faxed or sent by computer transmission to a facsimile number or an address for the receipt of electronic mail appearing in correspondence addressed by or on behalf of the person to the Commissioner or otherwise notified to the Commissioner; or
 - (f) communicated in some other way agreed by the person.
- (2) The use of a particular method for service of a document on a particular person does not prevent the service of other documents on the same person in a different way.
- (3) If a notice or other document is not served personally, the document is taken to be served on the business day following the day on which the document is sent to, or left for, the person

to whom it is addressed, subject to the exceptions in subsection (4).

- (4) If —
- (a) the notice or document is sent by post to an address within Australia but outside the State — a further 4 business days are to be allowed;
 - (b) the notice or document is sent by post to an address outside Australia — a further 10 business days are to be allowed.

63. Service of court process

If a person on whom a document is to be served for the purpose of court proceedings commenced by the Commissioner under this Act has not notified the Commissioner of an address in the State at which the document may be served (either on the person or on an agent who has authority to accept service), the document is taken to have been duly served —

- (a) if sent by prepaid post to the last known address (within or outside Australia) of the person to be served; or
- (b) if notice of the document is given in accordance with the court's directions.

64. Other enactments not limited

This Division does not limit any other enactment that provides for the service of documents.

Division 6 — General

65. Confidentiality

- (1) A person is subject to a duty of confidentiality under this section if —
- (a) the person is, or has been, engaged in the administration of this Act; or

- (b) the person has obtained access to confidential information, whether directly or indirectly, from a person referred to in paragraph (a).
- (2) A person who is subject to a duty of confidentiality under this section must not record, disclose or make use of confidential information except —
- (a) for a purpose related to the administration or enforcement of —
 - (i) this Act or a corresponding law;
 - (ii) another Act administered by the Commissioner or under which the Commissioner exercises statutory functions; or
 - (iii) a taxation law;
 - (b) with the written consent of the person to whom the information relates; or
 - (c) for the purposes of legal proceedings.

Penalty: \$20 000.

- (3) This section does not prevent —
- (a) the disclosure of information or material in connection with the investigation or prosecution of a criminal offence to —
 - (i) the Director of Public Prosecutions for a State or the Commonwealth;
 - (ii) an officer of the police force of a State or the Commonwealth;
 - (iii) an officer of the Australian Securities and Investments Commission; or
 - (iv) an officer of another law enforcement agency established under a law of a State or the Commonwealth that is authorised by the regulations to receive confidential information under this paragraph;

- (b) the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates; or
 - (c) the disclosure of information or material in other circumstances in which its disclosure is permitted by the regulations.
- (4) Information or material that has restrictions on its disclosure imposed under another Act remains subject to those restrictions despite the information or material being obtained by the Commissioner, and such information or material may only be disclosed under subsection (2) to the extent that the disclosure is consistent with those restrictions.
- (5) If confidential information is lawfully disclosed under this section, this section does not prevent the further disclosure of the confidential information, or the recording or use of it, for the purpose for which the disclosure was made.
- (6) A court cannot require a person who is subject to a duty of confidentiality under this section to give evidence, or to produce material, contrary to this section, except in proceedings arising from the lawful disclosure of confidential information.
- (7) In this section —
- “confidential information”** means information or material obtained in the course of the administration of this Act about an applicant for a first home owner grant or about the applicant’s spouse;
- “State”** includes Territory.

66. Time for commencing prosecutions

A prosecution for an offence against this Act may be commenced at any time within 5 years after the date on which it is alleged the offence was committed.

67. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

68. Appropriation of Consolidated Fund

The payment of a first home owner grant under this Act is to be charged to the Consolidated Fund, and this section appropriates that Fund accordingly.

69. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding \$5 000.

70. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

First Home Owner Grant Act 2000

Part 4 Miscellaneous

Division 6 General

s. 70

- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.



Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
Australian citizen	3(1)
authorised investigator	3(1), 48(3)
building	3(1)
commencement date.....	14(5)
Commissioner	3(1)
completed.....	14(6)
comprehensive home building contract	3(1)
confidential information.....	65(7)
consideration	14(8)
corresponding law.....	3(1)
decision on the application.....	26
document.....	47(3)
eligibility criteria.....	3(1)
eligible transaction	14(1)
first home owner grant	3(1)
first home owner grant scheme	3(1)
guardian	3(1)
home owner.....	5
home	4
identity card	3(1)
interested person	16(3)
non-conforming interest.....	6(3)
objector	26
option to purchase.....	3(1)
outstanding amount.....	58(1)
owner	3(1), 5
owner builder	3(1)
permanent resident.....	3(1)
premises	3(1)
registered.....	55(6)
Registrar	3(1)
relevant date	21(3)
relevant interest.....	3(1), 6(1)
relevant material	3(1)
repayment arrangement.....	3(1)
required repayment	52(1)
residence requirement	3(1)
residential property	3(1)

Defined Terms

spouse7
State 65(7)
taxation law..... 3(1)