

Western Australia

## **First Home Owner Grant Amendment Act 2004**

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As at 18 Nov 2004

No. 52 of 2004

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# First Home Owner Grant Amendment Act 2004

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## CONTENTS

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### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2

### **Part 2 — Amendments**

3.	The Act amended	3
4.	Section 3 amended	3
5.	Section 8 amended	4
6.	Section 9A inserted	4
	9A. Criterion 1A — applicant to be at least 18 years of age	4
7.	Section 11 replaced	5
	11. Criterion 3 — except in certain circumstances, applicant or applicant's spouse or de facto partner must not have received another grant	5
8.	Section 12 amended	6
9.	Section 13 replaced	6
	13. Criterion 5 — residence requirements	7
10.	Section 13A inserted	8
	13A. Criterion 6 — applicant must not have been convicted of an offence under this Act	8
11.	Section 21 amended	8
12.	Section 23 amended	10
13.	Section 47 amended	11
14.	Section 65 amended	11

Contents

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**Part 3 — Transitional provisions**

15.	Definitions	13
16.	Application of amendments to minimum age requirements	13
17.	Application of amendments to residence requirements	13

Western Australia

## **First Home Owner Grant Amendment Act 2004**

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**No. 52 of 2004**

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

*[Assented to 18 November 2004]*

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 Amendment Act 2004*.

### **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Parts 2 and 3 are deemed to have come into operation on 1 July 2004.

## Part 2 — Amendments

### 3. The Act amended

The amendments in this Act are to the *First Home Owner Grant Act 2000*\*.

[\* Act No. 16 of 2000.

*For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 148-9.]*

### 4. Section 3 amended

Section 3(1) is amended as follows:

- (a) by deleting the definition of “residence requirement” and inserting instead —

“

“**residence requirements**” means —

- (a) the requirement under section 13(1) for the applicant to occupy the home as the applicant’s principal place of residence for the required residence period; and
- (b) the requirement under section 13(4) for the applicant to begin the required residence period within the take-up period;

”;

- (b) by inserting the following definitions in the appropriate alphabetical positions —

“

“**required residence period**” has the meaning given by section 13(2);

“**take-up period**” has the meaning given by section 13(5);

“**the home**”, in relation to an applicant or an application, means the home acquired or to be acquired under the eligible transaction to which the application relates.

- ”,
- (c) in the definition of “taxation law” by deleting “tax.” and inserting instead —  
“ tax; ”.

**5. Section 8 amended**

Section 8(2) is amended by deleting “10(2) or 13(2)” and inserting instead —

“ 9A(2), 10(2) or 13(6) ”.

**6. Section 9A inserted**

After section 9 the following section is inserted —

“

**9A. Criterion 1A — applicant to be at least 18 years of age**

- (1) An applicant for a first home owner grant must be at least 18 years of age.
- (2) The Commissioner may exempt an applicant from the requirement to be at least 18 years of age if the Commissioner is satisfied that —
  - (a) the applicant intends to comply with the residence requirements to the extent that the applicant is required to do so; and
  - (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility for or entitlement to a first home owner grant.
- (3) When deciding whether to exempt an applicant from the requirement, the Commissioner must take into account —



- (a) the circumstances in which the eligible transaction was entered into, including any financial or familial arrangements; and
- (b) the circumstances in which the application is made, including the role and involvement of a guardian, trustee or other person acting with or on behalf of the applicant, including the eligibility of the guardian, trustee or other person for a first home owner grant.

”.

**7. Section 11 replaced**

Section 11 is repealed and the following section is inserted instead —

“

**11. Criterion 3 — except in certain circumstances, applicant or applicant’s spouse or de facto partner must not have received another grant**

- (1) Subject to subsection (2), an applicant (“**the applicant**”) is ineligible if —
  - (a) the applicant or the applicant’s spouse or de facto partner has been a party to another application under this Act or a corresponding law; and
  - (b) a first home owner grant (“**the other grant**”) has been paid on the other application.
- (2) The applicant is not ineligible —
  - (a) if the other grant was paid back under the conditions on which it was made; or
  - (b) if —
    - (i) the Commissioner or, if the other grant was under a corresponding law, the

**s. 8**

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authority responsible for administering that corresponding law, was notified by an applicant for the other grant that a requirement relating to residence in the home for which the other grant was paid had not been complied with;

- (ii) the other grant was paid back; and
- (iii) in the Commissioner's opinion, the circumstances do not warrant the applicant's being rendered ineligible.

- (3) For the purposes of subsection (2) a grant is not to be regarded as having been paid back unless any penalty or interest payable in relation to the grant has also been paid.

”.

**8. Section 12 amended**

Section 12(3)(b) is deleted and the following paragraph is inserted instead —

“

- (b) occupied the property as a place of residence —
  - (i) before 1 July 2004; or
  - (ii) for a continuous period of at least 6 months that began on or after 1 July 2004.

”.

**9. Section 13 replaced**

Section 13 is repealed and the following section is inserted instead —

“

**13. Criterion 5 — residence requirements**

- (1) An applicant for a first home owner grant must occupy the home as the applicant's principal place of residence for the required residence period.
- (2) For the purposes of subsection (1) the **“required residence period”** is —
  - (a) a continuous period of at least 6 months; or
  - (b) if a shorter period is approved by the Commissioner under subsection (3) in relation to the applicant, that shorter period.
- (3) The Commissioner may approve of the applicant complying with subsection (1) for a period shorter than 6 months if there are, in the Commissioner's opinion, good reasons why the applicant cannot comply with subsection (1) for a period of 6 months.
- (4) The applicant must begin the required residence period within the take-up period.
- (5) For the purposes of subsection (4) the **“take-up period”** is —
  - (a) the period of 12 months after completion of the eligible transaction; or
  - (b) if a longer period is approved by the Commissioner in relation to the applicant, that longer period.
- (6) The Commissioner may exempt an applicant from the residence requirements 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 requirements; and

**s. 10**

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- (c) there are, in the Commissioner's opinion, good reasons to exempt the applicant from the residence requirements.

”.

**10. Section 13A inserted**

After section 13 the following section is inserted in Part 2 Division 2 —

“

**13A. Criterion 6 — applicant must not have been convicted of an offence under this Act**

An applicant is ineligible if the applicant has been convicted of an offence under this Act or a corresponding law.

”.

**11. Section 21 amended**

- (1) Section 21(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

- (1) The Commissioner may authorise payment of a first home owner grant —
  - (a) in anticipation of compliance with the residence requirements; or
  - (b) if the requirement under section 13(4) has been complied with, in anticipation of compliance with the requirement under section 13(1),if the Commissioner is satisfied that each applicant intends to comply with those requirements, or that requirement, to the extent that the applicant is required to do so.
- (2) A payment authorised under subsection (1) is made on condition that, if an applicant —

- (a) does not comply with the requirement under section 13(4);
- (b) becomes aware that the requirement under section 13(4) will not be complied with; or
- (c) having complied with the requirement under section 13(4) —
  - (i) does not comply with the requirement under section 13(1); or
  - (ii) becomes aware that the requirement under section 13(1) will not be complied with,

the applicant must within 30 days after the relevant day —

- (d) give written notice of that fact to the Commissioner; and
  - (e) 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.
- (3) In subsection (2) —
- “relevant day”** means —
- (a) for subsection (2)(a) — the day after the day on which the take-up period ends;
  - (b) for subsection (2)(b) — the day on which the applicant first becomes aware that the requirement under section 13(4) will not be complied with;
  - (c) for subsection (2)(c)(i) — the day on which the applicant stops using the home as the applicant’s principal place of residence;
  - (d) for subsection (2)(c)(ii) — the day on which the applicant first becomes aware that the

**s. 12**

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requirement under section 13(1) will not be complied with.

”.

- (2) Section 21(4) is amended by deleting “(a) and (b)” and inserting instead —

“ (d) and (e) ”.

- (3) Section 21(5) is repealed and the following subsections are inserted instead —

“

- (5) The Commissioner may, by written notice, impose a penalty on an applicant if the applicant —

- (a) does not comply with subsection (2)(e) within the 30 day period mentioned in subsection (2); or
- (b) does not repay the amount of the grant in accordance with an arrangement approved for the purposes of subsection (2)(e).

- (5a) The amount of a penalty imposed under subsection (5) is not to exceed the amount that the applicant is required to repay under subsection (2).

”.

**12. Section 23 amended**

Section 23(3) is repealed and the following subsection is inserted instead —

“

- (3) If the deceased applicant —
- (a) had not complied with either of the residence requirements; or
  - (b) had complied with the requirement under section 13(4) but had not complied with the requirement under section 13(1),

but the Commissioner is satisfied that the applicant intended to do so, then the residence requirements are satisfied.

”.

**13. Section 47 amended**

- (1) Section 47(1) is amended by deleting “knowing the information or document to be” and inserting instead —

“ that is ”.

- (2) Section 47(2) is repealed and the following subsection is inserted instead —

“

- (2) In proceedings for an offence against this section it is a defence for the person charged to prove —

(a) that the person —

- (i) did not know that the information or document was false or misleading in a material particular; and
- (ii) was not reckless as to whether the information or document was false or misleading in a material particular;

or

- (b) that, when providing a document, the person advised the Commissioner or authorised investigator that the document was false or misleading in a material particular.

”.

**14. Section 65 amended**

Section 65(2)(c) is amended by inserting after “legal proceedings” —

**s. 14**

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“

under this Act, a taxation Act as defined in the  
*Taxation Administration Act 2003*, or a  
corresponding law

”.



## **Part 3 — Transitional provisions**

### **15. Definitions**

A term used in this Part that is defined in the *First Home Owner Grant Act 2000* has the same meaning in this Part as it has in that Act.

### **16. Application of amendments to minimum age requirements**

Despite the amendments effected by section 6, the *First Home Owner Grant Act 2000* as in force immediately before the commencement of that section continues to apply in relation to an eligible transaction the commencement date of which is before 1 July 2004.

### **17. Application of amendments to residence requirements**

Despite the amendments effected by section 9, the *First Home Owner Grant Act 2000* as in force immediately before the commencement of that section continues to apply in relation to an eligible transaction the commencement date of which is before 1 July 2004.

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