

# NORTHERN TERRITORY OF AUSTRALIA

## FIRST HOME OWNER GRANT ACT

As in force at 1 July 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 2004

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## FIRST HOME OWNER GRANT ACT

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

### Part 1 Preliminary

#### 1 Short title

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

#### 2 Commencement

This Act comes into operation on 1 July 2000.

#### 3 Definitions

In this Act, unless the contrary intention appears:

**Agency employee** means an employee within the meaning of the *Public Sector Employment and Management Act* of the Agency administering this Act and includes the Chief Executive Officer within the meaning of that Act of that Agency.

**Australian citizen** means an Australian citizen within the meaning of the *Australian Citizenship Act 1948* of the Commonwealth.

**building** includes part of a building.

**commencement date**, in relation to an eligible transaction, has the meaning in section 13(5).

**Commissioner** has the same meaning as in section 4(1) of the *Taxation (Administration) Act*.

**completion**, in relation to an eligible transaction, has the meaning in section 13(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 in section 13(8).

**corresponding law** means an Act of a State or another Territory of the Commonwealth corresponding to this Act.

**eligibility criteria** means the criteria prescribed in Division 2 of Part 2 for determining whether an applicant for a first home owner grant is eligible for the grant.

**eligible transaction** has the meaning in section 13(1).

**first home owner grant** means a grant authorised under section 17.

**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, includes a trustee who holds property on trust for the person under an instrument of trust or by order of a court or tribunal.

**home** has the meaning in section 4.

**option to purchase** includes a right of pre-emption or a right of first refusal.

**owner** means:

- (a) in relation to land, a person who has a relevant interest in the land; and
- (b) in relation to a home, a person who has a relevant interest in the land on which the home is built.

**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:

- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth; or

- (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

**relevant interest** has the meaning in section 5(2), (3) and (4).

**residence requirements** means the requirements under section 12(1), (1A) and (1B).

**residential property** means land in Australia on which there is a building lawfully occupied as a place of residence or suitable for occupation as a place of residence.

## **4 Homes**

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 Ownership of land and homes**

- (1) 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.
- (2) Each of the following is, subject to subsection (3), a relevant interest in land:
  - (a) an estate in fee simple in the land;
  - (b) a life estate in the land approved by the Commissioner;
  - (c) a perpetual lease of the land granted by the Commonwealth or the Territory;
  - (d) a leasehold interest in the land granted by the Commonwealth or the Territory 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 of an estate in fee simple in the land by instalments;
  - (f) a licence or right of occupancy granted by the Commonwealth or the Territory that gives, in the Commissioner's opinion, the licensee or the holder of the right reasonable security of tenure;

- (g) an interest as lessee or sublessee of the land under a long-term registered lease granted by the Commonwealth or the Territory where the term of the lease is 15 years or more.
- (3) Subject to subsection (4):
  - (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 period allowed by the Commissioner), a right to immediate occupation of the land;
  - (b) an interest is not a relevant interest in the hands of a person who 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 in trust.
- (4) The Regulations may provide for recognition of an interest (***a non-conforming interest***) as a relevant interest:
  - (a) even though the interest may not conform with the above provisions; and
  - (b) even though the interest may not be recognised at law or in equity as an interest in land.
- (5) If a first home owner grant is to be paid in consequence of the recognition of a non-conforming interest as a relevant interest, the Commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if criteria prescribed in the Regulations about future conduct or events are not satisfied.

## **6 Spouses**

If the Commissioner is satisfied that, at the time of deciding an application for a first home owner grant, an applicant:

- (a) is married but not cohabiting with the person to whom the applicant is married; and
- (b) has no intention of resuming cohabitation,

the person to whom the applicant is married is not to be regarded as the applicant's spouse.



## **Part 2                      First home owner grant**

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

#### **7                      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)(a), an applicant need not comply with the eligibility criteria to the extent the applicant is exempted from compliance by or under this Act.
- (3) Only one first home owner grant is payable for the same eligible transaction.

### **Division 2                Eligibility criteria (applicants)**

#### **8                      Criterion 1 – Applicant to be a natural person and at least 18 years of age**

- (1) An applicant for a first home owner grant must be:
  - (a) a natural person; and
  - (b) at least 18 years of age at the commencement date of the eligible transaction.
- (2) The Commissioner may exempt an applicant from the requirement in subsection (1)(b) if the Commissioner is satisfied:
  - (a) the applicant will comply with the residence requirements; and
  - (b) the application does not have the effect of circumventing limitations on, or requirements affecting, eligibility for or entitlement to a first home owner grant imposed by or under this Act.
- (3) If an application is made by joint applicants and one of the applicants complies with subsection (1)(b), it is not necessary for the other or others to comply with that paragraph.

**9                      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 the other or others to be Australian citizens or permanent residents.

**10                    Criterion 3 – Applicant (or applicant's spouse or de facto partner) must not have received an earlier grant**

- (1) Subject to subsection (2), an applicant is ineligible for a first home owner grant if:
  - (a) the applicant or the applicant's spouse or de facto partner has been a party to an earlier application under this Act or a corresponding law; and
  - (b) a grant was paid on the application.
- (2) However, an applicant is not ineligible under subsection (1) if:
  - (a) the grant was later paid back; and
  - (b) any amount payable as a penalty or as interest was also paid in relation to the earlier application.
- (3) An applicant is ineligible for a first home owner grant if the applicant or the applicant's spouse or de facto partner:
  - (a) could have successfully applied for a first home owner grant under this Act or a corresponding law in respect of an earlier transaction to which he or she was a party but did not do so; or
  - (b) could, assuming that he or she had then been an Australian citizen or a permanent resident, have successfully applied for a first home owner grant under this Act or a corresponding law in respect of an earlier transaction to which he or she was a party.

**11                      Criterion 4 – Applicant (or applicant's spouse or de facto partner) must not have had relevant interest in residential property**

- (1) An applicant is ineligible for a first home owner grant if the applicant or the applicant's spouse or de facto partner held before 1 July 2000:
  - (a) a relevant interest in residential property in the Territory; or
  - (b) an interest in residential property in a State or another Territory of the Commonwealth that is a relevant interest under the corresponding law of that State or Territory.
- (2) In working 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 for a first home owner grant if the applicant or the applicant's spouse or de facto partner 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 or de facto partner, being:
  - (a) a relevant interest in residential property in the Territory; or
  - (b) an interest in residential property in a State or another Territory of the Commonwealth that is a relevant interest under the corresponding law of that State or Territory.
- (4) However, for subsection (3), the applicant or the applicant's spouse or de facto partner is taken not to have used the property as the residence of the applicant or the applicant's spouse or de facto partner if:
  - (a) the property was the subject of an earlier application under this Act or a corresponding law by the applicant or the applicant's spouse or de facto partner;
  - (b) a first home owner grant was paid under the earlier application; and
  - (c) the applicant or the applicant's spouse or de facto partner repaid the grant.

## **12            Criterion 5 – Residence requirement**

- (1) Subject to subsection (1A), 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 for a continuous period of at least 6 months.
- (1A) However, if the Commissioner is satisfied there are special reasons to do so, the Commissioner may approve a shorter period.
- (1B) The period of occupation required under subsection (1), or the shorter period approved under subsection (1A), must start within 12 months after completion of the eligible transaction or a longer period approved by the Commissioner.
- (2) The Commissioner may exempt an applicant (***the non-complying 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
  - (c) there are, in the Commissioner's opinion, special reasons to exempt the non-complying applicant from the residence requirements.

## **Division 3            Eligible transactions**

### **13            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 Territory;
  - (b) a comprehensive home building contract made on or after 1 July 2000 by the owner of land in the Territory, or a person who will on completion of the contract be the owner of land in the Territory, to have a home built on the land; or
  - (c) the building of a home in the Territory by an owner builder if the building work commences on or after 1 July 2000.
- (2) A contract is a contract for the purchase of a home if the contract is a contract for the acquisition of a relevant interest in land on which a home is built.

- (3) A contract made on or after 1 July 2000 for the purchase or construction of a home is not an eligible transaction if:
- (a) in the case of a contract to purchase a home – the purchaser had an option to purchase the home granted before that date or the vendor had an option to require the purchaser to purchase the home granted before that date; or
  - (b) in the case of a comprehensive home building contract – either party had a right or option granted before that date to require the other party to enter into the contract,
- unless the contract is declared under subsection (4) to be an eligible transaction.
- (4) The Commissioner may declare a contract for the purchase or construction of a home to which subsection (3) would otherwise apply to be an eligible transaction if the Commissioner is of the opinion that the contract does not have the effect of circumventing limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant imposed by or under this Act.
- (5) The commencement date of an eligible transaction is:
- (a) in the case of a contract for the purchase or construction of a home – the date when the contract is made;
  - (b) in the case of the building of a home by an owner builder other than a transaction to which subsection (7) applies:
    - (i) the date when laying the foundations for the home commences; or
    - (ii) another date the Commissioner considers appropriate in the circumstances of the case; or
  - (c) in the case of a transaction to which subsection (7) applies – the date referred to in subsection (7)(b).
- (6) Subject to any qualifications prescribed by regulation, an eligible transaction is completed:
- (a) in the case of a contract for the purchase of a home, when:
    - (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 – when the building is ready for occupation as a place of residence;
  - (c) in the case of the building of a home by an owner builder other than a transaction to which subsection (7) applies – when the building is ready for occupation as a place of residence; or
  - (d) in the case of a transaction to which subsection (7) applies – when the event referred to in subsection (7)(c) occurs.
- (7) If a person purchases a building and intends to use it as a place of residence on land in which the person has a relevant interest but on which it is not situated at the time of purchase:
- (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 to be taken to be the date of the contract to purchase the building; and
  - (c) the transaction is to be taken to be completed when the 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 grant**

### **14      Application for grant**

- (1) An application for a first home owner grant is to be made to the Commissioner.

- (2) An application:
  - (a) must be in a form approved by the Commissioner;
  - (b) must contain the information required by the Commissioner about the applicant and the applicant's spouse or de facto partner; and
  - (c) must be signed by the applicant and, if required by the Commissioner, the applicant's spouse or de facto partner.
- (3) An applicant and the applicant's spouse or de facto partner must provide the Commissioner with any further information the Commissioner requires to decide the application.
- (4) Information provided by an applicant or an applicant's spouse or de facto partner 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) An application may only be made within a period (***the application period***):
  - (a) commencing 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 has a discretion to allow an application to be made before or after the application period.
- (7) An applicant may, with the Commissioner's consent, amend an application.

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

- (1) All interested persons must be applicants.
- (2) An interested person is a person who is, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home other than a person who is excluded from the application of this section under the Regulations.

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

- (1) An application for a first home owner grant 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 to be regarded as the applicant.

## **Division 5            Decision on application**

### **17            Commissioner to decide applications**

- (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) The Commissioner may authorise the payment of a first home owner grant before completion of the eligible transaction if satisfied that:
  - (a) there are special reasons for doing so; and
  - (b) the interests of the Territory can be adequately protected by conditions requiring repayment of the grant if the transaction is not completed within a reasonable time.
- (3) Where an applicant has not been exempted under section 12(2) from compliance with the residence requirements, the Commissioner may authorise payment of a first home owner grant in anticipation of compliance with the residence requirements if the Commissioner is satisfied that each applicant intends to comply with the residence requirements.

### **18            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.

### **19            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:
  - (a) to the applicant; or
  - (b) to some other person to whom the applicant directs in writing that the grant be paid.



## **20            Conditions generally**

- (1) The Commissioner may authorise the payment of a first home owner grant on conditions the Commissioner considers appropriate.
- (2) The Commissioner may at any time amend or cancel a condition imposed on a first home owner grant under section 5(5) or subsection (1) of this section.
- (3) If the Commissioner amends or cancels a condition of a first home owner grant, the Commissioner must give the person on whose application the grant was paid written notice of the decision and the date the decision takes effect.

## **21            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 comply with the residence requirements, the residence requirements are satisfied.

## **22            Power to correct decision**

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.

## **23            Notification 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 notice of the decision.

- (2) If the decision is to grant the application without conditions, the payment of the first home owner grant is sufficient notice of the decision.
- (3) If the decision is to refuse the 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**

### **24            Objections**

- (1) An applicant for a first home owner grant who is dissatisfied with the Commissioner's decision in relation to the application may lodge a written notice of objection with the Commissioner.
- (2) The grounds of objection must be stated fully and in detail in the notice of objection.
- (3) The objection must be lodged within 30 days after the date of the notice of the decision.
- (4) If the Commissioner is satisfied that an applicant has a reasonable excuse for failing to lodge an objection within the 30-day period, the Commissioner may extend the time for lodging the objection.

### **25            Powers of Commissioner on objection**

- (1) After considering an objection, the Commissioner may confirm, vary or reverse the decision subject to the objection.
- (2) The Commissioner must give the objector written notice of the decision on the objection.

### **26            Appeal**

- (1) An objector who is dissatisfied with the Commissioner's decision on the objection may appeal to the Local Court against the decision.
- (2) An appeal must be commenced within 28 days after the notice of the decision on the objection is given.
- (3) The Local Court may extend the time for commencing an appeal.
- (4) On an appeal, the objector is limited to the grounds stated in his or her objection.

**27            Determination of appeal**

On an appeal, the Local Court may:

- (a) confirm, vary or reverse the decision on the application for a first home owner grant; and
- (b) make incidental and ancillary orders.

**28            Pending appeal not to delay payment**

- (1) The fact that an appeal is pending in relation to an amount payable under this Act does not in the meantime interfere with or affect the amount the subject of the appeal and that amount is to be paid or may be recovered as if no appeal were pending.
- (2) If the amount is altered on appeal, a due adjustment is to be made, for which purpose an amount paid in excess is to be refunded and an amount short paid is recoverable as arrears.

**Part 3            Administration**

**Division 1       Administration generally**

**29            Administration**

The Commissioner has the general administration of this Act.

**30            Delegation**

- (1) The Commissioner may delegate in writing to a person any of the Commissioner's powers or functions under this Act other than the following:
  - (a) this power of delegation;
  - (b) the power under section 34(1) to appoint an authorised investigator;
  - (c) the power under section 37(3) to authorise the entry of premises by an authorised investigator without the consent of the occupier and without a warrant; or
  - (d) the power under section 40(2) to authorise the use of reasonable force by an authorised investigator to enter premises.

- (2) Without limiting subsection (1), the Commissioner may enter into an arrangement (***an administration arrangement***) with a financial institution or other person under which:
- (a) the Commissioner delegates powers or functions related to the administration of the first home owner grant scheme; and
  - (b) the financial institution or other person is required to carry out the delegated powers or functions in accordance with specified conditions.
- (3) The conditions of an administration arrangement may include conditions prescribed by regulation.
- (4) If an administration arrangement includes prescribed conditions, a financial institution or other person that contravenes a prescribed condition commits an offence.

Penalty:        100 penalty units.

## **Division 2            Investigations**

### **31            Interpretation**

- (1) In this Part:

***authorised investigation*** has the meaning given in section 32.

***authorised investigator*** means a person appointed under section 34.

***premises*** means:

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

and includes a part of premises.

***relevant material*** means a document or thing relevant to an authorised investigation.

- (2) The Commissioner has the functions and powers of an authorised investigator.

## **32            Authorised investigations**

An authorised investigation is an investigation for the purposes of one or more of the following:

- (a) ascertaining whether an application under this Act or a corresponding law for a first home owner grant has been properly made;
- (b) ascertaining whether an objection to a decision made under this Act or a corresponding law should be upheld;
- (c) ascertaining 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 entitled to the grant;
- (d) ascertaining whether a condition on which a first home owner grant has been paid under this Act or a corresponding law has been complied with;
- (e) gathering evidence of a contravention of this Act or a corresponding law;
- (f) any other matter relevant to the administration of this Act or a corresponding law.

## **33            Cross-border investigations**

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

## **34            Power to appoint authorised investigators**

- (1) The Commissioner may appoint a person to be an authorised investigator.
- (2) The Commissioner must issue an authorised investigator with an identity card that is to include a photograph of the investigator.

**35            Power to require information and production of records**

- (1) For the purposes of an authorised investigation, the Commissioner may require a person:
  - (a) to provide the Commissioner with 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, custody or power.
- (2) A requirement:
  - (a) may be made whether or not the person to whom the requirement is addressed is a person who has applied for a first home owner grant; and
  - (b) is to be made by notice in writing given to the person to whom the requirement is addressed.
- (3) A person required to provide answers to questions by notice under this section must, if the notice requires, verify the answers by statutory declaration.
- (4) A person who contravenes or fails to comply with a requirement under this section commits a regulatory offence.

Penalty:        100 penalty units

**36            Power to require person to attend for examination**

- (1) For the purposes of an authorised investigation, the Commissioner may require a person to attend at a specified time and place before an authorised investigator for examination on a specified subject.
- (2) A requirement:
  - (a) may be made whether or not the person to whom it is addressed is a person who has applied for a first home owner grant; and
  - (b) is to be made by notice in writing given to the person to whom it is addressed.
- (3) A notice requiring a person to attend for examination may require the person to bring and produce to the authorised investigator conducting the examination any relevant material in the person's possession, custody or control relating to the subject of the examination.

- (4) An authorised investigator conducting an examination may require a person attending for examination:
  - (a) to take an oath or affirmation to answer all questions truthfully and may administer the oath or affirmation;
  - (b) to answer a question relevant to the subject matter of the examination asked by the investigator or, with the consent of the investigator, by another person present at the examination; or
  - (c) to produce for examination by the investigator any relevant material in the person's possession at the examination.
- (5) A person who contravenes or fails to comply with a requirement under this section commits a regulatory offence.

Penalty:        100 penalty units.

- (6) The Regulations may provide for, or permit a person to determine, the scales of expenses to be allowed to persons required under this section to attend for examination.

### **37            Power to enter premises**

- (1) For the purposes of an authorised investigation, an authorised investigator may enter and remain on premises to exercise the powers of investigation in section 39.
- (2) The authorised investigator may only enter residential premises as follows:
  - (a) the investigator may enter the premises at any reasonable time with the consent of the occupier;
  - (b) the investigator may enter the premises under the authority of a search warrant issued under section 38;
  - (c) if the 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, he or she may enter the premises 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)(c) unless the Commissioner in the particular case has authorised the investigator, orally or in writing, to do so.

- (4) The authorised investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the investigator's identity card.

### **38            Search warrants**

- (1) For the purposes of an authorised investigation, an authorised investigator may apply to a Justice for a search warrant.
- (2) If the Justice is satisfied by evidence on oath that there are reasonable grounds to suspect that there may be relevant material on any premises, the Justice may issue a search warrant to an authorised investigator.
- (3) A search warrant authorises an authorised investigator:
  - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
  - (b) to exercise the powers in section 39.
- (4) A search warrant may be executed by the authorised investigator to whom it is issued or by any other authorised investigator.
- (5) An authorised investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, display the warrant.

### **39            Powers of authorised investigators while on premises**

- (1) An authorised investigator who enters premises under section 37 or under a warrant issued under section 38 may exercise one or more of the following powers:
  - (a) search the premises and examine anything on the premises;
  - (b) operate equipment or facilities on the premises for a purpose relevant to the authorised investigation;
  - (c) take possession of any relevant material and retain it for as long as may be necessary:
    - (i) to examine it to determine its evidentiary value;
    - (ii) to copy it; or
    - (iii) if it is relevant to possible legal proceedings – for the purposes of those proceedings;
  - (d) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;



- (e) request any person who is on the premises to do any of the following:
  - (i) to state his or her full name, date of birth and address;
  - (ii) to answer (orally or in writing) questions asked by the authorised investigator relevant to the authorised investigation;
  - (iii) to produce relevant material;
  - (iv) to operate equipment or facilities on the premises for a purpose relevant to the authorised investigation;
  - (v) to give other assistance the authorised investigator reasonably requires to carry out the authorised investigation.
- (2) If an authorised investigator takes anything from the premises, the investigator must issue a receipt in a form approved by the Commissioner and:
  - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
  - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (3) A person who hinders an authorised investigator commits an offence.  
  
Penalty:        Imprisonment for 2 years.
- (4) A person hinders an authorised investigator if the person:
  - (a) hinders or obstructs the investigator in the exercise of powers under this section;
  - (b) does not comply with a request of the investigator under this section; or
  - (c) gives the investigator information that the person knows is false or misleading.

#### **40            Use of force**

- (1) An authorised investigator may use reasonable force to exercise the power to enter premises under section 37 or under a warrant issued under section 38 or to exercise a power in section 39(1)(a) to (d).

- (2) An authorised investigator must not use the power in subsection (1) unless the Commissioner has in the particular case authorised the investigator, orally or in writing, to do so.

### **Division 3                      Incorrect applications and amounts incorrectly paid**

#### **41                      Power to recover amount paid in error etc.**

- (1) This section applies to a person on whose application a first home owner grant was paid if:
- (a) the person was ineligible for the grant;
  - (b) the grant was paid in anticipation of compliance with the residence requirements and the person fails to comply with those requirements; or
  - (c) the Commissioner imposed a condition on the grant under section 5(5) or 20 and the person breaches the condition.
- (2) A person to whom this section applies must:
- (a) notify the Commissioner in writing of the person's ineligibility, failure or breach; and
  - (b) pay to the Commissioner the amount of the grant,
- within:
- (c) in the case of ineligibility – 30 days after the date on which the grant was paid;
  - (d) in the case of non-compliance with the residence requirements – 30 days after:
    - (i) the date by which the person was to have occupied the home; or
    - (ii) the date on which it first became apparent that the residence requirements would not be complied with during the period allowed for compliance,
- whichever occurs first; or
- (e) in the case of breach of a condition – 30 days after the breach occurred.

(3) If an amount is not paid as required by subsection (2), the Commissioner may give to the person a notice in writing:

(a) requiring the person to pay to the Commissioner within 14 days after receiving the notice the amount of the unpaid portion of the grant together with a penalty of the same amount as that unpaid portion; and

(b) setting out the reason why payment is required.

(3A) If a person to whom this section applies fails to pay to the Commissioner the amount of the grant by the last date for payment as specified in subsection (2), the person must pay, in addition to the amount, interest on the unpaid portion of the grant from that date until the date the grant is repaid.

(3B) In addition to subsection (3A), if the person is required to pay a penalty by a notice under subsection (3) and the person fails to pay the penalty by the last date for payment as specified in subsection (3), the person must pay, in addition to the penalty, interest on the unpaid portion of the penalty calculated from that date until the date the penalty is paid.

(4) An amount required to be paid to the Commissioner under this section is a debt due to the Territory and may be sued for and recovered in a court of competent jurisdiction by the Commissioner suing in his or her official name.

(5) If a person who is liable to pay an amount under this section has an interest in the home for which the first home owner grant was paid, the liability is an overriding statutory charge, within the meaning of the *Land Title Act*, on the person's interest in that home.

(6) The Commissioner may enter into an arrangement (which may include provision for the payment of interest) for payment of a liability outstanding under this section by instalments.

(7) The Commissioner may remit the whole or any part of a penalty or interest payable under this section.

(8) A person who fails to comply with subsection (2) or a notice under subsection (3) commits a regulatory offence.

Penalty:        50 penalty units.

(9) A person who breached a condition on payment of a first home owner grant may be found guilty of an offence against subsection (8) even if the condition breached is subsequently amended or cancelled.

- (10) Subsection (9) applies despite section 14 of the Criminal Code.
- (11) If a first home owner grant was paid on the application of 2 or more persons, the liability of those persons under this section is joint and several.
- (12) For subsections (3A), (3B) and (6), interest is an annual rate calculated by adding 7% to the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the financial year in which the liability arose.

## **Part 4                      Miscellaneous**

### **42                      False statements**

- (1) A person who, in purported compliance with a requirement under this Act or the Regulations, makes a statement that is false in a material particular commits an offence.

Penalty:            Imprisonment for 2 years.

- (2) It is a defence to an offence against subsection (1) if the defendant proves that the false statement was made through ignorance or inadvertence

### **43                      Confidentiality**

- (1) The following persons are subject to the duty of confidentiality in this section:
  - (a) a person who is or has been the Commissioner;
  - (b) a person who is or has been an Agency employee;
  - (c) a person to whom a power or function of the Commissioner is or has been delegated under section 30;
  - (d) a person who is or has been an employee or agent of such a delegate;
  - (e) a person:
    - (i) to whom information or records are disclosed under this Act; or
    - (ii) who gains access (properly or improperly) to information or records obtained under this Act.

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- (2) A person subject to the duty of confidentiality in this section must not record, disclose, or make use of information or records obtained under this Act except:
- (a) for a purpose related to the administration or enforcement of this Act;
  - (b) as required or allowed by this Act or another written law that specifically or by necessary implication overrides this duty of confidentiality;
  - (c) as authorised by the person to whose affairs the information or records relate; or
  - (d) for the purpose of legal proceedings, or a report of legal proceedings, arising out of this Act.
- (3) This section does not prevent the disclosure of information or records:
- (a) to an Agency employee;
  - (b) to a person to whom a power or function of the Commissioner is delegated or an employee or agent of such a person who is exercising that power or performing that function on behalf of his or her employer or principal;
  - (c) to an official administering a corresponding law for a purpose related to the administration of that law;
  - (d) to a person performing, in pursuance of employment by the Territory, a function under an Act administered by the Commissioner for the purpose of enabling that person to carry out that function;
  - (e) to the Auditor-General for the purposes of performing functions or exercising powers in relation to an audit of the office of the Commissioner imposed or conferred on the Auditor-General by or under the *Audit Act* or any other Act;
  - (f) in connection with the investigation of an offence to:
    - (i) a member of the Police Force or the Australian Federal Police;
    - (ii) the Director of Public Prosecutions for the Territory or the Commonwealth; or
    - (iii) an officer of another law enforcement agency established under the law of the Commonwealth, a State

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or another Territory of the Commonwealth authorised by the Regulations to receive confidential information under this paragraph;

- (g) in a statistical or other form that could not reasonably be expected to lead to the identification of any person to whose affairs it relates; or
  - (h) in other circumstances in which its disclosure is permitted by the Regulations.
- (4) If information or records are lawfully disclosed under this section, this section does not prevent the further disclosure of the information or records, or the recording or use of the information or records, for the purpose for which the disclosure was made.
- (5) Nothing in this section prevents the Auditor-General from disclosing or publishing information or records lawfully disclosed under this section if the disclosure or publication does not directly or indirectly divulge information identifying the affairs of a particular person.
- (6) A person subject to the duty of confidentiality in this section who contravenes or fails to comply with that duty commits an offence.

Penalty: Imprisonment for 2 years.

#### **43A Time for bringing prosecutions**

The prosecution of an offence against this Act is to be commenced within 3 years after the day on which the offence is alleged to have been committed.

#### **44 Legal immunity**

- (1) This section applies to the following persons:
- (a) a person who is or has been the Commissioner;
  - (b) a person who is or has been an Agency employee;
  - (c) a person to whom a power or function of the Commissioner is or has been delegated under section 30;
  - (d) a person who is or has been an employee or agent of such a delegate.
- (2) No civil or criminal proceedings lie against a person to whom this section applies in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function, or the exercise or purported exercise of a power, under

this Act.

- (3) Subsection (2) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission.

#### **45 Continuing offences**

- (1) If, in committing an offence against a provision of this Act or the Regulations, a person fails to do an act within the time for doing the act specified in the provision, in addition to the offence for failure to do the act within the time, the person commits an additional offence on each day after the expiry of the time during which the act continues not to be done.
- (2) On being found guilty of an offence referred to in subsection (1), a person is, in addition to the penalty for failure to do the act within the time, liable to a penalty not exceeding 1 penalty unit for each day after the expiry of the time during which the offence continues.

#### **46 Service of documents**

A document that is required by or under this Act to be given or served on a person is to be given or served:

- (a) by delivering the document to the person personally;
- (b) by sending the document by prepaid post to the person at his or her last-known place of residence or business or, if he or she is carrying on business at 2 or more places, at one of those places;
- (c) by sending the document by prepaid post to the person at his or her last-known postal address;
- (d) by leaving the document at the last-known place of residence of the person with some person who is apparently living at that place and who is apparently not less than 16 years of age; or
- (e) by leaving the document at the last-known place of business of the person or, if he or she is carrying on business at 2 or more places, at one of those places with some person who is apparently employed by the person and who is apparently not less than 16 years of age.

#### **47 Appearances by Commissioner**

- (1) In an action, prosecution or other proceeding under this Act in a court, the Commissioner may appear personally, by a barrister or solicitor or by an officer appointed by the Commissioner.

- (2) The appearance of an officer appointed under subsection (1) and a statement by the officer that he or she appears by authority of the Commissioner are together sufficient evidence of that authority.

#### **48 Evidence**

- (1) The production of:
- (a) a notice of the Commissioner's decision in relation to an application for a first home owner grant; or
  - (b) a document under the hand of the Commissioner purporting to be a copy of such a notice,

is conclusive evidence of the due making of a decision in relation to the application and (except in proceedings on a review of, or appeal against, a decision under this Act) that all the particulars of the decision are correct.

- (2) The production of a document under the hand of the Commissioner purporting to be a copy of a document issued or given by the Commissioner is conclusive evidence that the document was so issued or given.
- (3) The production of a document under the hand of the Commissioner purporting to be a copy of or extract from:
- (a) an application for a first home owner grant;
  - (b) a notice of the Commissioner's decision in relation to such an application; or
  - (c) a notice under section 41(3) requiring payment of an amount,

is evidence of the matter set forth in the document so produced to the same extent as the original application or notice would be if it were produced.

#### **49 Standing appropriation**

The money required to pay first home owner grants is to be paid from the public moneys of the Territory and the Allocation for that purpose is established or increased to the extent necessary.

#### **50 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or



- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***First Home Owner Grant Act 2000 (Act No. 33, 2000)***

Assent date	27 June 2000
Commenced	1 July 2000 (s 2)

***First Home Owner Grant Amendment Act 2001 (Act No. 45, 2001)***

Assent date	19 July 2001
Commenced	9 March 2001 (s 2)

***First Home Owner Grant Amendment Act 2002 (Act No. 22, 2002)***

Assent date	7 June 2002
Commenced	ss 4(1) and 5: 9 October 2001; ss 4(2), 6 and 7: 1 January 2002 (s 2)

***First Home Owner Grant Amendment Act 2003 (Act No. 38, 2003)***

Assent date	30 June 2003
Commenced	27 May 2003 (s 2)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 (Gaz G11, 17 March 2004, p 8)

***First Home Owner Grant Amendment Act 2004 (Act No. 28, 2004)***

Assent date	28 April 2004
Commenced	s 5: 10 November 2003; s 11(e): 1 December 2000; rem: 1 July 2004 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and Gaz G38, 27 September 2000, p 2)

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**SAVINGS AND TRANSITIONAL PROVISIONS**

- s 4 *First Home Owner Grant Amendment Act 2003* (Act No. 38, 2003)
- s 70 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003*  
(Act No. 1, 2004)
- s 13 *First Home Owner Grant Amendment Act 2004* (Act No. 28, 2004)

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**LIST OF AMENDMENTS**

- s 3 amd No. 1, 2004, s 62; No. 28, 2004, s 4
- s 6 amd No. 1, 2004, s 62
- s 10 amd No. 1, 2004, s 62; No. 28, 2004, s 6
- s 11 amd No. 1, 2004, s 62; No. 28, 2004, s 7
- s 12 amd No. 28, 2004, s 8
- pt 2
- div 3A hdg ins No. 45, 2001, s 4  
exp s 13E 1 July 2002
- s 13A ins No. 45, 2001, s 4  
exp s 13E 1 July 2002
- s 13B ins No. 45, 2001, s 4  
amd No. 22, 2002, s 4  
exp s 13E 1 July 2002
- s 13C ins No. 45, 2001, s 4  
amd No. 22, 2002, s 5  
exp s 13E 1 July 2002
- s 13D ins No. 45, 2001, s 4  
amd No. 22, 2002, s 6  
exp s 13E 1 July 2002
- s 13E ins No. 45, 2001, s 4  
amd No. 22, 2002, s 7  
exp s 13E 1 July 2002
- s 14 amd No. 1, 2004, s 62
- s 17 amd No. 28, 2004, s 9
- s 21 amd No. 28, 2004, s 10
- s 41 amd No. 28, 2004, s 11
- s 42 amd No. 28, 2004, s 12
- s 43A ins No. 38, 2003, s 3