

# NORTHERN TERRITORY OF AUSTRALIA

## FIRST HOME OWNER GRANT ACT

As in force at 4 December 2012

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 4 December 2012. Any amendments that commence after that date are not included.

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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:

**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**, see section 4 of the *Australian Citizenship Act 2007* (Cth).

**building** includes part of a building.

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

**Commissioner** means the Commissioner of Territory Revenue or a person acting in that position.

**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) to (9).

**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.

**GST**, see section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**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.

**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.

**statutory interest rate**, see section 35 of the *Taxation Administration Act*.

**threshold amount**, for an eligible transaction, means:

- (a) if the commencement date for the transaction is before 4 December 2012 – \$750 000; or
- (b) if the commencement date for the transaction is on or after 4 December 2012 – \$600 000.

#### **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;
  - (h) an interest as lessee or sublessee of the land under a registered lease or sublease granted under section 19 or 19A of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) if 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; and
  - (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; and
  - (d) an interest is not a relevant interest if the holder of the interest is the lessor or sublessor under a lease or sublease mentioned in section 5(2).
- (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**

- (1) 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.
- (2) In this Act, a reference to an applicant's spouse or de facto partner, in relation to an application, is a reference to the applicant's spouse or de facto partner at the commencement date of the eligible transaction to which the application relates.

## **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 at the time of making the application.
- (2) If an application is made by joint applicants and one of the applicants is an Australian citizen or a permanent resident at the time of making the application, 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 commencement date of the eligible transaction to which the application relates, held an interest in property 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; and
  - (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.
- (5) Also, 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; and
  - (b) a first home owner grant was not paid under the earlier application because the Commissioner did not exempt the applicant or the applicant's spouse or de facto partner from the requirement in section 8(1)(b).

## **12            Criterion 5 – Residence requirements**

- (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 unless the applicant is exempt under subsection (3)(b).
- (2) That occupation of the home must:
- (a) start within 12 months after completion of the eligible transaction, or a longer period approved under subsection (3)(a)(i); and
  - (b) continue for a continuous period of at least 6 months, or a shorter period approved under subsection (3)(a)(ii).

- (3) If satisfied there are special reasons to do so, the Commissioner may:
- (a) approve either or both of the following for an applicant:
    - (i) a longer period for subsection (2)(a);
    - (ii) a shorter period for subsection (2)(b); or
  - (b) exempt an applicant from the requirement under subsection (1).

**12A Ineligibility – threshold amount exceeded**

- (1) Despite sections 10(2) and 11(4), an applicant is ineligible for a first home owner grant if:
- (a) the applicant or applicant's spouse or de facto partner was paid a grant on an earlier application under this Act or a corresponding law for a home used as the residence of the applicant, applicant's spouse or de facto partner; and
  - (b) that transaction is not an eligible transaction under:
    - (i) section 13AA(1)(b), (c), (d) or (e) because the threshold amount is exceeded; or
    - (ii) an equivalent provision of a corresponding law because the threshold amount (however described) under that law is exceeded (regardless of whether the amount under that law is the same as under this Act).

*Note for subsection (1)*

*Under section 41, an applicant is required to repay a grant if the unencumbered value or consideration for the transaction results in it not being an eligible transaction.*

- (2) Subsection (1) applies even if the applicant, applicant's spouse or de facto partner:
- (a) repaid the amount of the grant; and
  - (b) paid any penalty or interest in relation to the earlier application.

## **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; or
  - (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.
- (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; or
  - (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; or

- (b) in the case of a contract to have a home built – when 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 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; and
  - (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; or
  - (b) in the case of a comprehensive home building contract – the total consideration payable for the building work; or
  - (c) in the case of the building of a home by an owner builder – the actual costs to the owner of carrying out the work (excluding any allowance for the owner builder's own labour).
- (8A) The consideration for an eligible transaction does not include rent given for a lease or sublease mentioned in section 5(2).
- (9) The consideration for an eligible transaction includes any GST payable in relation to the transaction.

**13AA Transactions that are not eligible transactions**

- (1) Each of the following transactions is not an eligible transaction:
- (a) a contract made on or after 1 July 2000 for the purchase or construction of a home if:
    - (i) for 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
    - (ii) for 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;
  - (b) a contract for the purchase of a home, comprehensive home building contract or building of a home by an owner builder, if the consideration for the transaction (including any GST payable in relation to it) is more than the threshold amount;
  - (c) a contract for the purchase of a home if the total of the following amounts is more than the threshold amount:
    - (i) the unencumbered value of the home;
    - (ii) the unencumbered value, at the date the contract is made, of the relevant interest in the land on which the home is built or to be built;
  - (d) a comprehensive home building contract if the total of the following amounts is more than the threshold amount:
    - (i) the consideration for the transaction (including any GST payable in relation to it);
    - (ii) the unencumbered value, at the date the contract is made, of the relevant interest in the land on which the home is to be built;
  - (e) the building of a home by an owner builder if the total of the following amounts, at the date the home is ready for occupation as a place of residence, is more than the threshold amount:
    - (i) the unencumbered value of the home;
    - (ii) the unencumbered value of the relevant interest in the land on which the home is built.

- (2) However, subsection (1)(a) does not apply if the Commissioner declares the contract to be an eligible transaction.
- (3) The Commissioner may make the declaration only if the Commissioner is satisfied 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.
- (4) In this section:

**encumbrances** includes a debt or liability that might give rise to a right of recourse against the property.

**unencumbered value**, of a home or relevant interest in land, is the full value of the home or interest (without regard to encumbrances), and includes the amount of any GST payable in relation to the supply of the home or relevant interest.

## 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; and
  - (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.



- (2A) In addition, the Commissioner may authorise the payment of a first home owner grant before completion of the eligible transaction if satisfied the interests of the Territory can be adequately protected by conditions requiring repayment of the grant should it not be an eligible transaction under section 13AA(1)(b), (c), (d) or (e).
- (3) 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

- (1) The amount of a first home owner grant is the lesser of the following:
- (a) the amount of consideration actually paid for the eligible transaction;
  - (b) the amount applying under subsection (2) or (3).
- (2) If the commencement date for the transaction is before 4 December 2012, the amount for subsection (1)(b) is \$7 000.
- (3) If the commencement date for the transaction is on or after 4 December 2012, the amount for subsection (1)(b) is:
- (a) if the home is an established home in the urban area – \$12 000; or
  - (b) otherwise – \$25 000.
- (4) A home is an **established home in the urban area** if:
- (a) the land on which the home is or will be built is, as at the commencement date for the eligible transaction, wholly within the urban area; and
  - (b) the home is not a new home.
- (5) A home is a **new home** if:
- (a) the home has not been previously occupied or sold as a place of residence; or
  - (b) all of the following apply:
    - (i) the home is the subject of a contract for the purchase of the home;

- (ii) the sale of the home is, under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, a taxable supply as a sale of new residential premises as defined in section 40-75(1)(b) of that Act;
- (iii) the home has not, since being renovated, been occupied or sold as a place of residence.

*Note for subsection (5)(b)(ii)*

*Under section 40-75(1)(b) of the A New Tax System (Goods and Services Tax) Act 1999 (Cth), new residential premises includes residential premises that have been created through substantial renovations of a building.*

(6) In this section:

**urban area** means:

- (a) the Municipalities of Darwin, Palmerston and Litchfield and the Shire of Wagait; and
- (b) the prescribed area for the *Darwin Rates Act*; and
- (c) the Darwin Waterfront Precinct specified under section 4 of the *Darwin Waterfront Corporation Act*; and
- (d) any other area prescribed by regulation.

## **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.

## **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 any of the Commissioner's powers or functions under this Act.
- (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.

Maximum penalty: 100 penalty units.

#### *Note for Division 1*

*It should be noted that:*

- (a) *Part 9 of the Taxation Administration Act provides for the conduct of authorised investigations into matters relevant to the administration and enforcement of this Act; and*
- (b) *Part 10 of the Taxation Administration Act deals with confidential information obtained in the course of the administration of this Act; and*
- (c) *Part 11 of the Taxation Administration Act provides for objections and appeals against decisions made in the course of the administration of this Act.*

**30A Granting of approvals and exemptions**

- (1) If a provision of this Act allows the Commissioner to approve an extension of the time within which something is required to be done or to occur, the Commissioner may grant the approval even if the time within which the thing is required to be done or to occur has expired.
- (2) If a provision of this Act allows the Commissioner to approve a shorter period as the period for which a person is required to occupy a home as a principal place of residence, the Commissioner may grant the approval even if the person's occupation of the home as a principal place of residence has already ceased.
- (3) If a provision of this Act allows the Commissioner to exempt a person from a requirement, the Commissioner may grant the exemption even if the person has already failed to comply with the requirement.

**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 not entitled to the grant under section 7; or
  - (b) the grant is paid before completion of a transaction and on completion the consideration for it results in it not being an eligible transaction under section 13AA(1)(b) or (d); or
  - (c) the grant was paid in anticipation of compliance with the residence requirements and the person fails to comply with the requirements; or
  - (d) the Commissioner imposed a condition on the grant under section 5(5) or 20 and the person breaches the condition; or
  - (e) an overpayment of the amount to which the person was entitled occurs.
- (2) The person must, within the required time mentioned in subsection (2A):
  - (a) give written notice to the Commissioner of the non-entitlement, ineligibility, failure, breach or the overpayment; and

- (b) pay to the Commissioner the amount of the grant or overpayment.
- (2A) The required time is:
- (a) for non-entitlement mentioned in subsection (1)(a) – 30 days after the grant was paid; or
  - (b) for ineligibility mentioned in subsection (1)(b) – 30 days after the earlier of the following:
    - (i) completion of the transaction;
    - (ii) the date on which it first became apparent that the transaction would not be an eligible transaction; or
  - (c) for failure to comply with the residence requirements mentioned in subsection (1)(c) – 30 days after the earlier of the following:
    - (i) the date by which the person was to have occupied the home;
    - (ii) the date on which it first became apparent that the residence requirements would not be complied with during the period allowed for compliance; or
  - (d) for breach of a condition or an overpayment mentioned in subsection (1)(d) or (e) – 30 days after the breach or overpayment occurred.
- (3) If a person to whom this section applies fails to pay an amount as required by subsection (2):
- (a) the person in default must pay interest on the amount in default from the date liability to make the payment fell due until the date payment is actually made; and
  - (b) the Commissioner may, by notice in writing to the person:
    - (i) state why the amount in default must be paid; and
    - (ii) require payment of the amount in default within 30 days after the date of the notice; and
    - (iii) impose a penalty equivalent to the amount in default; and

- (c) if the amount in default (together with interest and penalty) is not paid within 30 days from the date of the notice, then, as from the end of that period, interest accrues on the penalty (in addition to the interest already accruing on the amount originally in default).
- (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.
- Maximum 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) Interest accrues under this section at the statutory interest rate as in force from time to time.

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## Part 4                      Miscellaneous

### 42                      Misleading statements and documents

- (1) A person must not make a statement to a person who is carrying out functions for, or related to, the administration of this Act (an **official**) that is misleading in a material particular.

Fault element:                      Awareness that the statement is or may be misleading or reckless indifference to whether the statement is or may be misleading.

Maximum penalty:                      Imprisonment for 2 years.

- (2) A person must not give an official a document that is misleading in a material particular.

Fault element:                      Awareness that the document is or may be misleading or reckless indifference to whether the document is or may be misleading.

Maximum penalty:                      Imprisonment for 2 years.

- (3) This section extends to a statement or document that is misleading because of the omission of relevant information as well as to one that is misleading because it consists of, or includes, misinformation.

- (4) However, no offence is committed against subsection (2) if the person, when giving the document to the official:

(a) draws the misleading aspect of the document to the official's attention; and

(b) to the extent the person can reasonably do so, gives the official the information necessary to correct the document.

### 43A                      Time for bringing prosecutions

A proceeding for an offence against this Act must be commenced:

(a) if alleged to have been committed before 1 July 2008 – within 3 years after the offence is alleged to have been committed; or

(b) if alleged to have been committed on or after 1 July 2008 – within 5 years after 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.

**45A Valuation of property**

- (1) For determining whether a transaction is an eligible transaction, the Commissioner may:
  - (a) by written notice given to a relevant person, require the person to lodge a written valuation of property within the time stated in the notice; or
  - (b) obtain a valuation from the Valuer-General or another valuer.

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- (2) If the Commissioner is not satisfied with the valuation lodged by the relevant person, the Commissioner may obtain a valuation from the Valuer-General or another valuer.
  - (3) The Commissioner may recover the cost of obtaining the valuation as a debt due to the Territory by the relevant person.
  - (4) In this section:

**property** means:

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

**relevant person**, for a transaction, means an applicant or former applicant for a first home owner grant in relation to the transaction.

**valuer** means a certified practising valuer who is a member of the Australian Property Institute, and includes a person who, in the Commissioner's opinion, has equivalent qualifications.

#### 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; or
- (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; or
- (c) by sending the document by prepaid post to the person at his or her last-known postal address; or
- (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.

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**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 legal practitioner 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; or
  - (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 appropriation 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.

**Part 5 Transitional matters****51 Objections and appeals**

- (1) Objections against the Commissioner's decisions under this Act are, as from 1 January 2008, to be made and dealt with subject to, and in accordance with, Part 11 of the *Taxation Administration Act* (whether the decision was made before or after that date) and any consequent appeal is also to be dealt with under that Part.
- (2) If an objection had been lodged under this Act before 1 January 2008, any uncompleted proceedings arising from the objection (including a consequent appeal) are to be dealt with in accordance with the relevant laws of the Territory as in force immediately before that date.

**52 Transitional provision (rates of interest on pre-existing liabilities)**

- (1) Interest accrues under section 41(3) on a liability arising before the commencement of the relevant amendment:
  - (a) up to the commencement of the relevant amendment – at the rate applicable before the commencement of the relevant amendment; and
  - (b) after the commencement of the relevant amendment – at the rate prescribed by the relevant amendment.

- (2) In this section:

***relevant amendment*** means the amendment made by *Revenue Law Reform (Budget Initiatives) Act 2008* to section 41(12).

**53 Application of limit on eligibility of transactions before commencement of *Revenue Legislation Amendment Act 2009***

- (1) This Act continues to apply in relation to a relevant application as if it had not been amended by Part 2, Division 3 of the amending Act.

(2) In this section:

**amending Act** means the *Revenue Legislation Amendment Act 2009*.

**pre-amending Act transaction** means an eligible transaction for which the commencement date is earlier than the commencement of Part 2, Division 3 of the amending Act.

**relevant application** means an application for a first home owner grant that relates to a pre-amending Act transaction.

#### **54 Application of section 18 after 4 December 2012**

(1) This section applies to an eligible transaction that is a contract for the purchase of a home if:

- (a) the contract replaces a contract to purchase the same or a substantially similar home that was made before 4 December 2012; or
- (b) the purchaser had an option to purchase the same or a substantially similar home that was granted before 4 December 2012; or
- (c) the vendor had an option to require the purchaser to purchase the same or a substantially similar home that was granted before 4 December 2012.

(2) This section applies in relation to an eligible transaction that is a comprehensive home building contract if:

- (a) the contract replaces a contract to construct the same or a substantially similar home that was made before 4 December 2012; or
- (b) a party to the contract had a right or option to require the other party to enter into the contract that was granted before 4 December 2012.

(3) If this section applies to an eligible transaction:

- (a) the threshold amount for the transaction is \$750 000; and
- (b) the amount of the first home owner grant for the transaction is the lesser of the following:
  - (i) the amount of consideration actually paid for the eligible transaction;
  - (ii) \$7,000.

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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)

***Treasury Legislation and Consequential Amendment Act 2006 (Act No. 19, 2006)***

Assent date	28 June 2006
Commenced	pt 1: 28 June 2006; pt 2: 2 May 2006; rem: 1 July 2006 (s 2)

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**Statute Law Revision Act 2007 (Act No. 4, 2007)**

Assent date 8 March 2007  
Commenced 8 March 2007

**Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)**

Assent date 17 May 2007  
Commenced s 10: 1 July 2007; rem: 17 May 2007 (s 2 and Gaz G26, 27 June 2007, p 3)

**Revenue (Budget Initiatives) Amendment Act 2007 (Act No. 12, 2007)**

Assent date 30 June 2007  
Commenced pt 2, div 2 and pt 3, div 2: 1 May 2007; rem: 1 July 2007 (s 2)

**First Home Owner Grant Amendment Act 2007 (Act No. 25, 2007)**

Assent date 29 October 2007  
Commenced 1 January 2008 (s 2)

**Revenue Law Reform (Budget Initiatives) Act 2008 (Act No. 23, 2008)**

Assent date 30 June 2008  
Commenced pt 1, ss 3, 12(1), 18 and 19: 1 January 2008;  
ss 7, 10 and 11(1): 6 May 2008; rem: 1 July 2008 (s 2)

**First Home Owner Grant Amendment Act 2009 (Act No. 8, 2009)**

Assent date 26 May 2009  
Commenced ss 3 to 6: 14 October 2008; rem: 26 May 2009 (s 2)

**Financial Management Amendment Act 2009 (Act No. 15, 2009)**

Assent date 18 June 2009  
Commenced 18 June 2009

**Revenue Legislation Amendment Act 2009 (Act No. 17, 2009)**

Assent date 25 June 2009  
Commenced pt 1 and pt 3, divs 1 and 2: 1 October 2008;  
pt 3, div 3: 6 May 2009; pt 2, divs 1 and 2, pt 3, div 4 and  
pts 4 and 5: June 2009; pt 3, div 5: 1 July 2009; pt 2, div 3  
and pt 3, div 6: 1 January 2010 (s 2 and Gaz G49,  
9 December 2009, p 3)

**Revenue and Other Legislation Amendment Act 2010 (Act No. 21, 2010)**

Assent date 30 June 2010  
Commenced pt 2 and pt 4, divs 1 and 2: 4 May 2010; rem: 1 July 2010 (s 2)

**Revenue Legislation Amendment Act 2011 (Act No. 21, 2011)**

Assent date 24 June 2011  
Commenced pt 2: 3 May 2011; rem: 1 July 2011 (s 2)

**Revenue and Other Legislation Amendment Act 201 (Act No. 30, 2012)**

Assent date 18 December 2012  
Commenced pts 2 and 3: 4 December 2012; pt 4: 1 January 2013;  
rem: 18 December 2012 (s 2)

**3**

**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)

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s 13 *First Home Owner Grant Amendment Act 2004* (Act No. 28, 2004)

#### 4 LIST OF AMENDMENTS

- s 3 amd No. 1, 2004, s 62; No. 28, 2004, s 4; No. 25, 2007, s 4; No. 23, 2008, s 14; No. 8, 2009, s 7; No. 17, 2009, No. 30, 2012, s ss 4 and 5; No. 21, 2010, s 4; No. 21, 2011, s 4; No. 30, 2012, s 11
- s 3A ins No. 8, 2009, s 4  
rep No. 30, 2012, s 12
- s 4 amd No. 8, 2009, s 7
- s 5 amd No. 8, 2009, s 7; No. 21, 2010, s 5
- s 6 amd No. 1, 2004, s 62; No. 19, 2006, s 9
- s 8 sub No. 28, 2004, s 5
- s 9 amd No. 19, 2006, s 10
- 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; No. 19, 2006, ss 4 and 11; No. 21, 2010, s 37
- s 12 amd No. 28, 2004, s 8; No. 19, 2006, s 12; No. 21, 2010, s 37  
sub No. 21, 2011, s 5
- s 12A ins No. 17, 2009, s 6
- s 13 amd No. 17, 2009, s 7; No. 21, 2010, ss 6 and 37
- s 13AA ins No. 17, 2009, s 8
- pt 2
- div 3A hdg ins No. 45, 2001, s 4  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 13A ins No. 45, 2001, s 4  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 13B ins No. 45, 2001, s 4  
amd No. 22, 2002, s 4  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 13C ins No. 45, 2001, s 4  
amd No. 22, 2002, s 5  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 13D ins No. 45, 2001, s 4  
amd No. 22, 2002, s 6  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 13E ins No. 45, 2001, s 4  
amd No. 22, 2002, s 7  
exp s 13E 1 July 2002  
ins No. 8, 2009, s 5  
rep No. 30, 2012, s 13
- s 14 amd No. 1, 2004, s 62; No. 21, 2010, s 37
- s 17 amd No. 28, 2004, s 9; No. 17, 2009, s 9; No. 21, 2011, s 6
- s 18 amd No. 12, 2007, s 23  
sub No. 30, 2012, s 14
- s 18A ins No. 8, 2009, s 6  
rep No. 30, 2012, s 14



## ENDNOTES

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s 21	amd No. 28, 2004, s 10
pt 2	
div 6 hdg	rep No. 25, 2007, s 5
s 24	amd No. 19, 2006, s 91 rep No. 25, 2007, s 5
s 25	rep No. 25, 2007, s 5
s 26	sub No. 19, 2006, s 92 rep No. 25, 2007, s 5
s 27	rep No. 19, 2006, s 92
s 28	rep No. 25, 2007, s 5
s 30	amd No. 25, 2007, s 6; No. 21, 2010, s 37
s 30A	ins No. 21, 2011, s 7
pt 3 div 1	
note	ins No. 25, 2007, s 7
pt 3	
div 2 hdg	rep No. 25, 2007, s 8
ss 31 – 40	rep No. 25, 2007, s 8
s 40A	ins No. 19, 2006, s 13 rep No. 25, 2007, s 8
s 41	amd No. 28, 2004, s 11; No. 19, 2006, s 14; No. 12, 2007, s 24; No. 23, 2008, s 15; No. 17, 2009, s 10; No. 21, 2010, s 37
s 42	amd No. 28, 2004, s 12 sub No. 23, 2008, s 16
s 43	amd No. 19, 2006, s 15; No. 4, 2007, s 7 rep No. 25, 2007, s 9
s 43A	ins No. 38, 2003, s 3 sub No. 23, 2008, s 16
s 45A	ins No. 17, 2009, s 11
s 46	amd No. 21, 2010, s 37
s 47	amd No. 7, 2007, s 16
s 48	amd No. 21, 2010, s 37
s 49	amd No. 15, 2009, s 16
pt 5 hdg	ins No. 19, 2006, s 93 sub No. 25, 2007, s 10
s 51	ins No. 19, 2006, s 93 sub No. 25, 2007, s 10
s 52	ins No. 23, 2008, s 17
s 53	ins No. 17, 2009, s 12
s 54	ins No. 30, 2012, s 15