

Version No. 015
First Home Owner Grant Act 2000
Act No. 5/2000

Version incorporating amendments as at 22 December 2006

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to encourage and assist home ownership, and to offset the effect of the GST on home ownership, by establishing a scheme for the payment of grants to first home owners.

2. Commencement

This Act comes into operation on 1 July 2000.

3. Definitions and cross-references

(1) In this Act—

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

"**authorised investigation**"—see section 39;

"**authorised officer**"—see section 36;

"**building**" includes part of a building;

"**commencement date**" of an eligible transaction—see section 13(4);

"**Commissioner**" means Commissioner of State Revenue under the **Taxation Administration Act 1997**;

S. 3
amended by
No. 27/2001
s. 3(Sch. 1
item 3.2) (ILA
s. 39B(1)).

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"completed"—for completion of an eligible transaction—see section 13(5);

"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 carried out under such a contract is not completed, includes any further contract under which the work is to be completed;

S. 3(1) def. of "consideration" amended by No. 42/2000 s. 8.

"consideration"—for consideration for an eligible transaction—see section 13(7);

"corresponding law" means an Act of another State, or a Territory, corresponding to this Act;

S. 3(1) def. of "de facto spouse" repealed by No. 27/2001 s. 3(Sch. 1 item 3.1(b)).

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S. 3(1) def. of "domestic partner" inserted by No. 27/2001 s. 3(Sch. 1 item 3.1(a)).

"domestic partner" of a person means a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

"eligibility criteria" means the criteria for determining whether an applicant for a first home owner grant is eligible for the grant (see Division 2 of Part 2);

"eligible transaction"—see section 13(1);

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"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" of a person under a legal disability includes—

- (a) a trustee who holds property on trust for the person under an instrument of trust or direction of a court or tribunal;
- (b) an administrator of the person's estate appointed under the **Guardianship and Administration Act 1986**;

"home"—see section 4;

"objector" means a person who lodges an objection under section 26(1);

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

"owner"—

- (a) in relation to a home, has the meaning given by section 5(1);
- (b) in relation to land, means a person who has a relevant interest in the land;

"owner builder" means an owner of land who builds a home, or has a home built, on the land without entering into a comprehensive home building contract;

"partner" of a person means, subject to section 6, the person's spouse or domestic partner;

S. 3(1) def. of "partner" inserted by No. 27/2001 s. 3(Sch. 1 item 3.1(a)).

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S. 3(1) def. of
"permanent
resident"
substituted by
No. 10/2001
s. 3.

"permanent resident" means—

- (a) the holder of a permanent visa within the meaning of section 30(1) of the Migration Act 1958 of the Commonwealth; or
- (b) a New Zealand citizen who is the holder of a special category visa within the meaning of section 32 of that Act;

"relevant interest"—see section 5;

S. 3(1) def. of
"residence
requirement"
amended by
No. 113/2003
s. 13.

"residence requirement" means the requirement that 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 commencing within the 12 month period immediately after the completion of the eligible transaction or a longer period approved by the Commissioner (see section 12);

"residential property"—land in Australia is residential property at a particular time if there is a building on the land lawfully occupied as a place of residence or suitable for occupation as a place of residence at that time;

S. 3(1) def. of
"spouse"
inserted by
No. 27/2001
s. 3(Sch. 1
item 3.1(c)).

"spouse" of a person means a person to whom the person is married;

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"taxation law" means—

- (a) a "taxing law" within the meaning of clause 2 in Part 1 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** and any law of another State or Territory that corresponds to such a taxing law; or
- (b) any law of the Commonwealth relating to taxation;

"terms contract" has the same meaning as in section 2(1) of the **Sale of Land Act 1962**;

"Tribunal" means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

- (2) For the purposes of the definition of "domestic partner" in sub-section (1), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case.

S. 3(2)
inserted by
No. 27/2001
s. 3(Sch. 1
item 3.2).

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.

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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 sub-section (3) a relevant interest in land—
 - (a) an estate in fee simple in the land; or
 - (b) a life estate in the land approved by the Commissioner; or
 - (c) a perpetual lease of the land granted by the Commonwealth or the State; or
 - (d) a leasehold interest in the land granted by the Commonwealth or the State that may be converted under the terms of the lease or by statute into an estate in fee simple; or
 - (e) an interest as purchaser under a contract for the purchase from the Commonwealth or the State of an estate in fee simple in the land by instalments; or
 - (f) an interest as purchaser of an estate in fee simple under a terms contract; or
 - (g) a licence or right of occupancy granted by the Commonwealth or the State that gives, in the Commissioner's opinion, the licensee or the holder of the right reasonable security of tenure; or
 - (h) an interest in a company's shares if the Commissioner is satisfied that—
 - (i) the interest entitles the holder of the interest to exclusive occupation of a specified home owned by the company; and

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- (ii) the value of the shares is not less than the value of the company's interest in the home.
- (3) Subject to sub-section (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 time 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;
 - (c) an equitable interest is not a relevant interest unless it is the interest of a person under a legal disability for whom a guardian holds the interest on trust.
- (4) The regulations may provide for recognition of an interest as a relevant interest whether or not—
- (a) the interest conforms with sub-section (3); and
 - (b) the interest is 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 an interest as a relevant interest under sub-section (4), 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.
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s. 6

S. 6
substituted by
No. 27/2001
s. 3(Sch. 1
item 3.3).

6. Exclusion of non-cohabiting spouse

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 applicant's spouse; and

(b) has no intention of resuming cohabitation—

the applicant's spouse is not to be regarded as the applicant's partner.

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s. 7

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 at the time that the transaction for which the grant is sought is completed; and
 - (b) the transaction for which the grant is sought—
 - (i) is an eligible transaction; and
 - (ii) has been completed.
- (2) Despite sub-section (1)(a), an applicant need not comply with the eligibility criteria to the extent that the applicant is exempted from compliance by or under this Act.
- (3) Only 1 first home owner grant is payable for the same eligible transaction.

S. 7(1)(a)
amended by
No. 113/2003
s. 14.

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.
- (2) The Commissioner may exempt an applicant from the requirement in sub-section (1)(b) if the Commissioner is satisfied that—

S. 8
substituted by
No. 113/2003
s. 15.

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- (a) the home to which the application relates will be occupied by the applicant as his or her principal place of residence for a continuous period of at least 6 months commencing within the 12 month period immediately after completion of the eligible transaction or within a longer period approved by the Commissioner; and
- (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility for or entitlement to a first home owner grant.

9. Criterion 2—Applicant to be Australian citizen or permanent resident

- (1) Subject to sub-section (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 1 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 partner) must not have been entitled to earlier grant

- (1) Subject to sub-section (2), an applicant is ineligible if—
 - (a) the applicant or the applicant's 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) An applicant is not ineligible if the grant was paid but later paid back.

S. 10
(Heading)
inserted by
No. 27/2001
s. 3(Sch. 1
item 3.4).

S. 10(1)(a)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.5).

S. 10(2)
amended by
No. 113/2003
s. 16.

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S. 10(3)
repealed by
No. 10/2001
s. 4(1).

**11. Criterion 4—Applicant (or applicant's partner)
must not have had relevant interest in residential
property**

S. 11
(Heading)
inserted by
No. 27/2001
s. 3(Sch. 1
item 3.6).

- (1) An applicant is ineligible if the applicant or the applicant's partner has, before 1 July 2000, held—
- (a) a relevant interest in residential property in Victoria; or
 - (b) an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory.
- (2) In working out for the purposes of sub-section (1) whether an applicant or the applicant's partner 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 right of occupation (because the property was subject to a lease or for any other reason) is to be disregarded.
- (3) An applicant is ineligible if, before the commencement date of the relevant transaction, the applicant, or the applicant's partner—
- (a) held a relevant interest in residential property in Victoria or an interest in residential property in another State or Territory that is a relevant interest under the corresponding law of that State or Territory; and
 - (b) occupied the property as a place of residence for a continuous period of at least 6 months.

S. 11(1)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

S. 11(2)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

S. 11(3)
inserted by
No. 10/2001
s. 4(2),
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7),
substituted by
No. 113/2003
s. 17.

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s. 12

S. 12
substituted by
No. 113/2003
s. 18.

12. Criterion 5—Residence requirement

- (1) An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence for a continuous period of at least 6 months (or the lesser period approved by the Commissioner) commencing within the 12 month period immediately after completion of the eligible transaction or within a longer period approved by the Commissioner.
- (2) The Commissioner may approve a lesser period of occupation under sub-section (1) if the Commissioner is satisfied that there are good reasons why the applicant cannot comply with the requirement to occupy the home for 6 months.
- (3) If an application is made by joint applicants and at least one (but not all) of the applicants complies with the residence requirement, the non-complying applicant or applicants are exempted from compliance with the residence requirement.

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 State;
 - (b) a comprehensive home building contract made on or after 1 July 2000 by the owner of land in the State, or a person who will on completion of the contract be the owner of land in the State, to have a home built on the land;
 - (c) the building of a home in the State by an owner builder if the building work commences on or after 1 July 2000.

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- (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) However, a contract made on or after 1 July 2000 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 building contract—either party had a right or option granted before that date to require the other to enter into the contract—

unless the Commissioner is satisfied that the option or right does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to a first home owner grant.

- (4) The commencement date of an eligible transaction is—
- (a) in the case of a contract—the date on which the contract is made;
 - (b) in the case of the building of a home by an owner builder—
 - (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.
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s. 13

S. 13(5)(a)(i)
substituted by
No. 113/2003
s. 19(1).

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- (5) An eligible transaction is completed when—
- (a) in the case of a contract for the purchase of a home—
 - (i) the purchaser (or a nominee of the purchaser) becomes entitled to possession of the home under the contract; and
 - (ii) if further requirements for the completion of the transaction are laid down in the regulations—the further requirements are complied with;
 - (b) in the case of a contract to have a home built—
 - (i) the building is ready for occupation as a place of residence; and
 - (ii) if further requirements for the completion of the transaction are laid down in the regulations—the further requirements are complied with;
 - (c) in the case of the building of a home by an owner builder—
 - (i) the building is ready for occupation as a place of residence; and
 - (ii) if further requirements for the completion of the transaction are laid down in the regulations—the further requirements are complied with.
- (6) If a person purchases a moveable 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
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- (b) the commencement date of the transaction is taken to be the date of the contract to purchase the moveable building; and
 - (c) the transaction is taken to be completed when the moveable building is ready for occupation as a place of residence on land in which the purchaser has a relevant interest.
- (7) The consideration for an eligible transaction is—
- (a) in the case of a contract for the purchase of a home—the consideration for that purchase;
 - (b) in the case of a comprehensive home building contract—the total consideration payable for the building work;
 - (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).
- (8) For the purposes of this Part, if—
- (a) a purchaser under a contract for the purchase of a home nominates another person (the "**nominee**") as purchaser; and
 - (b) the nominee provides valuable consideration for the purchase to the vendor—

S. 13(8)
inserted by
No. 113/2003
s. 19(2).

the contract for the purchase of the home is taken to be an eligible transaction in relation to the nominee, whether or not the nominee is a party to that contract.

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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 information required by the Commissioner about the applicant and, if the Commissioner so requires, about the applicant's partner; and
 - (c) must be signed by the applicant and, if the Commissioner so requires, by the applicant's partner.
- (3) An applicant and an applicant's partner must provide the Commissioner with any further information the Commissioner requires to decide the application.
- (4) Information provided by an applicant or applicant's 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.

S. 14(2)(b)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

S. 14(2)(c)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

S. 14(3)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

S. 14(4)
amended by
No. 27/2001
s. 3(Sch. 1
item 3.7).

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(6) However, the Commissioner has a discretion to allow an application before or after the application period.

(7) An applicant may 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 was, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home except such 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 may be made on behalf of a person under a legal disability by a guardian.

(2) For the purposes 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 good reasons for doing so; and

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

S. 18
amended by
No. 46/2004
s. 18 (ILA
s. 39B(1)).

18. Amount of grant

- (1) The amount of a first home owner grant is the lesser of the following—
- (a) the consideration for the eligible transaction;
 - (b) \$7000.
- (2) Subject to sub-sections (3) and (4), if the consideration for the eligible transaction does not exceed \$500 000 an additional amount is payable as follows—
- (a) \$5000 if the commencement date of the eligible transaction is on or after 1 May 2004 and before 1 January 2006; or
 - (b) \$3000 if the commencement date of the eligible transaction is on or after 1 January 2006 and before 1 January 2007; or
 - (c) if the commencement date of the eligible transaction is on or after 1 January 2007 and before 1 July 2009—
 - (i) \$5000 if the eligible transaction is a contract for the purchase of new residential premises or an eligible transaction referred to in section 13(1)(b) or (c); or
 - (ii) \$3000 in any other case.
- (3) Sub-section (2) does not apply to the extent that the amount of the first home owner grant (including the additional amount referred to in that sub-section) would exceed the consideration for the eligible transaction.

S. 18(2)
inserted by
No. 46/2004
s. 18,
substituted by
No. 36/2005
s. 23.

S. 18(2)(b)
amended by
No. 86/2006
s. 6(1)(a).

S. 18(2)(c)
inserted by
No. 86/2006
s. 6(1)(b).

S. 18(3)
inserted by
No. 46/2004
s. 18.

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- (4) Sub-section (2) also does not apply if the Commissioner is satisfied that the contract that formed the basis of the eligible transaction replaces a contract made before 1 May 2004 ("**the earlier contract**"), and the earlier contract was—
- (a) a contract for the purchase of the same home; or
 - (b) a comprehensive home building contract to build the same or a substantially similar home.
- (5) If an eligible pensioner (within the meaning of the **Duties Act 2000**) to whom section 60A(2) of that Act applies elects under that section to receive an exemption or concession under section 59 or 60 of that Act in respect of a transfer of land, he or she is not entitled to any amount under sub-section (2) of this section in respect of the eligible transaction relating to that land.
- (6) If an eligible first home owner (within the meaning of the **Duties Act 2000**) to whom section 63B(2) of that Act applies elects under that section to receive an exemption or concession under section 62 or 63 of that Act in respect of a transfer of land, he or she is not entitled to any amount under sub-section (2) of this section in respect of the eligible transaction relating to that land.
- (7) If a transferee of a PPR transfer elects under section 57O of the **Duties Act 2000** to receive a concessional rate of duty in respect of the PPR transfer, he or she is not entitled to any amount under subsection (2) of this section in respect of the eligible transaction relating to the land that is the subject of the PPR transfer.

S. 18(4)
inserted by
No. 46/2004
s. 18.

S. 18(5)
inserted by
No. 46/2004
s. 18.

S. 18(6)
inserted by
No. 38/2006
s. 7.

S. 18(7)
inserted by
No. 86/2006
s. 6(2).

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S. 18(8)
inserted by
No. 86/2006
s. 6(2).

(8) In this section—

new residential premises has the same meaning as in section 40-75 of the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

PPR transfer has the same meaning as in Division 4A of Part 5 of Chapter 2 of the **Duties Act 2000**.

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) in the case of a sole applicant—
 - (i) to the applicant; or
 - (ii) to some other person to whom the applicant directs in writing that the grant be paid; or
 - (b) in the case of joint applicants—
 - (i) to each applicant in equal shares; or
 - (ii) to some other person to whom the applicants direct in writing jointly that the grant be paid.
- (3) If the applicant requests, the Commissioner may apply the amount of a first home owner grant, or part of the amount, against stamp duty payable on—
 - (a) the conveyance of the relevant interest in respect of which the grant is made;
 - (b) a mortgage relating to the acquisition of the relevant interest in respect of which the grant is made.

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s. 20

20. Payment in anticipation of compliance with residence requirement

- (1) The Commissioner may authorise the payment of a first home owner grant in anticipation of compliance with the residence requirement if the Commissioner is satisfied that each applicant who is required to comply but has not yet complied with the residence requirement, intends to occupy the home as his or her principal place of residence for a continuous period of at least 6 months commencing within the 12 month period immediately after completion of the eligible transaction or within a longer period allowed by the Commissioner.
- (2) If a first home owner grant is paid in anticipation of compliance with the residence requirement, the payment is made on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the end of the period allowed for compliance—
- (a) give written notice of that fact to the Commissioner; and
 - (b) repay the amount of the grant.
- (3) A person must comply with the condition imposed by sub-section (2).
- Penalty: 60 penalty units.

S. 20(1)
amended by
No. 113/2003
s. 20.

21. Conditions generally

- (1) The Commissioner may authorise the payment of a first home owner grant on conditions the Commissioner considers appropriate.
- (2) A condition imposed by the Commissioner (under this section or any other provision of this Act) may require a person on whose application the first home owner grant is paid—

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s. 22

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- (a) to give notice of non-compliance with the condition within a period stated in the condition; and
 - (b) to repay the grant within a period stated in the condition.
- (3) In the case of a joint application, each applicant is individually liable to comply with a requirement under sub-section (2) but compliance by any 1 or more of them is to be regarded as compliance by both or all.
- (4) A person must comply with a condition imposed by the Commissioner (under this section or any other provision of this Act).

Penalty: 60 penalty units.

22. 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 1 of 2 or more applicants and 1 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 for a continuous period of 6 months commencing within the 12 month period immediately after completion of the eligible transaction or a longer period allowed by the Commissioner, but the

S. 22(3)
substituted by
No. 113/2003
s. 21.

Commissioner is satisfied that the applicant intended to do so, the residence requirement is satisfied.

23. Power to correct decision

- (1) If the Commissioner decides an application and is later satisfied (independently of an objection under this Act) that the decision is incorrect, the Commissioner may vary or reverse the decision.
- (2) A decision cannot be varied or reversed under this section more than 5 years after it was made.

24. Computer-based decisions

The Commissioner may direct that a decision in relation to an application for, or payment of, a first home owner grant is to be made by the operation of a computer program approved by the Commissioner.

25. 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 authorise the payment of a first home owner grant without conditions, the payment of the grant is sufficient notice of the decision.
- (3) If the decision is to refuse an application, or to vary or reverse an earlier decision on an application, or to impose conditions on the payment of the grant, the Commissioner must state in the notice the reasons for the decision.

Division 6—Objections and Reviews

26. Objections

- (1) An applicant for a first home owner grant may lodge a written objection with the Commissioner if the applicant is dissatisfied with the Commissioner's decision on the application (including a decision to reverse or vary an earlier decision).
- (2) The grounds for the objection must be stated fully and in detail, and must be in writing.
- (3) On an objection, the objector has the onus of proving the objector's case.
- (4) The objection must be lodged with the Commissioner within 60 days after the date of the notice of decision.
- (5) If the Commissioner is satisfied that the applicant has a reasonable excuse for failing to lodge the objection within the 60-day period, the Commissioner may extend the time for lodging the objection.
- (6) An objection is taken to have been lodged with the Commissioner when it is received by the Commissioner.

27. Determination of objection

- (1) The Commissioner must consider an objection and either allow the objection in whole or in part or disallow the objection.
- (2) The Commissioner may determine an objection that is subject to a right of review at any time before the hearing of the review proceedings commences.
- (3) The Commissioner must give notice in writing to the objector of the determination of the objection.

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- (4) The Commissioner must, in the notice, give the reasons for disallowing an objection or for allowing an objection in part only.

28. Suspension of determination

- (1) The Commissioner may suspend the determination of an objection for any period during which the objector, or another person having information relevant to the objection, fails to provide information relevant to the objection that the Commissioner has requested under this Act.
- (2) The Commissioner must give the objector written notice of the suspension and the suspension takes effect on service of the notice.

29. Review

- (1) If—
- (a) an objector is dissatisfied with the Commissioner's determination of the objection; or
 - (b) 90 days (not including any period of suspension under section 28) have passed since the objection was received by the Commissioner and the Commissioner has not determined the objection—
- the objector, in writing, may request the Commissioner to refer the matter to the Tribunal.
- (2) The objector's request—
- (a) in the circumstances referred to in subsection (1)(a), must be made within 60 days after the date of service on the objector of the notice of the Commissioner's determination of the objection; or

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(b) in the circumstances referred to in subsection (1)(b), may be made at any time after the 90-day period (not including any period of suspension under section 28).

(3) Subject to section 30, within 60 days after the request, the Commissioner must refer the matter to the Tribunal for review.

30. Request for further and better particulars

(1) Within 30 days after receiving a request to refer a matter for review, the Commissioner may require the objector to give further and better particulars of the objection.

(2) If, within 30 days after giving the notice—

(a) particulars are given, the Commissioner is not bound to refer the matter for review until 30 days after the Commissioner has received full details of the objection; or

(b) particulars are not given, the Commissioner must not refer the matter for review.

31. Grounds of review

On a review—

(a) the objector's case is limited to the grounds of the objection; and

(b) the Commissioner's case is limited to the grounds on which the objection was disallowed—

unless the Tribunal otherwise orders.

32. Onus on review

On a review, the objector has the onus of proving the objector's case.

33. Referral to Tribunal

- (1) The Tribunal must review a matter referred to it and, subject to sub-section (2), may confirm or vary the decision on the application for a first home owner grant.
- (2) If the objector does not appear before the Tribunal, the Tribunal must confirm the decision. However, if good cause is shown, the Tribunal, within the time prescribed by the regulations, may re-open and review the matter.

34. Giving effect to decision on review

- (1) Within 60 days after the decision on review becomes final, the Commissioner must take any action that is necessary to give effect to it.
 - (2) If no appeal to a court from a decision of the Tribunal on a review is instituted within 30 days after the day on which the decision is made, the decision is to be taken, for the purposes of this section, to have become final at the end of that period.
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PART 3—ADMINISTRATION

Division 1—Administration Generally

35. Administration

The Commissioner has the general administration of this Act and the regulations.

36. Authorised officers

- (1) The Commissioner is an authorised officer for the purposes of this Act.
- (2) Persons who are appointed as authorised officers under the **Taxation Administration Act 1997** are authorised officers for the purposes of this Act.

37. Delegation

The Commissioner, by instrument, may delegate any function or power of the Commissioner, other than this power of delegation, to any person employed or engaged in the administration or enforcement of this Act or another law under the general administration of the Commissioner.

38. Administration agreement

- (1) The Commissioner may enter into an agreement (an "**administration agreement**") with a financial institution or other person for carrying out functions related to the administration of the first home owner grant scheme.
- (2) An administration agreement must include any conditions prescribed by the regulations.

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- (3) A financial institution or other person that undertakes to carry out administrative functions under an administration agreement must not contravene a prescribed condition of the agreement.

Penalty: 120 penalty units.

- (4) The Commissioner may terminate an administration agreement at any time.

Division 2—Investigations

39. Authorised investigations

An authorised investigation is an investigation to determine—

- (a) whether an application under this Act or a corresponding law for a first home owner grant has been properly made; or
- (b) whether an objection to a decision made under this Act or a corresponding law should be allowed in whole or in part or disallowed; or
- (c) whether an applicant to whom, or for whose benefit, a first home owner grant has been paid under this Act or a corresponding law was eligible for the grant; or
- (d) whether a condition on which a first home owner grant has been paid under this Act or a corresponding law has been complied with; or
- (e) any other matter reasonably related to the administration or enforcement of this Act or a corresponding law.

40. Cross-border investigation

- (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 powers of investigation under this Division to the authority responsible for the administration of a corresponding law, or an appropriately qualified officer or employee of that authority nominated by it.

41. Power of investigation

- (1) For the purposes of an authorised investigation, the Commissioner may, by written notice, require a person—
 - (a) to give the Commissioner written information specified in the notice; or
 - (b) to attend at a specified time and place before the Commissioner or an authorised officer to answer questions relevant to the investigation; or
 - (c) to produce a document to the Commissioner at a specified time and place.
 - (2) The Commissioner may require information or evidence that is not given orally to be provided in the form of, or verified by, a statutory declaration.
 - (3) The Commissioner may require evidence that is given orally to be given on oath and for that purpose the Commissioner or an authorised officer may administer an oath.
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- (4) The person to whom the notice is given must comply with the notice within the period specified in the notice or any extended period allowed by the Commissioner.

Penalty: 60 penalty units in the case of a natural person;

120 penalty units in the case of a body corporate.

42. Powers of entry and inspection

- (1) An authorised officer may, for the purposes of an authorised investigation, exercise any of the following powers—
- (a) inspect premises and any thing found at the premises;
 - (b) require a person to produce a document relevant to the investigation for inspection and (if necessary) to operate a computer or other device in which information is stored to produce a document in understandable form;
 - (c) retain a document for inspection, to make a copy of it, or to take extracts from it;
 - (d) require a person to answer questions relevant to the investigation;
 - (e) require a person to give the authorised officer other assistance that may be reasonable in the circumstances to carry out the authorised investigation.
- (2) An authorised officer may enter premises for the purposes of an authorised investigation—
- (a) with the consent of the occupier; or
 - (b) on the authority of a warrant issued under section 43.

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- (3) An occupier who consents in writing to entry and inspection of his or her premises under this section must be given a copy of the signed consent immediately.
 - (4) An authorised officer may not exercise any powers under this section if the authorised officer fails to produce, on request, his or her identity card issued under the **Taxation Administration Act 1997** for inspection by the occupier of the premises.
 - (5) An authorised officer may be accompanied by any assistants the authorised officer reasonably requires to carry out an authorised investigation.
 - (6) A person must not—
 - (a) hinder or obstruct an authorised officer who is carrying out an authorised investigation or a person assisting the authorised officer; or
 - (b) use abusive, threatening or insulting language to an authorised officer who is carrying out an authorised investigation or a person assisting an authorised officer; or
 - (c) refuse or fail, without reasonable excuse, to comply with a requirement made by an authorised officer in the exercise of powers conferred by this section; or
 - (d) answer a question put by an authorised officer under this section knowing that the answer is false or misleading.

Penalty: 60 penalty units in the case of a natural person;
120 penalty units in the case of a body corporate.

43. Search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be relevant to the administration or execution of this Act.
- (2) If a magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be relevant to the administration or execution of this Act, the magistrate may issue a search warrant authorising an authorised officer named in the warrant and any assistants the authorised officer considers necessary—
 - (a) to enter the premises, or the part of premises, named or described in the warrant; and
 - (b) to search for and seize, or secure against interference, a thing named or described in the warrant; and
 - (c) if reasonably necessary for the purposes referred to in paragraph (b), to break open any receptacle in or on the premises.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the premises to be searched; and
 - (b) a description of the thing for which the search is to be made; and

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- (c) any conditions to which the warrant is subject; and
 - (d) whether entry is authorised to be made at any time or during stated hours; and
 - (e) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
 - (5) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

44. Announcement before entry

- (1) Before executing a search warrant, the authorised officer named in the warrant or a person assisting the authorised officer must announce that he or she is authorised by the warrant to enter the premises and give any person at the premises an opportunity to allow entry to the premises.
- (2) The authorised officer or a person assisting the authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

45. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the authorised officer must—

- (a) identify himself or herself to that person by producing his or her identity card issued under the **Taxation Administration Act 1997** for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

46. Self-incrimination

- (1) A person is not excused from answering a question, providing information or producing a document or thing, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person objects to answering the question, providing the information or producing the document or thing on that ground, the answer, information, document or thing is not admissible against the person in any criminal proceedings other than—
 - (a) proceedings for an offence against this Act; or
 - (b) proceedings for an offence in the nature of perjury.

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Part 3—Administration

s. 46A

S. 46A
inserted by
No. 46/2004
s. 19.

46A. Temporary grant for certain home owners who are not otherwise eligible for grant

- (1) The Treasurer, on the advice of the Commissioner, may pay an amount that is the lesser of \$5000 or the consideration paid for the purchase to a person who—
 - (a) purchases land under a contract for sale made on or after 1 May 2004 and before 1 July 2005; and
 - (b) but for section 63A of the **Duties Act 2000**, would be entitled to an exemption, concession or refund under section 62 or 63 of that Act in respect of the transfer of the land to the person; and
 - (c) is not eligible for a first home owner grant in respect of the purchase of the land.
- (2) The Consolidated Fund is appropriated to the necessary extent for the purposes of sub-section (1).

S. 46B
inserted by
No. 46/2004
s. 19.

46B. Commissioner may require information

- (1) For the purpose of determining whether to advise the Treasurer to make a payment to a person under section 46A, the Commissioner may require the person—
 - (a) to give the Commissioner any information required by the Commissioner; or
 - (b) to produce to the Commissioner any document required by the Commissioner.
- (2) A person must not give any information or produce any document under sub-section (1) that is false or misleading in a material particular.

Penalty: 60 penalty units.

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Part 3—Administration

s. 46B

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- (3) A person is not guilty of an offence against subsection (2) if the court hearing the charge is satisfied that the person did not know that the information or document was false or misleading.
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PART 4—MISCELLANEOUS

47. False and misleading information

- (1) A person must not make a false or misleading statement in or in connection with an application for a first home owner grant.

Penalty: 60 penalty units.

- (2) A person is not guilty of an offence against subsection (1) if the court hearing the charge is satisfied that the person did not know that the statement was false or misleading.

- (3) A person must not omit from a statement made in or in connection with an application for a first home owner grant any matter or thing without which the statement is, to the person's knowledge, false or misleading in a material particular.

Penalty: 60 penalty units.

48. Power to require repayment and impose penalty

- (1) The Commissioner may, by written notice, require an applicant (or former applicant) for a first home owner grant to repay an amount paid on the application if—

(a) the amount was paid in error; or

(b) the Commissioner reverses the decision under which the amount was paid for any other reason.

- (2) If, as a result of an applicant's dishonesty, an amount is paid by way of a first home owner grant, the Commissioner may, by the notice in which repayment is required or a separate notice, impose a penalty not exceeding the amount the applicant is required to repay.

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Part 4—Miscellaneous

s. 49

(3) If an applicant (or former applicant) for a first home owner grant fails to make a repayment required under this section or the conditions of the grant, the Commissioner may, by written notice, impose a penalty not exceeding the amount the applicant is required to repay.

(4) An amount or penalty under this section is payable by the date specified in the notice.

S. 48(4)
inserted by
No. 113/2003
s. 22.

(5) An applicant (or former applicant) is liable to pay interest on any unpaid—

S. 48(5)
inserted by
No. 113/2003
s. 22.

- (a) amount that is required to be repaid to the Commissioner under sub-section (1); or
- (b) penalty imposed under sub-section (2) or (3)—

calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under Division 1 of Part 5 of the **Taxation Administration Act 1997**.

(6) The Commissioner, in such circumstances as the Commissioner considers appropriate, may remit interest payable by an applicant (or former applicant) under this section by any amount.

S. 48(6)
inserted by
No. 113/2003
s. 22.

49. Power to recover amount paid in error etc.

(1) This section applies to the following amounts—

- (a) an amount that an applicant (or former applicant) for a first home owner grant is required to repay under the conditions of the grant or by requirement of the Commissioner under this Act;
- (b) an amount of a penalty imposed on an applicant (or former applicant) for a first home owner grant.

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Part 4—Miscellaneous

s. 49A

S. 49(3)
amended by
No. 113/2003
s. 23.

- (2) An applicant for a first home owner grant is liable to pay an amount to which this section applies to the Commissioner and, if there are 2 or more applicants, the liability is joint and several.
- (3) If an applicant who is liable to pay an amount to which this section applies has an interest in the home for which the first home owner grant was sought, the liability is a first charge on the land to which the home is affixed.
- (4) The Commissioner may recover an amount to which this section applies as a debt due to the State.
- (5) 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.
- (6) The Commissioner may write off the whole or part of a liability outstanding under this section if satisfied that action, or further action, to recover the amount outstanding is impracticable or unwarranted.

S. 49A
inserted by
No. 113/2003
s. 24.

49A. Registering charge on land

- (1) If, under section 49(3), there is a first charge on land, the Commissioner may deposit with the Registrar of Titles a certificate signed by the Commissioner stating that—
 - (a) the amount stated in the certificate is owing in relation to the charge on the land; and
 - (b) there is a charge on the land under section 49(3).
- (2) The Registrar of Titles must make a recording in the Register of the certificate referred to in subsection (1).

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Part 4—Miscellaneous

s. 50

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- (3) The Commissioner must, as soon as practicable after payment of the amount to which section 49 applies, deposit with the Registrar of Titles—
 - (a) a request to make a recording in the Register of the discharge of the charge; and
 - (b) a certificate signed by the Commissioner stating that the amount owing in relation to the charge on the land has been paid.
 - (4) The Registrar of Titles must make a recording in the Register of the discharge of the charge.
 - (5) The Commissioner may, by written notice, require an applicant (or former applicant) for a first home owner grant who holds a relevant interest in relation to which there is a charge, to pay the amount of any fees paid by the Commissioner for the recording, or discharge, of the charge.
 - (6) An amount required to be paid under sub-section (5) must be paid by the applicant (or former applicant) within 28 days after the date on which the notice is given to the applicant (or former applicant).

50. Protection of confidential information

- (1) In this section—

"protected information" means information about an applicant or applicant's partner for a first home owner grant obtained under or in relation to the administration of this Act.

S. 50(1) def. of "protected information" amended by No. 27/2001 s. 3(Sch. 1 item 3.7).

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

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s. 50

(b) the person has obtained access to protected information (directly or indirectly) from a person who is, or has been, engaged in the administration or enforcement of this Act.

(3) A person who is subject to a duty of confidentiality must not disclose protected information except as permitted by subsection (4).

Penalty: 60 penalty units.

(4) Protected information may be disclosed—

(a) at the request or with the consent of the person to whom the information relates or a person acting on that person's behalf; or

(b) in connection with the administration or enforcement of—

(i) this Act or a corresponding law; or

(ii) a taxation law; or

(c) for the purposes of legal proceedings; or

(ca) to the following in connection with an investigation or prosecution carried out in the course of their duty—

(i) a member of the police force; or

(ii) a member of the Australian Federal Police; or

(iii) the Director of Consumer Affairs Victoria; or

(iv) the Director of Housing; or

(d) as authorised under the regulations.

(5) For the purposes of the **Freedom of Information Act 1982**, protected information is information of a kind to which section 38 of that Act applies.

S. 50(4)(ca)
inserted by
No. 71/2004
s. 29.

51. Evidence

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

52. Time for commencing prosecution

A prosecution for an offence against this Act may be commenced at any time within 3 years after the alleged commission of the offence.

53. Appropriation of Consolidated Fund

If the Commissioner is required to pay an amount under this Act, the amount is to be paid from the Consolidated Fund which is appropriated by this section to the necessary extent.

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Part 4—Miscellaneous

s. 54

54. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.
 - (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
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Part 5—Consequential Amendment

s. 55

PART 5—CONSEQUENTIAL AMENDMENT

**55. Victorian Civil and Administrative Tribunal
Act 1998**

In clause 2 in Part 1 of Schedule 1 to the
**Victorian Civil and Administrative Tribunal
Act 1998**, in the definition of "taxing Act", after
paragraph (i) **insert—**

"(j) First Home Owner Grant Act 2000."

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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 2 March 2000

Legislative Council: 22 March 2000

The long title for the Bill for this Act was "to encourage and assist home ownership, and to offset the effect of the GST on home ownership, by establishing a scheme for the payment of grants to first home owners, and for other purposes."

The **First Home Owner Grant Act 2000** was assented to on 11 April 2000 and came into operation on 1 July 2000: section 2.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **First Home Owner Grant Act 2000** by Acts and subordinate instruments.

State Taxation Acts (Miscellaneous Amendments) Act 2000, No. 42/2000

Assent Date: 6.6.00
Commencement Date: S. 8 on 7.6.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Acts (Further Miscellaneous Amendments) Act 2001, No. 10/2001

Assent Date: 8.5.01
Commencement Date: S. 3 on 1.7.00: s. 2(2); s. 4 on 8.5.01: s. 2(1)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 3(Sch. 1 item 3) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Acts (Further Miscellaneous Amendments) Act 2003, No. 113/2003

Assent Date: 9.12.03
Commencement Date: Ss 22-24 on 10.12.03: s. 2(1); ss 13-21 on 1.1.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Acts (Tax Reform) Act 2004, No. 46/2004

Assent Date: 16.6.04
Commencement Date: Ss 18, 19 on 1.5.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Acts (Amendment) Act 2004, No. 71/2004

Assent Date: 19.10.04
Commencement Date: S. 29 on 20.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Acts (General Amendment) Act 2005, No. 36/2005

Assent Date: 28.6.05
Commencement Date: S. 23 on 1.7.05: s. 2(7)
Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

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Endnotes

State Taxation (Reductions and Concessions) Act 2006, No. 38/2006

Assent Date: 20.6.06

Commencement Date: S. 7 on 21.6.06: s. 2

Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

State Taxation Legislation Amendment (Housing Affordability) Act 2006, No. 86/2006

Assent Date: 22.12.06

Commencement Date: S. 6 on 22.12.06: s. 2

Current State: This information relates only to the provision/s amending the **First Home Owner Grant Act 2000**

First Home Owner Grant Act 2000
Act No. 5/2000

Endnotes

3. Explanatory Details

No entries at date of publication.