

SOUTH AUSTRALIA



RevenueSA

**First Home Owner Grant**

**Circular No. 200**

**GUIDE TO THE LEGISLATION**

**INTRODUCTION**

The purpose of this Circular is to provide a general guide to the provisions of the *First Home Owner Grant Act 2000* (“the Act”).

The information contained in this Circular is provided only as a guide to the effect of the legislation and is not intended to be a statement of legal intent.

The precise nature and scope of the First Home Owner Grant must be taken from reading the provisions as set out in the Act.

A document entitled, “Frequently Asked Questions”, is also available on the RevenueSA website, <http://www.treasury.sa.gov.au/revenuesa>, which deals with common questions and concerns that have arisen from the introduction of the First Home Owner Grant.

**GENERAL**

The *Inter-governmental Agreement (IGA) on the Reform of Commonwealth-State Financial Relations*, provides that, to offset the impact of the GST, the States and Territories will assist first home buyers through the funding and administration of a new, uniform First Home Owner Grant (“FHOG”).

Pursuant to the Act, the grant operates from 1 July 2000, with eligible applicants entitled to up to \$7,000 assistance per application in relation to eligible homes under the scheme.

A FHOG is payable if:-

- all applicants comply with the **eligibility criteria** (as set out herein);
- the transaction for which the grant is sought is an **eligible transaction** (as set out herein);
- the transaction for which the grant is sought is **completed** (as set out herein).

## ELIGIBILITY CRITERIA

An applicant for a FHOG must satisfy the following eligibility criteria set down in the Act to be entitled to receive a grant.

### Natural Person

To qualify for a FHOG, all persons acquiring or building the home must be natural persons.

### Australian Citizens or Permanent Residents

The Act requires that at least one of the applicants is a permanent resident or an Australian citizen. The definitions of Australian citizen and permanent resident in the Act rely on the *Australian Citizenship Act 1948* (Cwth) and the *Migration Act 1958* (Cwth) respectively.

### **Applicant or the Applicant's spouse must not have had a relevant interest in property before 1 July 2000.**

To qualify for the FHOG, the person acquiring the home or the person's spouse must not have had a relevant interest in a residential property prior to 1 July 2000. This requirement means if an applicant or an applicant's spouse has had a relevant interest in any form of residential property prior to 1 July 2000, the person will not qualify for a FHOG, regardless of whether the property was occupied as their principal place of residence.

#### Example 1:

*In 1999, and prior to her marriage to Mr Y, Mrs Y built a home in Victoria. Mrs Y rented the home to tenants, without ever having lived in the home. Mrs Y sells the Victorian property in June 2000. After their marriage, Mr Y acquires a home in South Australia on 2 August 2002, and resides in the home with Mrs Y. Mr Y would not be entitled to make a claim for a FHOG, as his spouse, Mrs Y, owned a residential property in Australia prior to 1 July 2000.*

#### Example 2:

*In 1997, Mr Z purchases a home. His wife, Mrs Z, does not have an interest in the home. The couple later divorce, and the home is sold in July 2000. Mrs Z subsequently marries Mr A, and Mr A purchases a home, in which they will both live, in July 2001. Mr A has never previously owned a home. Subject to compliance with other eligibility criteria, as neither Mr A or his spouse Mrs Z owned a residential property prior to 1 July 2000, a FHOG will be payable.*

### **Applicant or Applicant's spouse has not previously obtained a FHOG**

An applicant will not be entitled to the FHOG if they or their current spouse have already obtained, or **could have** obtained a grant.

If a person or their spouse has purchased a home after 1 July 2000 and resided in it as their principal place of residence, and did not apply for the grant, those persons will not be eligible for the grant for a future home purchase, if they could have applied for and received the grant.

#### Example 3:

*A person acquires a home on 1 August 2000 and resides in the home as his/her principal place of residence. The person does not make a claim for a FHOG even though the person satisfied all the relevant criteria. The same person acquires another home on 1 January 2002 and occupies it as a principal place of residence. The person would not be entitled to make a claim for a FHOG even though the person has not previously received a grant, as he/she would have been eligible for a grant in respect of the acquisition of the first home.*

#### Example 4:

*As in example 1, however if the first home was not occupied by the person as a principal place of residence and was, for example, let to tenants, a FHOG would be payable in respect of the second home (provided the other eligibility criteria were satisfied).*

#### Example 5:

*In 2001, and prior to her marriage to Mr X, Mrs X purchased a home in Victoria that was her first principal residence, and received a FHOG. After their marriage, Mr X acquires a home in South Australia on 2 August 2002 and resides in the home. Mrs X also resides in the home, but does not have an interest in the home. Mr X would not be entitled to make a claim for a FHOG, as Mrs X has previously obtained a FHOG in Victoria.*

### **Residence Requirement**

An applicant must occupy the home to which the application relates as the applicant's principal place of residence within 12 months after completion of the eligible transaction or a longer period approved by the Commissioner of State Taxation ("the Commissioner").

The Commissioner may exempt an applicant from this requirement if the applicant is one of two or more joint applicants, and at least one of the applicants will comply with the residence requirement and there are in the Commissioner's opinion good reasons to exempt an applicant from the residence requirement.

### **ELIGIBLE TRANSACTIONS**

In addition to satisfying the eligibility criteria, a FHOG will only be paid if an eligible transaction has been entered into. In particular, to qualify for a FHOG, an applicant must have either:-

1. entered into a binding contract on or after 1 July 2000 to buy a home in the State;
2. as an owner of land in the State or being a person who will on completion of the contract be an owner of land in the State, entered into a comprehensive home building contract on or after 1 July 2000 to have a home built on the land;
3. as an owner builder who is building a home in the State, commenced building work on land owned by them on or after 1 July 2000.

In addition, the contract to buy or build must not be part of a scheme to circumvent limitations on, or requirements affecting eligibility or entitlement to a FHOG.

The Commissioner will presume that such a scheme exists if:-

- in the case of a contract to purchase a home, the purchaser had an option to purchase the home granted before 1 July 2000, or the vendor had an option to require the purchaser to purchase the home granted before 1 July 2000; or
- in the case of a comprehensive home building contract, either party had a right or option granted before 1 July 2000 to require the other to enter into the contract.

This presumption can be rebutted if the applicant can satisfy the Commissioner that the principal reason for the existence of the option or right was one other than attempting to make the applicant eligible for a FHOG.

Under the Act each eligible transaction has a **commencement date**. The commencement date of an eligible transaction is:-

- 1) in the case of a contract, the date when the contract is made;
- 2) in the case of the building of a home by an owner builder –
  - a) the date when the laying of the foundations commences; or
  - b) another date the Commissioner considers appropriate in the circumstances of the case.

The commencement date of a transaction is important as the applicant must apply for a FHOG, within 12 months from the commencement date.

## COMPLETION OF TRANSACTIONS

In order for an applicant to be eligible for the grant, the transaction to which the application relates must be **completed**.

An eligible transaction is completed when:-

- in the case of a contract for the purchase of a home, when the purchaser becomes entitled to possession of the home under the contract. If the purchaser is to obtain registered title to the land on which the home is situated, the necessary steps to obtain registration of the purchaser's title (ie the transfer is lodged with the Lands Titles Office) must also have been taken;
- in the case of a contract to have a home built—when the building is ready for occupation as a place of residence;
- in the case of the building of a home by an owner builder, when the building is ready for occupation as a place of residence.

Although **completion** must have occurred for an applicant to be eligible for the grant, the Commissioner can choose to pay the grant prior to completion of the transaction if he is satisfied there are good reasons for doing so and that conditions are imposed requiring repayment of the grant if the transaction is not completed within a reasonable time.

#### **APPLICATIONS FOR THE GRANT**

An application for a FHOG may only be made within a period commencing on the **commencement date** of the transaction and ending 12 months after the **completion** of the eligible transaction to which the application relates.

The Commissioner does, however, have a discretion to allow an application to be made before or after the application period if he is satisfied that there are good reasons for doing so.

Applications can be lodged with either RevenueSA or an authorised delegate of the Commissioner.

A list of authorised delegates of the Commissioner can be obtained from RevenueSA or the RevenueSA website which can be found at <http://www.treasury.sa.gov.au/revenuesa>. In general, the major financial institutions, HomeStart financiers and some mortgage originators are authorised delegates.

#### **AMOUNT OF GRANT**

The amount of the FHOG is \$7,000 or the consideration for the transaction, whichever is the lesser.

A FHOG will not be payable where a home is a gift or bequest to the applicant (where no consideration has been paid).

#### **APPROVAL AND PAYMENT OF THE GRANT**

If the Commissioner is satisfied that a FHOG is payable on an application, the Commissioner must authorise the payment of the grant.

Under the Act, the transaction must be completed and all applicants must occupy the home as their principal place of residence, before the grant becomes payable.

### **Payment in anticipation of completion**

The Act however, provides the Commissioner with power to authorise the payment of a grant before the relevant eligible transaction is completed, if the Commissioner considers it appropriate, and 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.

### **Payment in anticipation of compliance with the residence requirement**

The Commissioner can also pay the grant before the residence requirement is met, provided that he is satisfied that each applicant who is required to comply with this requirement, but has not yet done so, **intends** to do so within 12 months after completion of the eligible transaction or a longer period allowed by the Commissioner.

If the grant is paid without the residence requirement being met, the payment is made on condition that if the residence requirement is not complied with, the applicant must, within 14 days after the **relevant date**, give written notice to the Commissioner and repay the amount of the grant.

The relevant date is the earlier of the following:-

- the end of the period allowed for compliance with the residence requirement; and
- the date on which it first became apparent that the residence requirement will not be complied with during the period allowed for compliance.

### **Conditions Generally**

The Commissioner may also authorise payment of the grant on any conditions he thinks appropriate.

The Commissioner can require the applicant in these situations to give notice of non compliance of a condition and to repay the grant within a period stated in the condition.

Any person who fails to comply with a condition imposed by the Commissioner under any provisions of the Act is guilty of an offence.

### **Payment Dates**

The following table outlines the proposed dates of payment in relation to different eligible transactions and modes of application available under Act.

| <b>PAYMENT DATE</b>     |  |                                |
|-------------------------|--|--------------------------------|
| <b>Transaction Type</b> | <b>Apply Through Authorised Delegate</b> | <b>Apply Through RevenueSA</b> |

|                                       |                          |   |
|---------------------------------------|--------------------------|---|
| Comprehensive Home Building Contract  | First progress payment   | First progress payment                          |
| Contract to purchase established home | Settlement               | Proof of lodgement of transfer for registration |
| Owner Builder                         | Certificate of Occupancy | Certificate of Occupancy                        |

More specific detail in relation to the payment details can be obtained through RevenueSA or authorised delegates.

### **Notification of Decisions**

When the Commissioner decides an application, the Commissioner must give the applicant notice of the decision.

If the decision is to refuse an application or to vary or reverse an earlier decision on an application, the Commissioner must state in the notice the reasons for the decision.

### **EXEMPTION FROM FINANCIAL INSTITUTIONS DUTY (“FID”)**

In most cases, payment of the FHOG will be achieved by way of an electronic funds transfer (“EFT”) to the financial institution’s dedicated central disbursement account (“First Receipt”) prior to settlement. Once the settlement process occurs, the grant, or the balance thereof, will then be transferred to the applicant’s individual account (“Second Receipt”), again by an EFT, in cases where the grant was not totally consumed in the settlement process, ie, used to pay other fees and charges.

Where the FHOG is provided directly to the applicant by RevenueSA, the grant will be credited to the applicant’s account held with a financial institution by EFT (“Single Receipt”).

First, Second and Single Receipts of a FHOG are all exempt from FID when credited to an account in the name of the applicant(s).

However, where the proceeds of the FHOG are placed in an account with persons other than the applicant(s) for the grant, an exemption will not be available.

### **OBJECTIONS AND APPEALS**

#### **Objection**

An applicant who is dissatisfied with the Commissioner's decision on the application may lodge a written notice of objection with the Treasurer.

The grounds of objection must be stated fully and in detail and be lodged within 60 days after the date of the notice of the decision, subject to the Treasurer having a discretion to extend the period if he is satisfied the objection had a reasonable excuse.

The Treasurer may refer an objection, or any aspect of an objection, to the Crown Solicitor or any other person for advice and after considering an objection, the Treasurer may confirm, vary or reverse the decision subject to the objection.

The Treasurer must give the objector written notice of the decision on the objection, setting out the reasons for the decision.

### **Appeal**

An objector who is dissatisfied with the Treasurer's decision on the objection may appeal to the Magistrates Court against the decision.

An appeal must be commenced within 60 days after the notice of the decision on the objection is given subject to a Court discretion to extend the time for commencing an appeal.

On an appeal, the Magistrates Court may confirm, vary or reverse the decision on the application for a FHOG and make incidental and ancillary orders.

Although a decision is subject to an objection or appeal, the Commissioner may act on the basis that the decision is correct until the objection or appeal is decided.

### **INVESTIGATIONS**

The Commissioner has a range of investigation and information gathering powers which are contained in Division 2 of Part 3 of the Act.

### **PENALTIES**

The Commissioner may impose an administrative penalty of up to the amount of the grant received in cases where:

- a grant has not been repaid following non-compliance with a condition of the payment of the grant; and
- a grant has been paid in error because of a false or misleading statement by an applicant.

Persons who dishonestly make a false or misleading statement in or in connection with an application for a grant face a penalty up to a maximum of \$20,000 or imprisonment for 2 years.

A person who makes a misleading statement in or in connection with an application for a grant faces a penalty up to a maximum of \$2,500. It is a defence to this offence to prove that the misleading statement was neither intentional nor negligent.

### **GLOSSARY OF TERMS**



**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.

### **Relevant interests**

Relevant interests can be any of the following:-

- an estate in fee simple in the land; or
- a life estate in the land approved by the Commissioner; or
- a perpetual lease of the land granted by the Commonwealth or the State; or
- 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
- 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
- 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
- an interest in a company's shares if the Commissioner is satisfied that:-
  - the interest entitles the holder of the interest to exclusive occupation of a specified home owned by the company; and
  - the value of the shares is not less than the value of the company's interest in the home.
- a non-conforming interest prescribed in Regulation 4 of the *Regulations Under the First Home Owner Grant Act 2000*.

### **Spouse**

A person is the spouse of another if:-

- they are legally married; or
- they are cohabiting in a genuine domestic relationship of a *de facto* marriage.

Enquiries relating to the contents of this circular may be made to RevenueSA on (08) 8226 3750.

**FURTHER INFORMATION**

***Location***

RevenueSA  
Taxpayer Services  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

***Postal***

Commissioner of State Taxation  
RevenueSA  
GPO Box 1353  
ADELAIDE SA 5001

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(08) 8226 3734

***Website***

**<http://www.treasury.sa.gov.au/revenuesa>**

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**COMMISSIONER OF STATE TAXATION**

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