

SOUTH AUSTRALIA



RevenueSA

First Home Owner Grant

Circular No. 250

FIRST HOME OWNER GRANT (MISCELLANEOUS) AMENDMENT ACT 2004

The *First Home Owner Grant Act 2000* ("the Act") has been amended by the *First Home Owner Grant (Miscellaneous) Amendment Act 2004* ("the Amending Act") which was assented to on 16 December 2004 and will come into operation on 1 January 2005.

This Circular explains the changes brought about by the Amending Act.

The information set out below is only intended as a guide to the effect of the amendments. The precise nature and scope of the new legislation should be taken from a reading of the provisions, as set out in full in the Amending Act.

Further information regarding the First Home Owner Grant (FHOG) can be found in Circulars 200, 206 and 216.

SIX MONTH RESIDENCY PERIOD

Under the current provisions of the Act, a FHOG applicant must occupy the home, to which the application relates, as his or her principal place of residence within twelve months of completion of the eligible transaction. The Commissioner has the discretion to allow a longer period.

The Amending Act inserts a minimum six-month principal place of residence requirement ("the Residence Requirement") into the Act. This requires an applicant to occupy the home, to which the application relates, as their principal place of residence for a continuous period of at least six months. This continuous period must commence within 12 months after completion of the eligible transaction. The Commissioner has the discretion to vary both the six month and the 12 month periods.

The Residence Requirement applies to all eligible transactions entered into on or after 1 January 2005.

If a FHOG application is lodged on or after 1 January 2005 in relation to an eligible transaction that was entered into before 1 January 2005, the Residence Requirement will not apply (i.e. the

current requirement to occupy the home as the applicant's principal place of residence will apply).

The Commissioner's discretion to approve a period of residency shorter than 6 months will be exercised when the Commissioner is satisfied that there are good reasons why the applicant is unable to occupy the home as his or her principal place of residence for the minimum period.

In all cases however, the applicant when lodging the application for the FHOG, must have intended to occupy and must objectively have been capable of occupying the home as their principal place of residence for at least 6 continuous months commencing within 12 months after completion of the eligible transaction.

Where an applicant is unable to meet the Residence Requirement, they must within 14 days, give written notice of that fact to the Commissioner and re-pay the FHOG. Failure to do so may result in a penalty being imposed.

PENALTIES

The Act currently provides that where a FHOG has to be re-paid as a result of an applicant's dishonesty, the Commissioner may also impose a penalty. That penalty cannot exceed the amount that the applicant is required to re-pay.

From 1 January 2005, if a FHOG has to be re-paid as a result of an applicant providing false or misleading information, the Commissioner may impose a penalty. Again that penalty cannot exceed the amount that the applicant is required to re-pay.

The substance of the change is that the Commissioner will no longer have to prove that there was a dishonest intent by the applicant before imposing a penalty.

The decision whether to impose a penalty will depend on the circumstances in which false or misleading information has been provided.

Examples of false or misleading information that may fall within the scope of the amendments include a person not disclosing that they had previously owned residential property, not disclosing that a spouse (including a *de facto* spouse) had owned residential property and providing false information to the Commissioner when requested to provide clarification of their application.

If the Commissioner is satisfied that false or misleading information was provided as a result of a genuine mistake, the penalty will not be imposed.

These amendments will apply to any application lodged on or after 1 January 2005.

PROSECUTION PERIOD

The Amending Act also increases the time limit within which a FHOG applicant can be prosecuted for an offence under the Act, from two years to three years from the date that the offence occurred.

This provision will apply where the application to which the offence relates was made on or after 1 January 2005.

FURTHER INFORMATION

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COMMISSIONER OF STATE TAXATION

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