



REPORT OF THE

STANDING COMMITTEE ON
CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

FIRST HOME OWNER GRANT
AMENDMENT BILL 2000

Presented by Hon Murray Nixon JP, MLC (Chairman)

Report 60

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

December 21 1989

Terms of Reference:

- 1 The functions of the committee are to inquire into and report on:
 - a) the constitutional law, customs and usages of Western Australia;
 - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the time of this inquiry:

Hon Murray Nixon JP, MLC (Chairman)
Hon Ray Halligan MLC
Hon Ken Travers MLC

Staff as at the time of this inquiry:

Ms Felicity Beattie, Advisory Officer
Mr David Driscoll, Committee Clerk

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222
Website: <http://www.parliament.wa.gov.au>

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REPORT OF THE STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

FIRST HOME OWNER GRANT AMENDMENT BILL 2000

1 REFERENCE AND PROCEDURE

- 1.1 The *First Home Owner Grant Amendment Bill 2000* (the Bill) was referred to the Standing Committee on Constitutional Affairs (the Committee) by the Legislative Council under Standing Order 230(d) on November 7 2000.

2 BACKGROUND TO THE BILL

- 2.1 The *First Home Owner Grant Bill 2000* was referred to the Committee by the Legislative Council under Standing Order 230(d) on May 4 2000. The Committee inquired into that Bill and reported to the Legislative Council on May 23 2000 in Report Number 51.
- 2.2 The *First Home Owner Grant Act 2000* (the Act) came into operation on July 1 2000.

3 CONTENTS AND PURPOSE OF THE *FIRST HOME OWNER GRANT AMENDMENT BILL 2000*

- 3.1 The purpose of the Bill is to extend access to the first home owner grant to New Zealand citizens who reside permanently in Australia.
- 3.2 Under the Act first home buyers who are Australian citizens or permanent residents may qualify for a grant of up to \$7 000 to offset the impact of the introduction of the goods and services tax on house prices.
- 3.3 Permanent resident is defined in subsection 3(1) of the Act as the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth.
- 3.4 This definition does not include special category visas granted to New Zealand citizens upon their arrival in Australia, even though both types of visas can serve the same purpose.

- 3.5 As a result, New Zealand citizens residing permanently in Australia are at a disadvantage relative to other migrants who hold a permanent visa.
- 3.6 This anomaly emerged after the Act was drafted and it is intended that these amendments operate retrospectively to July 1 2000, being the commencement date of the First Home Owners Scheme (the FHOS).
- 3.7 Similar amendments are intended, or have already been made, by other States and Territories so that national uniformity of the FHOS is maintained in line with the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*.
- 3.8 The Commonwealth has indicated that it is supportive of this extension to the FHOS, and that its current estimate of the cost of the FHOS already includes grants to be paid to New Zealanders.
- 3.9 Accordingly, any grant payments resulting from these amendments will be taken into account in the calculation of the Commonwealth's guarantee payments to the States and Territories, thereby ensuring that the State's budget remains no worse off as a result of this Bill.
- 3.10 The Bill also proposes minor amendments to clarify that an applicant must meet the eligibility criteria specific to the applicant, at the commencement date of the eligible transaction. The commencement date is:
- in the case of a contract – the date when the contract is made; or
 - in the case of the building of a home by an owner builder – the date when laying the foundations for the home begins.
- 3.11 The FHOS has always been administered on that basis and the proposed amendments merely seek to remove any ambiguity that could arise from the current wording of the Act.
- 3.12 The Bill contains eight clauses. Certain selected clauses of the Bill are outlined below. The Committee has provided comment on those clauses.

4 SELECTED CLAUSES OF THE *FIRST HOME OWNER GRANT AMENDMENT BILL 2000*

4.1 Clause 2 – Commencement

- 4.1.1 Subclause 2(1) provides that all sections other than section 8 operate from the date of Royal Assent.

4.1.2 Subclause 2(2) provides that section 8, dealing with the extension of the FHOS to New Zealand citizens, has retrospective application to July 1 2000, the date that the FHOS commenced.

4.2 **Clause 4 – Section 7 amended**

4.2.1 Section 7 of the Act provides the meaning of an applicant’s “spouse”. Paragraph (a) amends section 7(1) to clarify that for the purposes of the first home owner grant, a person is a spouse of an applicant if they are legally married at the commencement date of the eligible transaction to which the application relates.

4.2.2 Paragraph (b) deletes the existing section 7(1)(b) and replaces it with a new paragraph (b). This is to clarify that for the purposes of the first home owner grant, a person is considered to be the spouse of an applicant if that person and the applicant have been living together on a genuine domestic basis for at least two years at the commencement date of the eligible transaction to which the application relates.

4.2.3 For example, an unmarried person may enter into a contract to build a home on land that they own and meet all eligibility requirements for a grant at that time. Prior to completion of the home, the person marries someone who has previously owned a home. In these circumstances it could be argued that the person is ineligible for the grant, even though the spouse has no interest in the home. The amendments will make it clear that if the couple were not married at the commencement date, and had not been living together on a genuine domestic basis for at least two years prior to the commencement date, eligibility for the grant will not be affected.

4.3 **Clause 8 – Amendments relating to “permanent resident”**

4.3.1 Subclause 8(1) deletes the existing definition of “permanent resident” in section 3(1) of the Act and inserts a new definition that provides that “permanent resident” has the meaning given by new section 7B inserted by subclause 8(2). The Explanatory Memorandum to the Bill states that “*The amendment clarifies that an applicant must be a permanent resident on the commencement date of the eligible transaction.*” It appears to the Committee that rather than clarifying this matter, the amendment is drafted to overcome an anomaly in the Act.

4.3.2 For example, a new arrival into Australia enters into a contract to build a home but does not meet the eligibility criteria for a grant at that time, as the person is not an Australian citizen under the *Australian Citizenship Act 1948*

(Cth), nor the holder of a permanent or special category visa under section 30 or 32 of the *Migration Act 1958* (Cth). If the person gains permanent residency status prior to completion of the contract, it could be argued that the person is eligible for the grant. These amendments make it clear that the person is ineligible.

4.3.3 The Committee notes that this may disadvantage new applicants for permanent residency as opposed to the situation under the current legislation.

4.3.4 Subclause 8(2) inserts a new section 7B in Part 1 to provide a meaning of “permanent resident” for the purposes of an application for a first home owner grant.

4.3.5 Paragraph (a) provides that the following persons are “permanent residents” for the purposes of the Act –

- in item (i) – the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth; or
- in item (ii) – a New Zealand citizen who is the holder of a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

4.3.6 Paragraph (b) provides that applicants falling within the meaning of “permanent resident” in section 7B must satisfy the Commissioner of State Revenue that he or she intends to reside permanently in Australia. This category of applicant will be required to declare their intentions in this regard when making an application and audit activities will be carried out to ensure that information supplied to the Commissioner is not false or misleading.

4.3.7 Anyone who attempts to mislead the Commissioner as to their permanency may be required to repay the grant plus a penalty equal to the amount that they are required to repay.

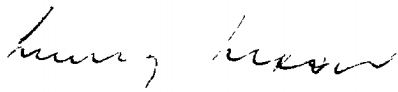
4.3.8 That person will also commit an offence against the Act for which a penalty of up to \$20 000 is provided.

4.3.9 As the amendments in this clause have retrospective application to July 1 2000, the Commissioner will be taken to have been satisfied of the intent as to permanency in respect of all applications already approved.

5 RECOMMENDATIONS

Recommendation 1: The Committee recommends that during debate on the Bill the House considers the issues raised in paragraph 4.3.3 of this report.

Recommendation 2: The Committee recommends that all clauses of the *First Home Owner Grant Amendment Bill 2000* be passed.



Hon Murray Nixon JP, MLC

Chairman

Date: November 16 2000