

# TASMANIA

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## HOMEBUILDER GRANTS BILL 2020

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## **SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**



# **HOMEBUILDER GRANTS BILL 2020**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
24 June 2020

*(Brought in by the Minister for Finance, the Honourable  
Michael Darrel Joseph Ferguson)*

## **A BILL FOR**

**An Act to encourage and assist in supporting the building industry by providing for the payments of grants to home owners to facilitate the building of new homes and the substantial renovation of existing homes in certain circumstances**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *HomeBuilder Grants Act 2020*.

### **2. Commencement**

This Act is taken to have commenced on 4 June 2020.

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### 3. Interpretation

In this Act, unless the contrary intention appears –

***Australian citizen*** means an Australian citizen as defined in the *Australian Citizenship Act 2007* of the Commonwealth;

***authorised officer*** means a person appointed as an authorised officer under section 50;

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

***commencement***, in relation to building, means –

- (a) the date of completion of the laying of the foundations for the building; or
- (b) if no foundations are to be laid, a date determined by the Commissioner in respect of the building;

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

***Commonwealth HomeBuilder grant*** means a grant under Part 3;

***completed***, in relation to an eligible transaction, means –

- (a) if the eligible transaction is a contract for a home referred to in

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section 5(a) or (b), when the home is ready for occupation as a place of residence; and

(b) if the eligible transaction is a contract for a home referred to in section 5(c), when –

(i) the purchaser becomes entitled to possession of the home under the contract; and

(ii) if the purchaser is to obtain a registered title to the land on which the home is situated, the necessary steps to obtain registration of the purchaser's title have been taken; and

(c) if the eligible transaction is a contract referred to in section 18(2)(b), when all the work performed as part of the eligible transaction is completed;

***corresponding law*** means an Act of the Commonwealth, or another State or a Territory, corresponding to all, or part of, this Act;

***eligible transaction***, in relation to a grant, means –

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- (a) in relation to a Tasmanian HomeBuilder grant, an eligible transaction under section 13(1); and
- (b) in relation to a Commonwealth HomeBuilder grant, an eligible transaction under section 18(1);

***first home owner grant*** means a grant authorised under the *First Home Owner Grant Act 2000*;

***function*** includes a power;

***guardian***, in relation to a person under a legal disability, includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal;

***home*** – see section 4;

***HomeBuilder grant contract*** – see section 5;

***market value*** – see section 6;

***National Partnership*** means the intergovernmental agreement, entered into by the Commonwealth and each State and Territory, named the National Partnership on HomeBuilder and signed on behalf of Tasmania on 19 June 2020;

***new home*** means a home that has not previously been occupied, or sold, as a place of residence;



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**owner** means –

- (a) in relation to land, a person who has a relevant interest in the land; and
- (b) in relation to a home, a person who has a relevant interest in the land on which the home is built;

**related person**, in relation to an applicant under this Act, means –

- (a) a person who is the spouse of the applicant; or
- (b) a person who is in a caring relationship with the applicant that is –
  - (i) the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*; or
  - (ii) declared to exist by virtue of a declaration of the Supreme Court in force under Part 7 of that Act; or
- (c) a person who is a grandchild, child, sibling, parent, grandparent or collateral relative of the applicant or a person in

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paragraph (a) or (b) in respect of the applicant; or

- (d) a private company, within the meaning of the *Duties Act 2001*, in which the applicant, or a person in paragraph (a), (b) or (c) in respect of the applicant, is a shareholder or director of the company or another private company, within the meaning of that Act, that is a related body corporate of the company within the meaning of the Corporations Act; or
- (e) a trustee for a trust, other than a public unit trust scheme within the meaning of the *Duties Act 2001*, in which the applicant, or a person in paragraph (a), (b), (c) or (d) in respect of the applicant, is a beneficiary of the trust; or
- (f) a partner in a partnership, to which the *Partnership Act 1891* applies, in which the applicant, or a person in paragraph (a), (b), (c) or (d) in respect of the applicant, is also a partner in the partnership;

***relevant interest*** has the meaning given under section 7(2);

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***residence requirement***, in relation to a grant, means –

- (a) in relation to a Tasmanian HomeBuilder grant, the requirements of section 12(1)(f); and
- (b) in relation to a Commonwealth HomeBuilder grant, the requirements of section 17(1)(g);

***spouse*** – see section 8;

***Tasmanian HomeBuilder grant*** means a grant under Part 2;

***taxation law*** means a law for the assessment or imposition of a tax.

#### **4. Home**

A home is a building affixed to land that –

- (a) may lawfully be used as a place of residence; and
- (b) is, in the opinion of the Commissioner, a suitable building for use as a place of residence.

#### **5. HomeBuilder grant contract**

For the purposes of this Act, a contract is a HomeBuilder grant contract if the contract –

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- (a) is a contract that relates to the building of 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 performed under such a contract is not completed, includes any further contract under which the work is to be completed; or
- (b) is a contract that relates to the building of a home –
  - (i) if, in respect of the home, the building commenced on or after 4 June 2020; and
  - (ii) if, at the time the contract is entered into, building work on the home has commenced but the home is not completed to the point where the home is ready for occupation; and
  - (iii) under which a builder is to complete the home to the point where the home is ready for occupation; and
  - (iv) including any further contract under which the work is to be completed if, for any reason, the work to be performed under a contract referred to in subparagraph (iii) is not completed; or

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- (c) is a contract for the purchase of a new home in the State, where the building of the new home commenced on or after 4 June 2020.

**6. Market value**

The Commissioner may take into account one or more of the following when determining the market value of land for the purposes of this Act:

- (a) an independent valuation of the land;
- (b) a valuation of the land under the *Valuation of Land Act 2001*;
- (c) the last sale price for the land, including the last price at which a contract for sale was entered into for the land;
- (d) any other matter the Commissioner considers relevant.

**7. Ownership of land and homes**

- (1) A person is an owner of a home if the person has a relevant interest in the land on which the home is built.
- (2) Subject to subsection (3), each of the following is a relevant interest in land:
  - (a) an estate in fee simple in the land;
  - (b) a life estate in the land approved by the Commissioner;

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- (c) a perpetual lease of the land granted by the Commonwealth or the State;
  - (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;
  - (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;
  - (f) 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;
  - (g) 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
    - (ii) the value of the shares is not less than the value of the company's interest in the home.
- (3) Subject to subsection (4) –
- (a) an interest is not a relevant interest at a particular time unless the holder of the interest has, or will have within 12 months after that time (or a longer time

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- allowed by the Commissioner), a right to immediate occupation of the land; and
- (b) an interest is not a relevant interest in the hands of a person who holds it subject to a trust; and
  - (c) an equitable interest is not a relevant interest unless it is the interest of a person under a legal disability for whom a guardian holds the interest on trust.
- (4) If the Commissioner is of the opinion that there is good reason to do so, the Commissioner may recognise an interest (a ***non-conforming interest***) as a relevant interest in land even though –
- (a) the interest may not conform, in full or in part, with subsections (2) and (3); or
  - (b) the interest may not be recognised at law or in equity as an interest in land.
- (5) If the Commissioner recognises a non-conforming interest as a relevant interest in land and, in consequence, a grant is to be paid under this Act, the Commissioner may impose appropriate conditions on the payment of the grant to ensure its recovery if suppositions about future conduct or events made by the Commissioner in recognising the interest are later proved to be incorrect.

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**8. Spouse**

A person is the spouse of another person if –

- (a) the persons are legally married; or
- (b) the persons are in a significant relationship, within the meaning of the *Relationships Act 2003*.

**9. Transaction value**

(1) Subject to subsection (2), the transaction value of a transaction is –

- (a) if the transaction is a contract referred to in section 5(a) or (b) and the contract includes the purchase of land, the sum of the following:
  - (i) the total consideration payable under the contract, including any consideration payable under secondary contracts specified in the contract, if any;
  - (ii) the total cost of materials to be used in work performed under the contract, or a secondary contract, where consideration payable under the contract does not include the cost of the materials; or
- (b) if the transaction is a contract referred to in section 5(a) or (b) and the contract



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does not include the purchase of land, the sum of the following:

- (i) the total consideration payable under the contract, including any consideration payable under secondary contracts specified in the contract, if any;
  - (ii) the total cost of materials to be used in work performed under the contract, or a secondary contract, where consideration payable under the contract does not include the cost of the materials;
  - (iii) the market value of the land on the day on which the contract is made; or
- (c) if the transaction is a contract referred to in section 5(c), the total consideration payable under the contract; or
- (d) if the transaction is a contract referred to in section 18(2)(b), the sum of the following:
- (i) the total consideration payable under the contract, including any consideration payable under secondary contracts specified in the contract, if any;
  - (ii) the total cost of materials to be used in work performed under the contract, or a secondary contract,

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where consideration payable under the contract does not include the cost of the materials.

- (2) Despite subsection (1), if the Commissioner is satisfied that the transaction value of a transaction calculated under that subsection does not reflect the market value of the transaction, the Commissioner may determine the transaction value of the transaction by such other means that the Commissioner considers appropriate.

## **PART 2 – TASMANIAN HOMEBUILDER GRANT**

### **10. Amount of Tasmanian HomeBuilder grant**

The amount of a Tasmanian HomeBuilder grant is \$20 000.

### **11. Entitlement to Tasmanian HomeBuilder grant**

- (1) A Tasmanian HomeBuilder grant is payable on application under this Act if –
  - (a) each applicant for the grant complies with the eligibility requirements specified in section 12; and
  - (b) the transaction for which the grant is sought –
    - (i) is an eligible transaction; and
    - (ii) has been completed; and
  - (c) the first home owner grant has not been paid, or is not payable, in respect of the eligible transaction.
- (2) Only one Tasmanian HomeBuilder grant is payable in respect of –
  - (a) the same eligible transaction; and
  - (b) the same land, whether or not there has been a change of ownership in respect of the land.

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- (3) Subsection (2) does not apply in respect of a previous grant of the Tasmanian HomeBuilder grant if the previous grant has been paid back in full.

**12. Eligibility requirement for Tasmanian HomeBuilder grant**

- (1) An applicant for a Tasmanian HomeBuilder grant is eligible for the grant if –
- (a) the applicant is a natural person; and
  - (b) the applicant has attained the age of 18 years at the time of entering into the eligible transaction to which the application relates; and
  - (c) the applicant is an Australian citizen; and
  - (d) in the case of a joint application, the only other applicant in respect of the application is, at the time of the application, the spouse of the applicant; and
  - (e) for the 2018-19 financial year, or any subsequent financial year that has been completed before the eligible transaction to which the application relates –
    - (i) in the case of a single applicant, the taxable income for the applicant is less than \$125 000; or

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- (ii) in the case of a joint application, the combined taxable income of all applicants is less than \$200 000; and
  - (f) subject to subsections (2) and (3), the applicant must occupy the home to which the application relates as the applicant's principal place of residence –
    - (i) for a continuous period of at least 6 months; and
    - (ii) commencing within the 12-month period immediately after the completion of the relevant eligible transaction; and
  - (g) the applicant has not previously been paid the Tasmanian HomeBuilder grant in respect of another eligible transaction.
- (2) The Commissioner may approve a lesser period of occupation under subsection (1)(f)(i) if the Commissioner is satisfied that there are good reasons why the applicant cannot comply with the requirement to occupy the home for a continuous period of 6 months.
- (3) The Commissioner may approve a greater period under subsection (1)(f)(ii) if the Commissioner is satisfied that there are good reasons why the applicant cannot comply with the requirement to commence occupation of the home, as a principal place of residence, within the 12-month period immediately after the completion of the relevant eligible transaction.

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- (4) A decision of the Commissioner under subsection (2) or (3) in respect of an application may be made at any time, unless a decision on the application has been varied or reversed under section 28.
- (5) Subsection (1)(g) does not apply in respect of a previous grant of the Tasmanian HomeBuilder grant if the previous grant has been paid back in full.

**13. Eligible transaction for Tasmanian HomeBuilder grant**

- (1) Subject to subsection (2), a transaction is an eligible transaction for a Tasmanian HomeBuilder grant if –
  - (a) the transaction is a HomeBuilder grant contract (the *relevant contract*) that is –
    - (i) made on or after 4 June 2020 but before 1 January 2021; and
    - (ii) entered into by the owner of the land to which the contract relates, or by a person who will, on completion of the contract, be the owner of the land; and
  - (b) the transaction value of the transaction, as calculated under section 9, does not exceed \$750 000; and
  - (c) where required under the *Occupational Licensing Act 2005*, building work to be

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performed under the relevant contract is performed by a person who –

- (i) is the holder of the relevant licence, under that Act, to perform the work; and
  - (ii) held such a licence on 4 June 2020; and
  - (iii) is not an owner builder, within the meaning of that Act, in respect of the work; and
- (d) where the relevant contract is a contract referred to in section 5(a), commencement of building under the contract occurred no later than –
- (i) 3 months after the day on which the contract is made; or
  - (ii) such further period not exceeding a further 3 months, as determined by the Commissioner, if the Commissioner is satisfied that the commencement of building is delayed due to factors that are unforeseen and outside of the control of the parties to the contract; and
- (e) the transaction is completed within 18 months after –
- (i) if the relevant contract is a contract referred to in

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section 5(a), the commencement of building of the new home under the relevant contract; and

- (ii) in respect of any other relevant contract, the commencement of building of the new home to which the contract relates.

(2) A transaction is not an eligible transaction if –

- (a) a party to the contract that forms the transaction, other than an applicant, is a related person in relation to an applicant; or
- (b) under the terms of the contract that forms the transaction, an applicant is to perform work under the contract whether for consideration or not; or
- (c) the Commissioner is of the opinion that the market value of the transaction differs significantly from the transaction value of the transaction as calculated under section 9; or
- (d) the Commissioner is of the opinion that the transaction forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant; or
- (e) the Commissioner is of the opinion that the transaction replaces a previous transaction, entered into before 4 June 2020, that –



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- (i) is for the same home; and
- (ii) is between substantially, or benefits substantially, the same parties.

**14. Amendment of Tasmanian HomeBuilder grant**

- (1) The Minister, by order and on one or more occasion, may amend the Act to do one or more of the following:
  - (a) omit the amount specified in section 10 and substitute another amount;
  - (b) omit the date on which the period ends as specified in section 13(1)(a)(i) and substitute a later date;
  - (c) alter the date by which an application for the Tasmanian HomeBuilder grant may be made, as specified in section 20(2)(c)(ii), by specifying a later date for that grant.
- (2) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (1) as if the order were regulations within the meaning of that Act.
- (3) An order under subsection (1) –
  - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and

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- (b) is not an instrument of legislative character for the purposes of the *Subordinate Legislation Act 1992*.

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**PART 3 – COMMONWEALTH HOMEBUILDER  
GRANT**

**15. Amount of Commonwealth HomeBuilder grant**

- (1) The amount of a Commonwealth HomeBuilder grant is \$25 000.
- (2) Despite subsection (1), if the National Partnership ceases to be in force, the amount of a Commonwealth HomeBuilder grant is zero on, and from, the cessation of the National Partnership.

**16. Entitlement to Commonwealth HomeBuilder grant**

- (1) A Commonwealth HomeBuilder grant is payable on application under this Act if –
  - (a) each applicant for the grant complies with the eligibility requirements specified in section 17; and
  - (b) the transaction for which the grant is sought –
    - (i) is an eligible transaction; and
    - (ii) has been completed.
- (2) Only one Commonwealth HomeBuilder grant is payable in respect of –
  - (a) the same eligible transaction; and

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- (b) the same land, whether or not there has been a change of ownership in respect of the land.
- (3) Subsection (2) does not apply in respect of a previous grant of the Commonwealth HomeBuilder grant if the previous grant has been paid back in full.
- (4) The payment of the Tasmanian HomeBuilder grant, or the first home owner grant, in respect of an eligible transaction does not, of itself, prevent the payment of the Commonwealth HomeBuilder grant in respect of the transaction.

**17. Eligibility requirement for Commonwealth HomeBuilder grant**

- (1) An applicant for a Commonwealth HomeBuilder grant is eligible for the grant if –
  - (a) the applicant is a natural person; and
  - (b) the applicant has attained the age of 18 years at the time of entering into the eligible transaction to which the application relates; and
  - (c) the applicant is an Australian citizen; and
  - (d) in the case of a joint application, the only other applicant in respect of the application is, at the time of the application, the spouse of the applicant; and

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- (e) for the 2018-19 financial year, or any subsequent financial year that has been completed before the eligible transaction to which the application relates –
  - (i) in the case of a single applicant, the taxable income for the applicant is less than \$125 000; or
  - (ii) in the case of a joint application, the combined taxable income of all applicants is less than \$200 000; and
- (f) if the application relates to an eligible transaction for a renovation of a home, the home was the principal place of residence for the applicant at the time he or she entered into the eligible transaction; and
- (g) subject to subsections (2) and (3), the applicant must occupy the home to which the application relates as the applicant's principal place of residence –
  - (i) for a continuous period of at least 6 months; and
  - (ii) commencing within the 12-month period immediately after the completion of the relevant eligible transaction; and
- (h) the applicant has not previously been paid the Commonwealth HomeBuilder

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grant in respect of another eligible transaction.

- (2) The Commissioner may approve a lesser period of occupation under subsection (1)(g)(i) if the Commissioner is satisfied that there are good reasons why the applicant cannot comply with the requirement to occupy the home for a continuous period of 6 months.
- (3) The Commissioner may approve a greater period under subsection (1)(g)(ii) if the Commissioner is satisfied that there are good reasons why the applicant cannot comply with the requirement to commence occupation of the home, as a principal place of residence, within the 12-month period immediately after the completion of the relevant eligible transaction.
- (4) A decision of the Commissioner under subsection (2) or (3) in respect of an application may be made at any time, unless a decision on the application has been varied or reversed under section 28.
- (5) Subsection (1)(h) does not apply in respect of a previous grant of the Commonwealth HomeBuilder grant if the previous grant has been paid back in full.

**18. Eligible transaction for Commonwealth HomeBuilder grant**

- (1) Subject to subsection (2), a transaction is an eligible transaction for a Commonwealth HomeBuilder grant if –

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- (a) the transaction is a contract specified in subsection (2) (the *relevant contract*); and
- (b) where required under the *Occupational Licensing Act 2005*, building work to be performed under the relevant contract is performed by a person who –
  - (i) is the holder of the relevant licence, under that Act, to perform the work; and
  - (ii) held such a licence on 4 June 2020; and
  - (iii) is not an owner builder, within the meaning of that Act, in respect of the work; and
- (c) where the relevant contract is a contract referred to in subsection (2)(b) or section 5(a), commencement of work under the contract occurred no later than –
  - (i) 3 months after the day on which the contract is made; or
  - (ii) such further period not exceeding a further 3 months, as determined by the Commissioner, if the Commissioner is satisfied that the commencement of building is delayed due to factors that are unforeseen and outside of the

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control of the parties to the contract.

- (2) A contract is a relevant contract in respect of an eligible transaction if it is –
- (a) a HomeBuilder grant contract made on or after 4 June 2020, but before 1 January 2021 –
    - (i) where the transaction value of the transaction, as calculated under section 9, does not exceed \$750 000; and
    - (ii) by the owner of the land to which the contract relates, or by a person who will, on completion of the contract, be the owner of the land; or
  - (b) a contract made on or after 4 June 2020, but before 1 January 2021, for a renovation of a home on land where –
    - (i) the contract –
      - (A) relates to a renovation that substantially alters the home; or
      - (B) is for both the demolition of the home and the building of another home on the land; and



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- (ii) the contract is made by the owner of the land to which the contract relates; and
  - (iii) the transaction value of the eligible transaction, as calculated under section 9, is greater than \$150 000 but not more than \$750 000; and
  - (iv) the market value of the land, on the day on which the contract is made, does not exceed \$1 500 000; and
  - (v) in the opinion of the Commissioner, the substantial effect of the contract is to –
    - (A) in the case of a contract under subparagraph (i)(A), improve accessibility, safety or liveability of the home; and
    - (B) in the case of a contract under subparagraph (i)(B), improve accessibility, safety or liveability of the land by building the new home under the contract.
- (3) A transaction is not an eligible transaction if –

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- (a) a party to the contract that forms the transaction, other than an applicant, is a related person in relation to an applicant; or
- (b) under the terms of the contract that forms the transaction, an applicant is to perform work under the contract whether for consideration or not; or
- (c) the Commissioner is of the opinion that the market value of the transaction differs significantly from the transaction value of the transaction as calculated under section 9; or
- (d) the Commissioner is of the opinion that the transaction forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant; or
- (e) the Commissioner is of the opinion that the transaction replaces a previous transaction, entered into before 4 June 2020, that –
  - (i) is for the same home or the same renovation; and
  - (ii) is between substantially, or that benefits substantially, the same parties.

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**19. Amendment of Commonwealth HomeBuilder grant**

- (1) If the National Partnership is amended on or after this Act is taken to commence, the Minister may, by order, make such amendments as are necessary to ensure that this Act is consistent with the National Partnership.
- (2) An order under subsection (1) –
  - (a) may only include such amendments as are required to ensure that this Act is consistent with the National Partnership; and
  - (b) may, as a result of an amendment that is made under paragraph (a), amend the operation of the Tasmanian HomeBuilder grant so as to ensure that the requirements, and processes, of that grant are not inconsistent with the Commonwealth HomeBuilder grant; and
  - (c) may be made so as to have effect from the day on which the amendment to the National Partnership, to which the order relates, commences or such later day as is specified in the order.
- (3) An order under subsection (1) –
  - (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
  - (b) is not an instrument of legislative character for the purposes of the *Subordinate Legislation Act 1992*.

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**PART 4 – APPLICATION PROCESS**

*Division 1 – Application for grant*

**20. Application for grant**

- (1) An application for a grant under this Act is to be made to the Commissioner.
- (2) An application under subsection (1) –
  - (a) must be in a form approved by the Commissioner; and
  - (b) must contain the information required by the Commissioner; and
  - (c) must be made –
    - (i) on or after the day on which the contract, that forms the eligible transaction to which the application relates, is made; and
    - (ii) before 1 January 2021; and
  - (d) may be made in respect of either the Tasmanian HomeBuilder grant or the Commonwealth HomeBuilder grant, or both.
- (3) An applicant must provide the Commissioner with any further information the Commissioner requires to decide the application.
- (4) Information provided by an applicant in or in relation to an application must, if the

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Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Commissioner.

- (5) An applicant may, with the Commissioner's consent, amend an application under this Act.

**21. All interested persons to be applicants**

- (1) All interested persons must be applicants.
- (2) An interested person is a person who is, or will be, on completion of the eligible transaction to which an application under this Act relates, an owner of the relevant home, except such a person who is excluded from the application of this section under the regulations.

**22. Application on behalf of persons with legal disability**

- (1) An application may be made, on behalf of a person under a legal disability, by a guardian of the person.
- (2) For the purpose of determining eligibility for a grant under this Act in respect of an application referred to in subsection (1), the person under the legal disability is to be regarded as the applicant.

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***Division 2 – Decision on application***

**23. Commissioner to decide applications**

- (1) If the Commissioner is satisfied that a grant is payable on an application under this Act, the Commissioner must authorise the payment of the grant.
- (2) The Commissioner may authorise the payment of a grant under this Act before completion of an eligible transaction if satisfied that –
  - (a) there are good reasons to do so; and
  - (b) the interests of the State and the Commonwealth, if relevant, can be adequately protected by conditions requiring repayment of the grant if the eligible transaction is not completed within a reasonable time.

**24. Payment of grant**

- (1) A grant under this Act is to be paid by electronic funds transfer, by cheque or in any other way the Commissioner thinks appropriate.
- (2) A grant under this Act is to be paid –
  - (a) to the applicant who applied for the grant; or
  - (b) to some other person to whom the applicant directs in writing that the grant be paid.

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**25. Payment in anticipation of compliance with residence requirement**

- (1) The Commissioner may authorise payment of a grant under this Act 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 so occupy the home.
- (2) If a grant is paid under this Act in anticipation of compliance with the residence requirement, the payment is made on the condition that, if the residence requirement is not complied with, the applicant must within 14 days after the relevant date –
  - (a) give written notice of that fact to the Commissioner; and
  - (b) repay the amount of the grant.

Penalty: Fine not exceeding 100 penalty units.

- (3) For the purposes of subsection (2), the relevant date in respect of an applicant is the earlier of the following:
  - (a) the end of the period allowed for compliance with the residence requirement;
  - (b) the date on which it first becomes apparent that the residence requirement will not be complied with during the period allowed for such compliance.

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- (4) If a grant is paid under this Act in anticipation of compliance with the residence requirement and an applicant ceases to retain his or her relevant interest in the land before satisfying the residence requirement, the applicant must, within 14 days after ceasing to retain his or her relevant interest –
- (a) give written notice of that fact to the Commissioner; and
  - (b) repay the amount of the grant.

Penalty: Fine not exceeding 100 penalty units.

**26. Conditions on payment of grants**

- (1) The Commissioner may authorise the payment of a grant under this Act on conditions that the Commissioner considers appropriate.
- (2) A condition imposed by the Commissioner on the payment of a grant under this Act may require a person on whose application the grant is paid –
  - (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 for a grant under this Act –



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- (a) each applicant is individually liable to comply with a requirement under subsection (2) in respect of the grant; and
  - (b) compliance with a requirement under subsection (2) by one applicant is taken to be compliance by both applicants.
- (4) A person must comply with a condition imposed by the Commissioner under this Act in respect of the person or on a grant paid or payable to the person.

Penalty: Fine not exceeding 100 penalty units.

**27. Death of applicant**

- (1) An application for a grant under this Act does not lapse because an applicant dies before the application is decided.
- (2) If an applicant for a grant under this Act dies before the application is decided, the following provisions apply:
  - (a) if the deceased person was an applicant in respect of a joint application and the other applicant survives, the application is to be dealt with as if the surviving applicant was the sole applicant;
  - (b) in any other case, a grant, if payable on the application, is to be paid to the estate of the deceased.
- (3) If a deceased applicant for a grant under this Act had not, by the date of his or her death, met the

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residence requirement in respect of the home to which the application relates, but the Commissioner is satisfied that the applicant intended to do so, the residence requirement is satisfied.

**28. Power to correct decision**

- (1) The Commissioner may vary or reverse a decision made under this Act in respect of an application if the Commissioner decides the application and is later satisfied, independently of an objection under this Act, that –
  - (a) the decision is incorrect; or
  - (b) the decision was made on the basis of, or having regard to, false or misleading information provided by an applicant or a third party; or
  - (c) an applicant failed to provide information, that was relevant to the making of the decision on the application, which the applicant ought reasonably to have provided; or
  - (d) the applicant failed to comply with any condition upon which the grant was made or failed to comply with, or meet, the relevant eligibility requirements.
- (2) A decision cannot be varied or reversed under this section more than 5 years after the decision was made.

**29. 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 grant under this Act 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, the Commissioner must state in the notice, given under subsection (1) in respect of the decision, the reasons for the decision.

***Division 3 – Objections and appeals of decisions***

**30. Notice of objection**

- (1) An applicant may lodge a written notice of objection with the Commissioner if the applicant is dissatisfied with the Commissioner's decision –
  - (a) on the application; or
  - (b) to vary or reverse a decision, in accordance with section 28, in respect of the application; or
  - (c) to impose a penalty under section 45 in respect of the application.

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- (2) The grounds of an objection must be stated fully and in detail in the notice of objection under subsection (1).
- (3) A notice of objection under subsection (1) must be lodged within 60 days after the date of the notice of the decision.
- (4) If the Commissioner is satisfied that an objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Commissioner may extend the time for lodging the objection.

**31. Powers of Commissioner in relation to objections**

- (1) In this section –

*delegate* means a person to whom the Commissioner has delegated powers to consider an objection under section 30.

- (2) After considering a notice of objection under section 30 in respect of a decision, the Commissioner may confirm, vary or reverse the decision.
- (3) The Commissioner must give the person who lodged the objection written notice of the decision on the objection, setting out the reasons for the decision.
- (4) The Commissioner must ensure that a delegate who considers and decides on an objection lodged under section 30 –

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- (a) was not involved in making the decision to which the objection relates; or
- (b) is not, or was not at the time the decision to which the objection relates, a subordinate of a person who was involved in making the decision.

**32. Appeals**

- (1) If a person who lodged an objection under section 30 is dissatisfied with the Commissioner's decision under section 31 in respect of the objection, the person may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.
- (2) An application under subsection (1) must be lodged within 60 days after the written notice, in respect of the relevant decision under section 31, is given.

**33. Limitation on review of decisions**

A court or administrative review body, including the Magistrates Court (Administrative Appeals Division), does not have jurisdiction or power to consider any question concerning a decision of the Commissioner except as provided in this Division.

**34. Effect of objection or appeal not to stay proceedings**

- (1) Although a decision is subject to an objection or review under this Division, the Commissioner

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may act on the basis that the decision is correct until the objection or review is decided.

- (2) When an objection or review under this Division is decided, the Commissioner must take any necessary action to give effect to that decision.

## **PART 5 – INVESTIGATIONS**

### **35. Interpretation**

In this Part –

*authorised investigation* means an investigation to determine –

- (a) whether an application under this Act, or a corresponding law, has been properly made; or
- (b) whether an objection to a decision made under this Act, or a corresponding law, should be upheld; or
- (c) whether an applicant to whom or for whose benefit a grant has been paid under this Act, or a corresponding law, was eligible for the grant; or
- (d) whether a condition on which a 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.

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**36. Power to conduct authorised investigation**

- (1) The Commissioner may conduct an authorised investigation.
- (2) 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.
- (3) The Commissioner may delegate powers of investigation under this Part to –
  - (a) an authority responsible for the administration of a corresponding law; or
  - (b) a person nominated by such an authority.

**37. Power of investigation**

- (1) For the purposes of an authorised investigation, the Commissioner may, by written notice, require a person to –
  - (a) give the Commissioner written information that is relevant to the investigation and is specified in the notice; or
  - (b) attend at a specified time and place before the Commissioner, or a nominee of the Commissioner, to answer questions relevant to the investigation; or
  - (c) produce a document to the Commissioner that is relevant to the



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investigation at a specified time and place.

- (2) The Commissioner may require that information given, or to be given, under this section be verified on oath or by statutory declaration.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of the Commissioner made to the person under this section.

Penalty: Fine not exceeding 100 penalty units.

- (4) A person must not, having attended before the Commissioner or a nominee of the Commissioner under subsection (1)(b), refuse or fail to answer, without reasonable excuse, a question relevant to the investigation.

Penalty: Fine not exceeding 100 penalty units.

**38. Powers of entry and inspection**

- (1) An authorised officer may exercise any of the following powers for the purposes of an authorised investigation:
  - (a) inspect premises;
  - (b) require a person to produce a document, relevant to the investigation, for inspection and, if necessary, to operate a computer, or device, in which information is stored, to produce the information in understandable form;

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- (c) retain a document for inspection, or make a copy of it or take extracts from it;
  - (d) require a person to answer questions relevant to the investigation;
  - (e) require a person to give the authorised officer any 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 carrying out an authorised investigation –
- (a) with the consent of the occupier of the premises; or
  - (b) under the authority of a warrant issued under subsection (3).
- (3) A magistrate may issue a warrant authorising an authorised officer to enter premises, including the use of force that may be reasonably necessary in the circumstances, if satisfied that the warrant is reasonably necessary for the administration or enforcement of this Act.
- (4) An authorised officer may be accompanied by any assistants the authorised officer reasonably requires to carry out an authorised investigation.
- (5) A person must not –
- (a) hinder or obstruct an authorised officer who is carrying out an authorised

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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 the authorised officer; or
- (c) refuse or fail, without reasonable excuse, to comply with a requirement made by an authorised officer under this section; or
- (d) answer a question, put by an authorised officer, under this section knowing that the answer is false or misleading.

Penalty: Fine not exceeding 100 penalty units.

**39. Self-incrimination**

- (1) If a person is required to answer a question or to produce a document in the course of an authorised investigation, it is not an excuse for non-compliance that the answer to the question or the contents of the document might tend to incriminate the person or to make the person liable to a penalty.
- (2) However, if the person answers the question, or produces the document, after objecting to the requirement to do so on the grounds of self-incrimination, evidence of the answer to the question or the production or contents of the document is not admissible in proceedings for an

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offence or for the imposition of a penalty other than proceedings under this Act.

**40. Access to records**

(1) In this section –

*record* means any document or any other information kept in any form or device.

(2) For the purposes of an authorised investigation, an authorised officer may inspect and take copies of a public record kept under an Act without payment of any fee required under that Act.

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**PART 6 – MISCELLANEOUS**

**41. Applicant to notify of changes**

(1) In this section –

*change in transaction value*, in respect of an eligible transaction, means a difference between –

- (a) the transaction value of the transaction calculated, under section 9, for the purposes of determining an application in respect of the transaction under this Act; and
  - (b) the transaction value of the transaction calculated, under section 9, on completion of the transaction.
- (2) Within 14 days after becoming aware of a change in transaction value of an eligible transaction, a person must notify the Commissioner of the change if –
- (a) the person applied for a grant under this Act in respect of the eligible transaction; and
  - (b) a grant is paid, or payable, under this Act in respect of the application.

Penalty: Fine not exceeding 100 penalty units.

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- (3) Subsection (2) does not apply in respect of an eligible transaction if the transaction value of the transaction, calculated under section 9, on completion of the transaction –
  - (a) does not exceed \$750 000; and
  - (b) if the eligible transaction is a contract referred to in section 18(2)(b), remains greater than \$150 000.
  
- (4) The Commissioner may require a grant paid under this Act in respect of an eligible transaction to be repaid, in accordance with section 45, if the Commissioner –
  - (a) is notified under subsection (1), or otherwise becomes aware, of a change in transaction value of the eligible transaction; and
  - (b) is satisfied that the grant would not have been paid in respect of an eligible transaction if the transaction value of the transaction, calculated under section 9 on completion of the transaction, had been used to determine the application for the grant.

**42. False or misleading statements**

- (1) A person must not, in giving any information under this Act, dishonestly –
  - (a) make a statement that is false or misleading; or

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- (b) omit any matter from a statement if, without the matter, the statement is false or misleading; or
- (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: Fine not exceeding 150 penalty units.

- (2) A person must not, in giving any information under this Act, intentionally or negligently –
  - (a) make a statement that is false or misleading; or
  - (b) omit any matter from a statement if, without the matter, the statement is false or misleading; or
  - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: Fine not exceeding 100 penalty units.

**43. Evidence**

- (1) A certificate signed by the Commissioner stating that a grant was paid under this Act to the person named in the certificate, on the date specified in the certificate, is admissible in legal proceedings as evidence of the payment.

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- (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 that –
  - (a) the requirement was made; and
  - (b) the amount specified in the notice was outstanding at the date on which the notice was issued.

**44. Time for commencing prosecutions**

Proceedings for an offence under this Act may only be commenced within 3 years after the date on which the offence is alleged to have been committed.

**45. Power to require repayment and impose penalty**

- (1) The Commissioner may, by written notice, require an applicant, or former applicant, to repay an amount paid on the application under this Act if –
  - (a) the amount was paid in error; or
  - (b) the Commissioner varies or reverses the decision, under which the amount was paid, in accordance with section 28; or



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- (c) the Commissioner requires the amount to be repaid as the result of a variation notified under section 41 in respect of the application.
- (2) The Commissioner, in a written notice under subsection (1), may impose a penalty not exceeding the amount the applicant, or former applicant, is required to repay under subsection (1) if –
  - (a) the applicant or former applicant contravenes section 41 or 42 in respect of the application; and
  - (b) as a result of the contravention, a grant is paid or payable under the application.
- (3) If an applicant, or former applicant, for a grant under this Act 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 or former applicant is required to repay under this section.
- (4) If an amount is paid in error, on an application under this Act, to a third party, the Commissioner may, by written notice, require the third party to repay the amount to the Commissioner.

**46. Power to recover amount paid in error**

- (1) This section applies to the following amounts:

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- (a) an amount that an applicant, or former applicant, for a grant is required to repay under the conditions of the grant or by requirement of the Commissioner under this Act;
  - (b) the amount of a penalty imposed on an applicant, or former applicant, for a grant under this Act;
  - (c) an amount a third party is required to repay by requirement of the Commissioner under this Act.
- (2) The liability arising from a requirement to pay, or repay, an amount to which this section applies is joint and several if the requirement attaches to 2 or more persons.
- (3) If an applicant who is liable to pay, or repay, an amount to which this section applies has an interest in the home for which a grant under this Act was sought, the liability is a first charge on the applicant's interest in that home.
- (4) The Commissioner may recover as a debt due to the Crown –
- (a) an amount to which this section applies; and
  - (b) any reasonable costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by lawful means of the amount referred to in paragraph (a).

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- (5) If a person fails to pay all, or any part, of an amount to which this section applies within the time specified in a notice under section 45 which requires the payment, the Commissioner, by written notice to the person, may require the person to pay interest on the unpaid amount.
- (6) If the Commissioner requires a person to pay interest on an amount under subsection (5), the person is liable to pay interest on the amount, or part of the amount, that is unpaid –
  - (a) on a daily basis from the end of the last day for payment specified in the notice under section 45 until the day it is paid; and
  - (b) at the interest rate specified in section 35 of the *Taxation Administration Act 1997*.
- (7) Despite subsection (6), a person is not liable to pay interest on an amount under that subsection if the amount of interest that would be payable under that subsection would be less than \$20.
- (8) The Commissioner may enter into an arrangement, including provision for the payment of interest, for payment of a liability outstanding under this section by instalments.
- (9) The Commissioner may write off the whole, or any part, of a liability to pay an amount to which this section applies, or any interest relating to such an amount, if satisfied that any action, or further action, to recover the outstanding amount or interest is impracticable or unwarranted.

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**47. Recovery of grants and costs from third parties**

- (1) The Commissioner, by written notice, may require any of the following persons instead of the applicant, or former applicant, to pay any amount due under section 46:
  - (a) a person from whom any money is due or accruing or may become due to the applicant;
  - (b) a person who holds, or may subsequently hold, money for or on account of the applicant;
  - (c) a person who holds, or may subsequently hold, money on account of some other person for payment to the applicant;
  - (d) a person who has authority from some other person to pay money to the applicant.
- (2) A copy of a notice served on a person under subsection (1) is to be served on the applicant to which the notice relates.
- (3) The amount of money required to be paid by a person under subsection (1) is –
  - (a) if the amount of money held or due or authorised to be paid does not exceed the amount payable by the applicant to the Commissioner, all the money; or

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- (b) if the amount of the money exceeds the amount payable, sufficient money to pay the amount so payable.
- (4) A person required to pay money under this section must pay the money to the Commissioner on the later of the following:
  - (a) on receipt of the notice under subsection (1);
  - (b) when the money is held by the person;
  - (c) within the period specified in the notice under subsection (1).
- (5) A person subject to the requirement of the Commissioner under this section must comply with the requirement.

Penalty: In the case of –

  - (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) in any other case, a fine not exceeding 20 penalty units.
- (6) If the whole or any part of an amount specified in a notice under subsection (1) is paid by another person –
  - (a) the Commissioner is to promptly notify the person, on whom the notice was served, of the payment; and
  - (b) the notice is taken to be amended accordingly.

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**48. Administration**

The Commissioner is responsible to the Minister for the administration of the scheme for the payment of grants under this Act.

**49. Delegation**

- (1) The Commissioner may delegate functions related to the administration of a grant under this Act.
- (2) Without limiting subsection (1), the Commissioner may enter into an agreement (an *administration agreement*) with a financial institution or other person under which –
  - (a) the Commissioner delegates functions related to the administration of a grant under this Act; and
  - (b) the financial institution or other person is required to carry out the delegated functions in accordance with specified conditions.
- (3) The conditions of an administration agreement may include prescribed conditions.
- (4) A financial institution or other person, who enters into an administration agreement with the Commissioner, must comply with the terms and conditions of the agreement.

Penalty: Fine not exceeding 500 penalty units.

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- (5) The Commissioner may, at any time, at the Commissioner's discretion, revoke an administration agreement or any other delegation granted under this section.

**50. Authorised officers**

The Commissioner may appoint persons as authorised officers for the purposes of this Act.

**51. Protection of officers**

- (1) This section applies to –
- (a) the Commissioner; and
  - (b) an authorised officer; and
  - (c) a delegate of the Commissioner who is a State Service officer or State Service employee.
- (2) No personal liability attaches to a person to whom this section applies for an honest act or omission in the performance, or purported performance, of functions under this Act.
- (3) A liability that would, but for subsection (2), lie against a person to whom this section applies, lies instead against the Crown.

**52. Protection of confidential information**

- (1) In this section –

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***protected information*** means information obtained in the course of work related to the administration of this Act about an application for a grant under this Act.

- (2) For the purposes of this section, a person is subject to a duty of confidentiality if –
- (a) the person is, or has been, engaged in work related to the administration of this Act; or
  - (b) the person has obtained access to protected information, whether directly or indirectly, from a person who is, or has been, engaged in work related to the administration of this Act.
- (3) A person who is subject to a duty of confidentiality under this section must not disclose protected information except as permitted under subsection (4).

Penalty: Fine not exceeding 100 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 another person acting on behalf of that person; or
  - (b) in connection with the administration, or enforcement, of –
    - (i) this Act or a corresponding law; or



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- (ii) a taxation law of the Commonwealth or a State or Territory; or
- (c) to the Commonwealth if –
  - (i) the protected information relates to the grant of, or an application for, the Commonwealth HomeBuilder grant; and
  - (ii) the disclosure of the information is at the request of the Commonwealth; and
  - (iii) the disclosure of the information is in accordance with the National Partnership; or
- (d) for the purposes of legal proceedings; or
- (e) as prescribed under the regulations.

**53. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may –
  - (a) authorise any matter to be determined, applied or regulated by the Commissioner; and
  - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to

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time, circumstance or otherwise, specified in the regulations; and

- (c) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (d) in respect of such an offence, provide for the imposition of a fine not exceeding 25 penalty units.

- (3) Regulations made under this Act may be made so as to have effect from the day on which this Act is taken to have commenced or such later day as is specified in the regulations.

**54. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Finance; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Treasury and Finance.

**55. Consequential Amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 55

***First Home Owner Grant Act 2000***

1. Section 7 is amended by inserting after subsection (3) the following subsection:
  - (4) A first home owner grant is not payable in respect of a transaction if the Tasmanian HomeBuilder grant, within the meaning of the *HomeBuilder Grants Act 2020*, has been paid in respect of the transaction.