

ADMINISTRATIVE DIRECTION

Australian Government HomeBuilder Grant – Queensland

BACKGROUND

On 4 June 2020, the Australian Government announced the \$25,000 HomeBuilder Grant (the grant), available to eligible owner-occupiers who build a new home or substantially renovate an existing home where the contract is signed between 4 June 2020 and 31 December 2020 (both dates inclusive).

On 29 November 2020, the Australian Government announced an extension of the grant, at a reduced amount of \$15,000, for eligible contracts signed between 1 January 2021 to 31 March 2021 (both dates inclusive). The Australian Government announced other changes to the grant including an extension to the construction commencement timeframe from three months to six months, for all eligible contracts signed on or after 4 June 2020.

On 17 April 2021, the Australian Government announced a further extension to the construction commencement timeframe from 6 months to 18 months, for all eligible contracts signed on or after 4 June 2020 up to and including 31 March 2021.

The Australian Government provides funding for the payment of the grant in accordance with program guidelines established by the Australian Government and set out under a National Partnership Agreement. State and Territory governments administer the grant on behalf of the Australian Government in accordance with the National Partnership Agreement.

On 30 July 2020, the then Treasurer and Minister for Infrastructure and Planning approved an administrative direction to establish the basis for the administration of the grant in Queensland by the Commissioner of State Revenue (Commissioner) or his delegates. It sets out what transactions are eligible, eligibility criteria for applicants, how to apply for the grant, payment of the grant, and obligations for applicants.

In addition to the administrative direction, the *First Home Owner Grant and Other Home Owner Grants Act 2000* provides for particular matters relating to the grant, gives the Commissioner investigative and enforcement powers and provides applicants with objection and appeal rights.

On 16 December 2020, the Treasurer and Minister for Investment approved amendments to the administrative direction to give effect to the extension of the grant and other relevant changes announced by the Australian Government, including to clarify how the *First Home Owner Grant and Other Home Owner Grants Act 2000* is to be administered for the purposes of the extension. Applicants for the grant in Queensland must agree to the terms and obligations set out in this administrative direction as a condition of payment of the grant.

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Eligible transactions

1. Each of the following transactions are **eligible transactions** for payment of the grant:
 - a. a contract for the freehold purchase of a new home in Queensland if the contract commencement date is between 4 June 2020 and 31 March 2021 (both dates inclusive), and the construction commencement date is on or after 4 June 2020 and within 18 months of the contract commencement date;
 - b. a comprehensive home building contract made by the freehold owner of land in Queensland, or a person who will, prior to completion of the comprehensive home building contract be the freehold owner of land in Queensland, to have a new home built on the land, if the contract commencement date is between 4 June 2020 and 31 March 2021 (both dates inclusive), and the construction commencement date is on or after the contract commencement date and within 18 months of the contract commencement date;
 - c. a substantial renovation contract made by the freehold owner of a home in Queensland if the contract commencement date is between 4 June 2020 and 31 March 2021 (both dates inclusive), and the construction commencement date is on or after the contract commencement date and within 18 months of the contract commencement date.

Value caps for eligible transactions

2. A transaction that is a contract for the freehold purchase of a new home is not an eligible transaction if the consideration for the transaction is more than \$750,000.
3. A transaction that is a comprehensive home building contract is not an eligible transaction if the total of the following is more than \$750,000:
 - a. the consideration for the transaction;
 - b. the unencumbered value of the land on which the new home is built or to be built, before the contract commencement date for the transaction.
4. A transaction that is a substantial renovation contract is not an eligible transaction if either or both apply:
 - a. the consideration is less than \$150,000 or more than \$750,000;
 - b. the unencumbered value of the land inclusive of all structures, fixtures and improvements is:
 - i. for a substantial renovation contract mentioned in paragraphs 19.a. and b. – before the construction commencement date, more than \$1,500,000; or
 - ii. for a substantial renovation contract mentioned in paragraph 19.c. – before the existing home was demolished under the separate contract, more than \$1,500,000.

Licensed builder requirements for eligible transactions

5. If the contract commencement date is before 29 November 2020, a transaction is not an eligible transaction if the building work¹ will be performed by a person who does not hold a licence to carry out the building work under the *Queensland Building and Construction Commission Act 1991* that was issued prior to 4 June 2020.
6. If the contract commencement date is on or after 29 November 2020, a transaction is not an eligible transaction if the building work will be performed by a person who does not hold a licence to carry out the builder work under the *Queensland Building and Construction Commission Act 1991* that was issued prior to 29 November 2020.
7. Also, a transaction is not an eligible transaction if part or all of the building work is to be performed by the applicant, regardless of whether the applicant holds an owner-builder permit under the *Queensland Building and Construction Commission Act 1991*.

Disqualifying arrangements

8. A transaction is not an eligible transaction if the Commissioner is satisfied the contract forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant for an eligible transaction.
9. Unless satisfied to the contrary, the Commissioner must presume the existence of a scheme under paragraph 8 if the contract replaces a contract made before 4 June 2020, and the contract is:
 - a. to purchase the same or substantially similar home;
 - b. a comprehensive home building contract to build the same or substantially similar home; or
 - c. for the same or substantially similar renovation of the home.
10. Also, unless satisfied to the contrary, the Commissioner must presume the existence of a scheme under paragraph 8 if the parties to the contract have not dealt with each other at arm's length.

Definitions for eligible transactions

11. **Construction commencement date** means:
 - a. for a contract for the purchase of a new home or a comprehensive home building contract – the date when excavation and site preparation works start; or
 - b. for a substantial renovation contract mentioned in paragraph 19.a – the date when building work under the contract starts; or
 - c. for a substantial renovation contract mentioned in paragraph 19.b. – the date when demolition work under the contract starts; or
 - d. for a substantial renovation contract mentioned in paragraph 19.c. – the date when building work under the contract starts.
12. **Contract commencement date** means the date when the contract is made.

¹ The definition of 'building work' in schedule 2 of the *Queensland Building and Construction Commission Act 1991* is adopted for the purposes of this administrative direction.

13. **Completed** or **completion** means:
- for a contract for the purchase of a new home – when the purchaser’s title is registered;
 - for a comprehensive home building contract – when the building is ready for occupation as a home and a final inspection certificate under the *Building Act 1975* has been issued for the building; or
 - for a substantial renovation contract – when all building work under the contract has been completed.
14. A **comprehensive home building contract** means a contract under which a builder undertakes to build a home from the start of building work to the point where the home is ready for occupation and, if for any reason, the work to be carried out under the contract is not completed, includes any further contract under which the work is to be completed.
15. **Consideration** means:
- for a contract for the purchase of a new home – the consideration for the purchase;
 - for a contract to have a home built – the total consideration payable for the building work; or
 - for a substantial renovation contract – the total consideration payable under the contract.
16. **Freehold** means an estate in fee simple in land.
17. A **home** is a building, fixed to land, that:
- may lawfully be used as a place of residence; and
 - is a suitable building for use as a place of residence.
18. A **new home** is a home that has not been previously occupied or sold as a place of residence.
19. A **substantial renovation contract**:
- is a contract for the renovation of an existing dwelling which substantially alters the existing dwelling and improves the accessibility or safety or liveability of the property (although this need not involve the removal or replacement of foundations, external walls, interior walls, floors, roofs or staircases); or
 - is a contract for the demolition of the existing home and building of a new home on the land; or
 - is a contract for the building of a new home on the land which replaces a pre-existing home on the land that was demolished under a separate contract entered into by the applicant (the **separate contract**) and;
- Note –*
- To remove ambiguity for subparagraph c., the contract for the building of a new home on the land is the substantial renovation contract, not the separate contract.
- for each contract mentioned in subparagraphs a., b. or c., if for any reason, the work to be carried out under the contract is not completed, includes any further contract under which the work is to be completed.
- However, a *substantial renovation contract* does not generally include:
- a contract for the construction of a standalone granny flat, swimming pool, tennis court, or a structure not connected to the home such as an outdoor spa, sauna, shed or standalone garage; or
 - a contract relating to a renovation that is primarily cosmetic in purpose such as landscaping, painting or recarpeting.
20. The **unencumbered value** of property (i.e. a home, land or freehold interest in land) is the value of the property determined without regard to:
- any encumbrance to which the property is subject, whether contingently or otherwise; or
 - any arrangement:
 - the parties to which are not dealing with each other at arm’s length; and
 - that results in the reduction of the value of the property; or
 - any arrangement for which a significant purpose of any party to the arrangement was, in the Commissioner’s opinion, the reduction of the value of the property.

Eligibility criteria for applicants

21. An applicant for a grant must satisfy all of the following criteria set out below. Criterion 1a only applies where there is a single applicant while criterion 1b only applies if there are joint applicants.

Criterion 1a – Single applicant must be the registered freehold owner of the property

22. If an application relates to a contract for the purchase of a new home, the applicant must be the sole registered freehold owner of the property when the contract is completed.
23. Subject to paragraph 41, if an application relates to a comprehensive home building contract, the applicant must be the sole registered freehold owner of the property as at the contract commencement date, or will be the sole registered freehold owner of the property no later than laying of foundations or when the first progress payment is made.
24. If an application relates to a substantial renovation contract, the applicant must be the sole registered freehold owner of the property as at the contract commencement date.

Criterion 1b – Joint applicants must be spouses and be the registered freehold owners of the property

25. A joint application can only be made by two persons if they are spouses as at the contract commencement date of the eligible transaction.
26. If an application relates to a contract for the purchase of a new home, the joint applicants must be the only registered freehold owners of the property when the contract is completed.
27. Subject to paragraph 41, if an application relates to a comprehensive home building contract, the joint applicants must be the only registered freehold owners of the property as at the contract commencement date, or will be the only registered freehold owners of the property no later than laying of foundations or when the first progress payment is made.
28. If an application relates to a substantial renovation contract, the joint applicants must be the only registered freehold owners of the property as at the contract commencement date.

Criterion 2 – Applicant to be natural person and at least 18 years of age

29. An applicant, or if there are joint applicants – both applicants, must be a natural person and be at least 18 years of age as at the contract commencement date for the eligible transaction.

Criterion 3 – Applicant to be Australian citizen

30. An applicant, or if there are joint applicants – both applicants, must be an Australian citizen as at the date the application is made.

Criterion 4 – Applicant or applicant's spouse must not have received an earlier grant

31. An applicant is ineligible if the applicant or the applicant's spouse (whether or not the spouse is a party to the application) has been a party to an earlier application for the grant in Queensland or any other Australian State or Territory and the grant was paid on the application. However, an applicant is not ineligible if the earlier grant was later paid back only because the eligible transaction did not complete.²

Criterion 5 – Income tests

32. If there is a single applicant, the applicant must have a taxable income for either the 2018-19 or 2019-20 financial year of less than \$125,000.
33. If there are joint applicants, the combined taxable income for both applicants for either the 2018-19 or 2019-20 financial year must be less than \$200,000.

Criterion 6 – Residence requirements

34. Upon completion of an eligible transaction, the applicant, or if there are joint applicants – both applicants, must occupy the home to which the application relates as their principal place of residence for a continuous period of 6 months.

Definition for eligibility criteria

35. A **spouse** is a person who is:
 - a. married; or
 - b. a de facto partner³; or
 - c. a civil partner⁴.

² See paragraph 13 as to when an eligible transaction is 'completed'.

³ The definition of 'de facto partner' under section 32DA of the *Acts Interpretation Act 1954* is adopted for the purposes of this administrative direction.

⁴ The definition of 'civil partner' under schedule 1 of the *Acts Interpretation Act 1954* is adopted for the purposes of this administrative direction.

The Commissioner must not regard a person as an applicant's spouse if the Commissioner is satisfied, when deciding an application for the grant, that an applicant:

- a. is married but is living apart from the person to whom the applicant is married, and they have no intention of again living together as a couple; or
- b. is in a registered relationship but is living apart from the person with whom the applicant is in a civil partnership, and they have no intention of again living together as a couple.

The Commissioner must regard a person as an applicant's spouse if the Commissioner is satisfied, when deciding an application for the grant, that an applicant:

- a. is living apart from the person who, under this paragraph, would otherwise be the applicant's de facto partner; and
- b. they intend to again live together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA.

Application for a grant

36. An application for the grant must be made to the Commissioner.
37. An application for the grant must be made in the way approved by the Commissioner and supported by the information required by the Commissioner.
38. The application may only be made within a period (the **application period**):
 - a. starting on the contract commencement date of the eligible transaction to which the application relates; and
 - b. ending on 14 April 2021.
39. All interested persons must be applicants. An **interested person** is:
 - a. if an application relates to a contract for the purchase of a new home – a person who will be an owner of a freehold interest in the land when the contract is completed; or
 - b. if an application relates to a comprehensive home building contract – a person who is an owner of a freehold interest in the land as at the contract commencement date, or will be an owner of a freehold interest in the land no later than laying of foundations or when the first progress payment is made; or
 - c. if an application relates to a substantial renovation contract – a person who is an owner of a freehold interest in the land as at the contract commencement date.

Payment of a grant upon application

40. A grant is payable on an application under this administrative direction if:
 - a. the applicant or, if there are joint applicants – both applicants, comply with the eligibility criteria; and
 - b. the transaction for which the grant is sought is an eligible transaction;
 - c. for an eligible transaction that is a contract for the purchase of a new home – when the contract has been completed; or
 - d. subject to paragraphs 41 and 42, for an eligible transaction that is a comprehensive home building contract – when the foundations have been laid and the first progress payment has been paid to the builder; or
 - e. for an eligible transaction that is a substantial renovation contract – after construction has commenced and at least \$150,000 of the contract price has been paid to the builder.
41. A grant may be payable for an eligible transaction that is a comprehensive home building contract despite paragraphs 23 and 27, if:
 - a. the freehold title had not been registered in the name of the applicant or applicants by the time foundations were laid and the first progress payment was paid to the builder, due to factors that were outside of the control of the applicant or applicants, such as third party delays with lodging or registering instruments of title; and
 - b. the applicant or applicants' freehold title will be registered prior to completion of the comprehensive home building contract.
42. A grant payable under paragraph 41 is payable when the freehold title in the property is registered.

43. If the Commissioner is satisfied a grant is payable on application, the Commissioner must authorise the payment of the grant to the applicant or, if there are joint applicants, to a specified applicant or to both of them jointly. However, the Commissioner may authorise payment of the grant to an applicant's specified mortgage account with a recognised financial institution if requested by an applicant, and if:
- a. the grant relates to an eligible transaction that is a comprehensive home building contract; and
 - b. the building of the home is being financed by a recognised financial institution; and
 - c. the first drawdown of the loan has occurred; and
 - d. the applicant provides the Commissioner with a letter from the financial institution which:
 - i. confirms the financial institution has approved finance for the transaction; and
 - ii. confirms the first drawdown of the loan has occurred; and
 - iii. provides the bank account details for the applicant's mortgage account.
44. The amount of a grant is:
- a. if the contract commencement date for an eligible transaction is between 4 June 2020 and 31 December 2020 (both dates inclusive) – \$25,000; or
 - b. if the contract commencement date for an eligible transaction is between 1 January 2021 and 31 March 2021 (both dates inclusive) – \$15,000.
45. A grant must be paid by electronic funds transfer, cheque or in any other way the Commissioner considers appropriate.

Payment in anticipation of compliance with residence requirement and obligations for applicants

46. The Commissioner may authorise payment of a grant in anticipation of compliance with the residence requirement in paragraph 34 if the Commissioner is satisfied each applicant intends to comply with the residence requirement.
47. If a grant is paid in anticipation of compliance with the residence requirement in paragraph 34, the payment is made on the condition that, if the residence requirement is not complied with, the applicants 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.
48. For paragraph 47, the **relevant date** is the date on which it first becomes apparent that the residence requirement will not be complied with.
49. For a joint application, each applicant is individually liable to comply with the requirements under paragraph 47 but compliance by any one or both of them must be regarded as compliance by both.

Payment of the grant in anticipation of the eligible transaction being completed

50. The Commissioner may authorise payment of a grant in anticipation of the eligible transaction to which the grant relates being completed.
51. If a grant is paid in anticipation of the eligible transaction to which the grant relates being completed, the payment is made on the conditions that:
- a. the eligible transaction must be completed, and all outstanding evidence needed by the Commissioner to determine an application have been provided to the Commissioner by 30 April 2023 (the **sunset date**); and
 - b. if the eligible transaction has not been completed by the sunset date, the applicants must within 14 days after the earlier of the sunset date or the date on which it first becomes apparent that the contract will not be completed:
 - i. give written notice of that fact to the Commissioner; and
 - ii. repay the amount of the grant.

52. For a joint application, each applicant is individually liable to comply with the requirements under paragraph 51 but compliance by any one or both of them must be regarded as compliance by both.

Conditions generally

53. The Commissioner may authorise payment of a grant on the reasonable conditions the Commissioner considers appropriate.

54. A condition imposed by the Commissioner under paragraph 53 or any other provision of this administrative direction may require a person on whose application the grant is paid:
- to give notice of non-compliance with the condition within a period stated in the condition; and
 - to repay the grant within a period stated in the condition.
55. For a joint application, each applicant is individually liable to comply with a requirement under paragraph 54 but compliance by any one or both of them must be regarded as compliance by both.

Death of applicant

56. An application for the grant does not lapse because an applicant dies before the application is decided.
57. If an applicant dies before the application is decided, the following apply:
- if an application was made jointly and one applicant dies – the application must be dealt with as if the surviving applicant was the sole applicant. However, for determining whether criterion 5 is satisfied, if the joint applicants would have satisfied paragraph 33, the surviving applicant will be taken to satisfy paragraph 32; or
 - if a. does not apply – a grant, if payable on application, must be paid to the deceased's personal representative.
58. A deceased applicant will be taken to comply with the residence requirement in paragraph 34 if:
- the deceased applicant had not, when the applicant died, complied with the residence requirement as applying to the applicant immediately before the applicant's death; and
 - the Commissioner is satisfied the applicant intended to comply with the residence requirement.

Notice of decision

59. If the Commissioner decides an application, or decides to vary or reverse an earlier decision on an application, the Commissioner must give the applicant written notice of the decision.
60. If the decision is to refuse an application, or to vary or reverse an earlier decision on an application, the notice must state the reasons for the decision.

Repayment of the grant by applicants

61. In addition to the requirement to repay a grant for failure to comply with the residence requirement in paragraph 34 or where an eligible transaction is not completed under paragraph 51 the Commissioner may, by written notice, require an applicant to repay an amount paid on application if the amount was paid in error or if the applicant is later found not to have satisfied the eligibility criteria. The notice must state the reasons for decision.

Administration of the grant

62. The Commissioner may delegate the Commissioner's powers under this administrative direction to an appropriately qualified officer or employee of Queensland Treasury.
63. The Commissioner may amend or vary the terms of this administrative direction to:
- change any requirement or process necessary to ensure the proper administration and integrity of the HomeBuilder Grant in Queensland, provided the change is not inconsistent with the National Partnership Agreement; or
 - ensure it remains consistent with the National Partnership Agreement, should changes be made to that agreement after commencement of this administrative direction.

Administration of the *First Home Owner Grant and Other Home Owner Grants Act 2000*

64. Part 3B of the *First Home Owner Grant and Other Home Owner Grants Act 2000* provides for particular matters relating to the grant. Relevantly, section 25S states that the amount of the grant is \$25,000.
65. For the purposes of administering the extension of the grant, the amount of the grant is the amount in paragraph 44 of this administrative direction.