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Australian Government

HomeBuilder Working Group

Minutes of Meeting

Date: Monday, 30 November 2020

Time: 2:00 – 3:00pm



Australian Government

s 22



3. Proposed changes

- VW ran through the changes to the program, including:

s 22



- **An extended deadline for applications to be submitted.** Applications can now be submitted up until **14 April 2021 (inclusive)**. This will apply to all eligible contracts signed on or after 4 June 2020.

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JOB CREATION IDC**HomeBuilder - Response to Applications for HomeBuilder Closing**

- Applications for HomeBuilder closed on 14 April 2021.
- The Commonwealth, State and Federal Ministers and State Revenue Offices (SROs) have received a significant volume of correspondence from individuals who did not submit a HomeBuilder application before the deadline, including individuals who commenced an application, but did not complete the form and formally submit it.
 - Treasury has contacted each SRO, and confirmed they are managing complaints by noting that applications for HomeBuilder closed on 14 April 2021, that this deadline was announced on 29 November 2020, and that applications cannot be submitted after this date.
- The Commonwealth understands some individuals have articulated their concerns on social media and have made complaints to Ombudsmen.
- The Commonwealth is not minded to reopen HomeBuilder applications.
 - This would be complex and would likely result in a significant increase in the total cost of the program.
 - It would also place further administrative burden on jurisdictions. SROs have noted to Treasury their strong preference to not reopen applications for this reason.
- The Commonwealth's view is that it would be for jurisdictions to remediate individuals for any administrative errors relating to submitting applications where appropriate.
 - Depending on the mechanisms available in each jurisdiction, they may be able to make ex-gratia payments to individuals via discretionary processes.
 - : Feedback indicates States would be unlikely to consider, or that it would not be possible to provide, remediation of this nature in relation to HomeBuilder.
 - Individuals can also seek recourse through judicial review or via complaints to an Ombudsman. Most States have indicated they anticipate a small number of complaints have or will be made through these jurisdiction's mechanisms.
- Jurisdictions have previously requested funding from the Commonwealth to administer HomeBuilder and face significant resourcing costs over the life of the program.

Ombudsman Questions

General Questions

Information and messaging

1. What agreement was reached with States/Territories about the information to be provided to the public and prospective applicants? Please provide copies of any documents that relate.

The HomeBuilder NPA states that States are responsible for '*administering HomeBuilder. Each State will make the necessary arrangements to administer HomeBuilder consistent with the terms, conditions, eligibility criteria set out in Schedule A.*' (20(a)). Administration of the program includes providing information to the public and prospective applicants.

As per clause 22 of the NPA, the Commonwealth and States must agree on the nature and content of promotional material etc. The Commonwealth provided communication guidelines to State Revenue Offices (via chair of SRO Working Group) on 7 July 2020 (attached).

2. What steps did Treasury take to ensure States/Territories provided adequate and consistent messaging about eligibility criteria and key deadlines (including both during planning and initial rollout, and later in 2020 and 2021)?

Eligibility criteria and application deadlines are detailed in the NPA. As above, States are responsible for administering the program, including communications.

3. What guidance has Treasury provided States/Territories about its position on which applications commenced (but not yet completed) prior to 14 April 2021 may be completed and submitted after that date?
 - a. Is Treasury satisfied that the approach taken by each State/Territory at **Attachment A** is consistent with Treasury's advice to States/Territories in question 3 above?
 - b. Is Treasury satisfied that the approach taken by each State/Territory at **Attachment A** will result in a reasonably equitable outcome for applicants in a Commonwealth scheme delivered by States/Territories?

Under the NPA, States are responsible for administering HomeBuilder. This includes determining what constitutes a validly submitted application.

Accordingly, the Commonwealth considers it within scope of the NPA for States to treat any applications that had been started by midnight, 14 April 2021, as 'submitted'. Applicants would still be required to meet the program's eligibility criteria to receive the grant, with their application to be finalised and supporting documentation submitted by 30 April 2023.

Email advice from Treasury to States is attached.

- a. States are responsible for administering HomeBuilder. This includes determining what constitutes a validly submitted application.

Treasury understands all States will allow individuals who started, but did not complete, an application in the online application portal before midnight 14 April 2021 to continue their application. Treasury understands State Revenue Offices have been in contact with these affected applicants by email.

- b. The States have sole discretion to determine whether an application has been validly submitted by the deadline.

4. Was Treasury aware of the statements made by the Hon Michael Sukkar MP in **Attachment B**? If yes, were any steps taken to ensure statements he made were clarified in Treasury's HomeBuilder communications?

Treasury issued a number of communications regarding the application deadline, including:

- Screenshot – Treasury Website (29 November 2021)
- FAQ (16 December 2020)
- Factsheet (16 December 2020)
- Email sent to 47,000 subscribers on Treasury website (24 December 2020)
- Email sent to around 40,000 subscribers (29 November 2020)

In addition, the States had information on their websites about the application deadline. Some States also published videos outlining the application process.

Complaint handling

5. What steps has Treasury taken to ensure it has an accessible and effective complaint handling mechanism for people who wish to complain to Treasury about the scheme?

Individuals can provide written complaints to Treasury via email or our correspondence form (available on the Treasury website). Individuals have also provided verbal feedback via the phone.

Individuals are also referred (including assisted referrals) to Treasury via Minister Sukkar or the Treasurer, other departments (e.g. Prime Minister and Cabinet) and State Revenue Offices.

Correspondence is logged and assessed by a member of the HomeBuilder team. Following assessment, complaints are triaged:

- Simple complaints are resolved by frontline staff. If complaints are more complex/priority front line staff will discuss appropriate handling with more senior members of the team.
- Complex or sensitive complaints are escalated to senior members of the team. As required, they are raised with Minister Sukkar's Office [NB: changes to the NPA require a decision of Government].

Insights are shared regularly at team meetings. Feedback is also discussed with States via the HomeBuilder Working Group, DHOTs or with the State Revenue Offices. If a complaint raises an issue with a State's administration of the scheme, information about the complaint is provided to the relevant State Revenue Office.

Complaints are expected to be resolved within reasonable timeframes. Responses are provided to individuals (QA'd and reviewed by senior members of the team). If the individual has provided their complaint via a Minister's office, Treasury provides a draft response or input for the Minister's Office to provide.

The scheme has been amended a number of times in response to feedback provided by members of the public, including the extension of the program to 31 March 2021 and the construction commencement period extension to 18 months. Complaint data informed the Government's decisions in both these circumstances.

6. What steps has Treasury taken to encourage States/Territories to put effective complaint and review processes into place?

Under the NPA, States should consider appropriate appeals and complaints processes (Schedule B).

As above, the administration of the scheme is regularly discussed with States via the HomeBuilder Working Group, DHOTs and with the State Revenue Offices.

7. Did Treasury put any process in place to ensure that there was visibility of complaints made to States/Territories about the scheme or its operation?

The administration of the scheme is regularly discussed with States via the HomeBuilder Working Group, DHOTs and with the State Revenue Offices.

8. Is there any process in place for referral of HomeBuilder complaints between Treasury and State/Territory complaint handling systems? If yes, please describe.

Depending on the nature of the complaint, States and Treasury will refer complaints to each other (generally via email).

As above, complaint feedback is also discussed with States via the HomeBuilder Working Group, DHOTs or with the State Revenue Offices. If a complaint raises an issue with a State's administration of the scheme, information about the complaint is provided to the relevant State Revenue Office.

Evaluation and review

s 22

11. Will the review include an assessment of any of whether Schedule B.3 resulted in adequate appeals and complaints processes being put in place in all States/Territories?

It is anticipated that the review will examine all sections of the NPA, including Schedule B.3.

HomeBuilder – Meeting with Queensland 5 May 2021

s 22, s 22 – Assistant Commissioner, s 22, s 22

s 22 and s 22 apologies

Patrick, s 22

Receiving complaints outline – all six categories

Only 2 cases that have reviewed where there is a client that they were told by SRO where they are saying they have lodged, given advice from SRO that they have

Mortgage broker, builder lodged- taking strict approach

Similar approach with post and portal issue

Two cases reviewed RE: misinformation

First - accurate information given to the client – argued that it was incomplete, from that the client formed view that they had lodged

Second – accepts that the advice given by agent was inaccurate - but doesn't resolve the problem – that they didn't apply by 14 April

Issue: part of the process is declaration. FB man hasn't signed a declaration, hasn't submitted evidentiary docs, hasn't filled out the form – and can't sign now as after 14 April
No doubt that he had a genuine belief he was in the system

Would have to determine that the application when incomplete in the portal – can affect up to 5k people in the portal

Have to accept a declaration after the event – which he can't do, or backdate – false declaration

Circular argument – hwo under the NPA and AD how to resolve

s 22 has spoken to s 47F

- Decision he is ineligible to him
- Formal complaint – will get same response
- Options – JR if we maintain that decision

Other one has been advised – different, wasn't told he lodged an application – formed that view instead of having that view confirmed

Challenge – consistency –

- 5k in the portal incomplete
- 2,200 are at a point it is reasonable to believe the client could progress applications
- 500 – fairly convinced advanced in application that they could submit quickly

In order to apply any fix – need to review all circs of 500-5k people, form a view that they had a reasonable belief on the available evidence, and they make a determination

s 22 in addition given specific application

- How many in his category?
 - o Can't determine how many in the group – relies on the client making contact and raising the issue
 - o Just the two at the moment
 - o Would have to go through the process each time raised
- Will become public knowledge the result – facebook
- Get the call recordings – listen to them, all calls are record

Call centre

- Centre Qld fields the calls
- Have to make a requisition for the recording, form a view on the call

If through JR – legitimate view – tough precedent to match

- s 22 – may be a handful – 15-20 that could be
- But comes down to how many raise a complaints and go through the process

If JR is successful – remedy?

- Admin tribunal powers – needs to get advice
- Most likely an ex gratia payment- unsure of the mechanics given Cth funds scheme
- Argument for ex gratia – law acting in a way that has unintended consequence
 - o Intended consequence when someone hasn't applied
- Can see challenges mounting JR
- Only real vehicle is JR

Second case

- Misunderstood the process – assumed they had lodged, no specific from the SRO
- Called twice on the same day
- Issue – didn't have CC date, didn't want to submit a declaration with a false date in there. COuldn't sign until that field was filled
- Told to put in an estimated date, or get builder to give estimate
- Said they would enter that date, and then submit

- Second call after entering the date after thinking they submit
 - o Talked about wanting to confirm they were in the system
 - o Recap on entering CC date
 - o Told the agent had alpha reference code – asked if that code is in the system
- Agent affirmed needed tCC date and submit the app
- Asked he wanted the code
 - o If you have the code you are in the system – but it doesn't mean app submitted or received
 - o Didn't advise if application had been lodge – talking at cross purposes

In both cases – Qld satisfied they had formed a reasonable view that they submitted an application

In neither situation does decision sit comfortable with it – but have no discretion to resolve

Mechanism

- No ability to change NPA, discretion by amending AD
- Discretion case by case
- But how to assess?

Approved form – by Cmr

- Unless they have met requirements, can't considered – no documentary evidence, or declaration
- Consistency- can't consider a call is sufficient, would have to accept all calls up – Cmr wouldn't approve

Other schemes

- s 22 – FHOG
 - o Online application or paper application – if not
- Don't see those outcomes – FHOG long running, 20 years
- Only avenue – objected to the decision, new info became available to consider that
 - o Requires an application nevertheless
- Online system functions – six digit code – think they apply
- Web content available about the code, 28,500 did it correctly

28,500 did it

5,000 only st

Can move through a# of statuses in the portal

- Broke down what each status means on the website

UIN number – log in

- Saves an alpha code
- When you submit application – get UIN when they transfer from the portal to their system

s 47F – wayback machine

- FB
- Claims info after

Updated first week April

- After 14 April no longer able to complete application
- Online 7 April – prior to cut off date

Earlier web content

- Gave definition of three other status – clarified what is an incomplete application
- Documents required – lodged application but need more docs
 - o Stayed broadly consistent
- Revised wording – can log in see what docs you have provided and not loaded

Distinction between incomplete application, and where documents are required

Category shows up when you log in the system

- First start – new
- Log back in – status as incomplete
- When signed declaration and lodged – documents required
- Receive an email that you have lodge application

No submit button before the declaration – next or back the only options

Don't believe a reasonable person would think they haven't submitted an application if they hadn't pressed submitted- except in s 47F case

- Various info sources available
-

Case by case – not proactively approached, not aware that it is common practice in policy or review area

Expects follows a similar process to Victoria, but would respond in a similar way

s 47F – scatter gun, gone to every avenue – Ombudsman, ministers, four complaints in four channels with SRO, premier

Qld application process will mirror other jurisdictions – work very closely with other for consistent approach

Not aware of leeway in other states they assessing individual cases, hasn't been discussed

Difficult to accept outside of NPA, no power to, Qld has AD, different mechanism to assess

- Not sure how to do that
- Can call Vic – run scenarios past him
- National group – opening up apps, WA < Vic
- Qld – knows it not on the table, line in the sand
- Have had convos about incorrect info provided to the applicant
-

Paper application / post

- A few ministerials
- One sticks out – rang on 16 April, said missed deadline, told they couldn't lodge
- Emailed a paper application on superceded form – received on 19 April
- Regardless wether paper or not – after the end of the program, form not an issue

Paper forms

- Came in week before the portal came online
- Continued until extension announced – 29 November
- NPA signed – Christmas Eve – amended AD
 - o Version 1 of app form superceded, no longer an pplication in form approved by the Cmr – new form
 - o At that point – didn't make form available publically – on application and in exceptopnal circs
 - o Reason: because paper form from 30 July – downloaded an stockpiled by brokers and agents in Qld – given to clients, emailing in the apps despite preferred method online
 - o Processing times blew out – had to enter all details
- Still had paper forms available in Jan 2021 but on application and in exceptional circs

- V1 was redundant, returned to client, advised to lodge online – 8 January 2021

Communications

- No point – how do you track down, impossible
- Did exercise which brokers
 - o Contacted the top 40 – anyone who lodged more than 7 apps
 - o V1 not available, v2 only in exceptional circumstances, lodge online, can self serve
- Brokers sending emails with applications, but clients opening apps in the portal – duplication
- Responding within 48 hours to these emails
- Contacted Master Builders – builders giving documents to clients in those packages
- Doc on how to apply for HB – contained info by exception for paper applications
- Posted form to them
- Scripting clear
- Had to apply to s 22 or s 22
 - o Qld shared service agency had scripting
- IF they received one by post without an exception – would call them, provided it was received
- Calls? Time and date – likely to get record – not classified
- Most emailed them in, not post
- Can look up names if we send them through, doesn't keep track of them
- Onus on applicant to make the application, not to apply for them

Alpha code – consider started but had lodged

- s 22 – whether a reasonable person thought that represented lodgement
- No email acknowledgment, there would be outstanding fields in the forms
- See alpha code on the page when you are entering in
- Log back in with email, reference is in the top left/right corner
- No point do you have confirmation you have lodged
 - o s 22 – issue – 30 April 2023 deadline
- Need to press submit – or submit like button

s 47F – different because he confirmed, but he never hit submit

Hard to find mechanism around how to get around the deadline – mechanics is the issue, step outside AD – illegal, or outside the NPA – need a mechanism or amendment to the NPA – s 22 (policy and leg) – can't give discretion by amending the AD to align with the NPA

Our view – don't want to change NPA, but only way for the Cth change the nPA

s 22 asked Qld to go other states to test how they would or have dealt with these cases

s 22 – sees all corro, complaints – only the two

In terms of numbers – 200-500

Issue once on FB

1. **Process question – 6-digit code**
2. **Status of application – specific advice by call centre**
3. **Application process – specific advice**

Call with s 22

- Staff looking on the system – couldn't see in the system until submitted
- Vic – going to the developer, can't access incomplete system
- Six digit code – access to the portal, not submitted
- The call centre would not be able to see that
- Options to remedy?
 - o Sympathy for the person who called, but what are the options?
 - o Vic asked developer to look into one today –
 - She completed every screen but did not submit
 - But nothing she could do
 - Likely response – you had to submit, would need acknowledgement, had 2 months – not lodged
 - o Filled the whole form on 15 of February – two months to follow up, never got an acknowledgement, never called, never logged back in
- Qld – RO potentially mislead or given incorrect information, comfort that they applied
- s 22 – state processes have failed/complied with the program
- Ex gratia situation – for the treasurer
- RO can put forward recommendations – but for ministers
- If it wasn't a cth scheme – if scenario where did everything but didn't submit – might suggest ex gratia to their tsr

- Better alternative than reopening
- Different states have different views
- Vic – seeing complaints, clear with comms, instructions. If didn't submit, black and white.
- Will continue to follow the program parameters.

Application process - portal

- Put in email, send the six digit code – access to the portal
- Status 'new'
- First screen – you haven't entered information, have to fill screens – have to submit by 14 April
- Few differences between states – but the messaging was the same (declaration slightly different)
- Log back in – status incomplete – have until 14 April

Video – showed the acknowledgement email, might be in Vic guidelines

Updated website since 14 April

Ombudsman last week

- Didn't seem sympathetic to applicants – clear they had to submit, if they didn't, not eligible
- May come across particular scenarios they would want to do anything different, but unlikely
- Harder – cth scheme with cth funding, would avoid in most instances

Two main complaints

s 22

- Hadn't finished all info, waiting on more, partially submitted, but didn't submit

s 22

TREASURY MINISTERIAL SUBMISSION

14 May 2021

PDR No. MS21-001018

Assistant Treasurer, Minister for Housing, Minister for Homelessness, Social and Community
Housing

cc: Treasurer

HOMEBUILDER UPDATE – Response to applications closing**Timing:** Applications for HomeBuilder closed on 14 April 2021.

- That you note that Treasury does not recommend making any changes to HomeBuilder.

Signature:

...../...../2021

KEY POINTS

- Under the National Partnership Agreement on HomeBuilder (NPA), State Revenue Offices (SROs) can only consider HomeBuilder applications submitted by midnight, 14 April 2021.
- Treasury has received around 1,000 items of correspondence from individuals who did not submit a HomeBuilder application before applications closed on 14 April 2021, including individuals who commenced an application, but did not complete the form and formally submit it. SROs have received similar feedback.
 - Victoria (who received 29 per cent of applications nationally) anticipates they have 7,000-8,000 partially completed, but not submitted applications. Queensland (21 per cent of applications) has indicated they have around 5,000.
 - We understand some individuals have corresponded with State and Federal Ministers, articulated their concerns on social media and made complaints to Ombudsmen.
- Treasury does not recommend making any changes to HomeBuilder. Reopening HomeBuilder applications (including to assess partially completed applications) would be complex and would likely result in a significant increase in the total cost of the program. It would also place further administrative burden on the States.
 - SROs have noted to Treasury their strong preference not to reopen the application process for this reason.
 - It would be challenging to limit reopening applications to a specified cohort of individuals, including setting criteria to identify and assess those who should be eligible to submit an application.
- It would be for States to remediate individuals for administrative errors where appropriate.
 - Depending on the provisions in each jurisdiction, States governments may be able to make ex-gratia payments to individuals via discretionary processes. Ex-gratia payments are generally paid in special circumstances to rectify unintended consequences of administrative actions. Feedback indicates States would be unlikely to consider, or that

it would not be possible to provide, remediation of this nature in relation to HomeBuilder.

- Dissatisfied individuals may seek recourse through judicial review or via complaint to an Ombudsman. Most States have indicated they anticipate a small number of complaints have or will be made through these mechanisms. More information is at [Additional Information](#).
 - Complainants need to exhaust all avenues for review or appeal before approaching the Ombudsman, including any complaints processes in the SRO and/or judicial review (if appropriate).
 - We have confirmed via SROs that all jurisdictions are managing complaints by noting that applications for HomeBuilder closed at midnight, Wednesday 14 April 2021, that this deadline was announced on 29 November 2020, and that applications cannot be submitted after this date.
- The NPA does not address the situation of compensating an unsuccessful or potential applicant. If a State were compelled to make a payment to a HomeBuilder applicant, the Commonwealth would not be liable to reimburse the State.
 - Following any outcomes through the above mechanisms, the Commonwealth may wish to reconsider whether States should be reimbursed for remediation.
 - States have previously requested funding from the Commonwealth to administer HomeBuilder (MS20-002318 refers) and face significant resourcing costs over the life of the program.
- Treasury will continue to monitor the situation and liaise with States and their SROs.

s 22



Director
Housing Policy Unit, Social Policy
Division
Ext: s 22

Contact Officer:

s 22



Consultation: Law Division, Commonwealth-State Relations Division

ADDITIONAL INFORMATION

- States are responsible for administering HomeBuilder and are encouraged to resolve issues resulting from administration failures themselves (i.e. outside the NPA). However, there are limited mechanisms for States to remediate aggrieved individuals.
- If application requirements were amended, applications would need to be fully reopened or, at a minimum, to applicants who had started (but not formally submitted) an application. It would be challenging to reopen applications for a limited cohort.
 - As the construction commencement requirement has been extended from six months to 18 months, the cohort of potentially eligible applicants is far larger than at 14 April 2021 and is likely to be larger than the pool of incomplete applications.
 - : The extension of the commencement requirement was intended to assist *existing* applicants who intended to commence construction within six months, and who submitted an application accordingly. This extension for existing applicants cost \$774.8 million, bringing the total cost of the program to \$2.7 billion.
 - There would also be a significant additional administrative burden placed on jurisdictions. States are already facing challenges processing the volume of existing applications (MS21-000654 and MS-000463 refer).
- Amending application deadlines and/or requirements would require additional policy authority and agreement from the States.

Applicant concerns

- The majority of correspondence is from individuals seeking to submit a late application as they missed the deadline, including because they now meet the extended 18 month construction commencement requirement (announced 17 April 2021).
- Some correspondents believe they applied for HomeBuilder, however liaison with SROs now indicates they did not actually submit an application. These individuals generally misunderstood the application process (for example, due to complexities in the application process) or, in a discrete number of cases, may have received incomplete or incorrect information about their application.
- Queensland has identified two instances where individuals (who did not submit an application) received incomplete or incorrect information about their application or the application process. Queensland are unable to consider these applications under the HomeBuilder program, as they were not submitted by 14 April 2021.
 - Queensland will review communications to applicants on a case-by-case basis following a complaint being made to the SRO. Queensland has indicated it would be extremely resource-intensive to undertake a review of all correspondence provided to potential applicants.

- Treasury understands incorrect information about the application process may have been provided to potential applicants in South Australia in July/August 2020. To date, Treasury is aware of one case.
- Treasury understands some application may have experienced issues with the application portals in the days leading up to the application deadline (14 April 2021), including in Queensland, Western Australia and Victoria.
 - Treasury has confirmed with Victoria that they did not have any technical issues reported on 13 April 2021, contrary to an allegation from a member of the public.
 - Treasury is aware of one potential case in Queensland.
- We understand that the Victorian Ombudsman has met with the Victorian SRO to discuss a relatively small number of complaints about the HomeBuilder application process. At this stage, the Victorian SRO anticipates a formal investigation into these complaints would be unlikely.
 - Treasury has liaised with all SROs and understands that other jurisdictions are yet to be approached by their Ombudsman.

Judicial Review

- Judicial review considers whether the decision maker followed the process set out in the law and procedural fairness was afforded to the applicant.
- A court might order that a HomeBuilder application should be treated as having been validly made, which would require the relevant government to consider the application. A court could also order that an application should have been approved, in which case the application would need to be treated as having been approved for the HomeBuilder program.
 - Because of the Commonwealth's limited role in administering HomeBuilder, it is unlikely that judicial review would be sought in relation to the Commonwealth's involvement in a particular application. It's more likely that review would be sought of the actions taken, or not taken, by the relevant State.
- If successful, any court ruling with respect to any required action by the Commonwealth or State government would be legally enforceable, including making a payment.
 - The NPA does not address the situation of compensating an applicant or potential applicant. If a State were compelled to make a payment to a HomeBuilder applicant, the Commonwealth would not be liable to reimburse the State.

Ombudsman

- An Ombudsman is an independent body that can investigate complaints about decisions or actions of government departments or agencies in its jurisdiction to see if decisions or actions are wrong, unjust, unlawful, or discriminatory. It can also launch investigations on their own initiatives, but usually only for serious systemic issues.

- While the Commonwealth Ombudsman legislation enables joint investigations where the relevant matter of administration relates to more than one jurisdiction, as States administer HomeBuilder, it is unlikely that a State Ombudsman would be able to investigate or make recommendations against Treasury in relation to any complaints about the administration of the scheme. Similarly, it is unlikely that the Commonwealth Ombudsman could investigate or make recommendations against SROs.
- An Ombudsman could investigate decisions and actions of government agencies in relation to HomeBuilder to see if they are wrong, unjust, unlawful, or discriminatory. It is anticipated that the majority of complaints made to Ombudsmen would be resolved informally between the complainant, relevant SRO and Ombudsman.
 - An Ombudsman’s recommendation is not enforceable. However, not acting on an Ombudsman’s recommendation may pose a reputational risk for the Commonwealth and/or the States. In practice most recommendations are accepted and complaints resolved.
 - If a State made a payment to a HomeBuilder applicant, the Commonwealth would not be liable to reimburse the State.

HomeBuilder application process

- Victoria, New South Wales, Queensland, South Australia and the Northern Territory share an online application portal and broadly similar application processes. They have provided similar communications about the application process.
- Western Australia, Tasmania and the Australian Capital Territory each had a unique application form, process and communications.
 - Western Australia changed their application form and process in November 2020, including at what stage applications could be submitted. This change was communicated on their website.

HomeBuilder – Meeting with Queensland SRO Wednesday 5 May 2021

Introduction

Applicants who didn't apply by the deadline are not eligible for the grant – applications have closed on 14 April and they cannot be considered for the grant.

Under Queensland's Administrative Direction on HomeBuilder (s37):

an application for the grant must be made in the way approved by the Commissioner and supported by the information required by the Commissioner

The approved form in Queensland is an application submitted by the portal with all required information and documentation. Incomplete applications cannot be assessed for the grant.

Key themes of complaints

We have come across three key themes of complaints from potential applicants in Queensland:

1. They were advised that their application had been submitted
 - a. E.g. s 47F, MC21-011095 – SRO advice that as he had started the application he had until 30 April 2023 to complete it, hence believed he had submitted an application
 - b. E.g. s 47F – SRO/Treasury told him that all he had to do was start an application
2. They were given incorrect information about the application process
 - a. Incorrect information about the deadlines, what information needed to be provided, when to provide the information
 - b. E.g. s 47F (portal state), HomeBuilder inbox – SRO advice to wait for the builder gives them the construction start date before completing their application
3. They were told they were able to submit an application by post or email when these forms were no longer being accepted by the SRO
 - a. Queensland stopped accepting postal applications on 8 January 2021
 - b. E.g. s 47F, HomeBuilder inbox – was told in April 2021 that she could post her application
 - c. E.g. s 47F, HomeBuilder inbox, paper application rejected
 - d. E.g. s 47F – advised to email a pdf of his application, sent to wrong address. Could not accept a pdf in any event

In each scenario, we are of the view that the applicant formed a reasonable belief that they had applied for HomeBuilder based on specific information provided to them about their application.

Our View

Provided the applicant have provide evidence of what led them to form this belief, we are of the view that steps should be taken to resolve their complaints.

We consider instances where incorrect advice has been given to applicants to be an implementation error. As such, we consider that it is within Queensland's remit to rectify.

Our View

- However, the cases for applicants who formed a reasonable belief that they had submitted an application based on specific information given them should be considered as having submitted an application, provided there is sufficient evidence to establish this belief
-

Possible resolutions

Queensland Ombudsman Process

- The Ombudsman is an independent body. No one can direct how its investigations should be conducted or whether it should investigate a matter.
- The Ombudsman can investigate complaints about Queensland state government departments or agencies. It can also launch investigations on their own initiatives, but usually only for serious systemic issues.
- Investigations can be conducted informally, or the Ombudsman can decide to use formal powers to require documents, information or answers to questions. Most investigations are completed in an informal and cooperative way.
- Ombudsman can only make recommendations after assessing the information before it.
- Complainants need to exhaust all avenues for review or appeal before approaching the Ombudsman, including any complaints process in the SRO.
- The Ombudsman cannot force an organisation to follow its recommendations but in practice most are accepted.
-

Investigation process

1. Complaint is made by a member of the public, or the Ombudsman launches an investigation of its own initiative
2. Preliminary Assessment (~ 1 month)
 - Determines if the Ombudsman has power to investigate the complaint (jurisdiction)
 - If it has jurisdiction, the case is assigned to an investigator, who:
 - : Can request information from an agency and the complainant
 - : Assesses the impact of the organisation's decision or action, and whether the organisation's decision was lawful, fair and reasonable
 - After reviewing the material before it, the investigator decides whether to:
 - : to discontinue the investigation,
 - : launch an informal investigation
 - : launch a formal investigation
3. Informal Investigations by Assistant Ombudsman (most common if not resolved in the preliminary stage, usually 3 months)
 - Determ
- 4.
5. Investigator decides if the complaint needs to be investigated further or can be closed.
 - Most investigations are completed within three months and straightforward matters are finalised much quicker than that.

6. If the investigation finds the organisation's decision was unlawful, unfair or unreasonable, the Ombudsman may make recommendations to fix the complaint. This may involve working informally with organisation

[https://www.ombudsman.qld.gov.au/ArticleDocuments/433/Policy_and_procedure - Complaints under OA 2001 - PUBLIC.PDF.aspx](https://www.ombudsman.qld.gov.au/ArticleDocuments/433/Policy_and_procedure_-_Complaints_under_OA_2001_-_PUBLIC.PDF.aspx)

[C:\Users\DFX\Downloads\Ombudsman guidelines for deciding complaints - February 2021 PUBLIC \(1\).pdf](C:\Users\DFX\Downloads\Ombudsman_guidelines_for_deciding_complaints_-_February_2021_PUBLIC_(1).pdf)

file:///C:/Users/DFX/Downloads/Queensland%20Ombudsman%20-%20Casebook%202020%20-%20PUBLIC%20DIGITAL.PDF

- How it works
- Impact of findings
- Qld in particular
- Anecdotes on process in Qld

Queensland Ombudsman

<https://www.ombudsman.qld.gov.au/what-we-do/investigations/how-an-agency-responds-to-an-ombudsman-investigation>

Ombudsman investigators will usually request particular documents or specific information. Sometimes they may want to arrange to meet officers who were part of the decision-making process.

The next steps depend on the information provided. If the Ombudsman is satisfied your organisation has appropriately dealt with the matter, or agreed outcomes are put in place to informally resolve the matter, the investigation can be finalised. If the Ombudsman considers an administrative action was unlawful, unreasonable or wrong, a letter setting out the proposed opinions and recommendations will be sent to your organisation. Your organisation will be invited to respond before a final decision is made.

The Ombudsman also has the option to make a report under s.50 of the Act. The report may be tabled in Parliament or, with the approval of the Speaker, released

publicly. The organisation will be provided with a proposed s.50 report and have the opportunity to respond before it is published.

In cases where an investigation was commenced from a complaint, the person who made the complaint is also informed of the final decision.

No one can direct:

- how our investigations should be conducted
- whether we should or should not investigate particular complaints
- the level of priority we give to investigations.

As well as assessing and investigating complaints, we also work with state government departments and agencies, local councils and public universities to improve their decision-making and administrative practices by:

- making recommendations based on an investigation
- delivering training programs
- providing advice.

If we decide that your complaint should be investigated, it will be given to one of our investigators.

The investigator may need to request information from the organisation involved. They will then look at all the information provided by you and the organisation and assess:

- the impact of the organisation's decision or action
- whether the organisation's decision was lawful, fair and reasonable
- the outcome you want

- whether an investigation is likely to lead to a positive outcome for you and/or lead to an improvement in the organisation's procedures.

This takes around one month to complete. During this stage of the investigation, the investigator will contact you to discuss your complaint.

At this point the investigator may:

- determine that your complaint does not need to be investigated further; or
- continue their investigation.

More information from you and/or the organisation may be required. We may also undertake site visits or conduct interviews with you and/or the organisation's staff.

The time needed to complete an investigation depends on the complexity of the complaint and the amount of information we need to collect. Most investigations are completed within three months and straightforward matters are finalised much quicker than that. If an investigation is going to take longer we will let you know.

The investigator will keep you informed about the progress of the investigation and update you at least once a month. However, please [contact us](#) if you have questions at any stage.

If our investigation finds the organisation's decision was unlawful, unfair or unreasonable, we may make recommendations to fix your complaint. This may involve working informally with you and the organisation to reach an outcome. We may also recommend changes to the organisation's policies or procedures so the issue does not happen again. We cannot force an organisation to follow our recommendations but most are accepted.

Queensland's Administrative Direction:

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.

From Queensland's website (as at 3 May 2021):

Late applications


If you started your application but did not *submit* it by 14 April 2021, you cannot log in to complete it and apply for the grant.

If you successfully submitted an online application, you would have:

- a 6-letter reference
- entered all the required information
- signed (electronically) a declaration
- been given a status of 'Documents required'
- received a confirmation email.

We are not accepting late applications for the grant. This is an Australian Government policy decision, and the Queensland Government is not able to extend the closing date.

Types of complaints

Complaint	Outcome	Reason
Did not know the deadline and failed to apply in time	Not eligible	Didn't apply in time due to their own error
Thought that they had to meet certain milestones before being able to submit an application (e.g. laying the slab, payment \$150,000)	Not eligible*	Didn't apply in time and misunderstood the process Issue in WA where they were telling applicants they could only apply after the slab was laid WA advice that OTP could apply when build complete and they had certificate of title SA
Did not apply as they would not start construction in 6 months and did not know of the 18 month extension	Not eligible	Did not apply by the deadline The extension for those who believed they would start construction within 6 monthn
Technical errors – website not working/ crashed on 14 April	Not eligible	WA, Vic
Belief that if they started an application that it would be considered		 Home Builders Grant .msg
Started applications “lost” by SRO – portal and non portal states Portal states – received an application code but haven't submitted, no record of application in the portal Many applicants believe that log in code is their application reference number (6 digit letter code)	Not eligible	WA, Vic, Qld, NSW Vic telling applicants that they can't find incomplete applications NSW and Qld saying they can see incomplete application s
Submitted applications “lost” or deleted by SRO		Vic, SA
Not accepting paper forms		Qld

Majority of complaints in Vic

HomeBuilder inbox – majority of complaints is that they missed the deadline or that they would have applied if they knew of the 18 month extension, belief that someone else would apply on their behalf

Vic: “On both occasions the Home Builder Scheme website gave me the option to save and return at a later date to provide my supporting documents, honestly leaving me with the understanding that I had, at that point, registered for the Home Builder Scheme with no warning message that I had not yet completed my submission.”

We are receiving feedback from applicants, states and territory SROs and on social media regarding the application deadline on 14 April 2021.

There are five classes of complaints:

1. Applicants who were not aware of the deadline, or their obligation to apply – no
2. Applicants who misunderstood the application process and deadlines (based on general information)
- 3. Applicants who formed the belief that they submitted an application, but did not actually complete an application**
- 4. Applicants who took all steps to submit an application, but their application was not lodged due to external circumstances (technical issues, postal applications)**
- 5. Applicants who relied on specific advice regarding their application and formed the belief that they have applied.**

3. Applicants who formed the belief that they submitted an application, but did not actually complete an application

This may be an issue in Victoria and Queensland, where messaging on the process, reminders to applicants who have not finished their applications, and design of the portal was not as clear as it could have been.

4. Applicants who took all steps to submit an application, but their application was not lodged due to external circumstances (technical issues, postal applications)

e.g. NSW – accidentally deleted (NB: issue resolved, the application re-added to the system)

e.g. SA -

5. Applicants who have been given and relied on specific advice regarding their application and formed the belief that they have applied.

Queensland - Incorrect information given to applicants (generally by the call centre)

7. Status of application
8. Requirements before 14 April
9. Postal

Verbal advice that the applicant had submitted an application and they need not take any further action

Paper/ mail lodgement. Queensland stopped accepting applications by post on 8 January 2021.

It is alleged that the call centre advised potential applicants that they could submit by post, or by email after that date. These applications have not been accepted.

Applicants claim that the information about postal applications was not on Queensland SRO's website/

Victoria

Step out our thinking

Problem, key issues, keythemes

Possible solutions

HomeBuilder – Audit of Jurisdictions

Issue	NSW	Victoria	Queensland	WA	SA	Tasmania	NT
Portal state?	Yes	Yes	Yes	No	Yes	No	Yes
How many people believed they submitted an application but did not in fact complete their application?	Very few (one or two). This has not been a major issue		5,000 users started the process 2,200 appear to have made a reasonable attempt to complete the application 500 have almost finished the applications, only final information not entered (e.g. date construction due to start, insufficient details of the contract)	Not aware of this issue Have had a few who misunderstood the process and deadlines	Have had a few		
Communications to applicants	Sent a reminder email to all incomplete applications (around 9,500) on 23 March 2021. Email advises that their application, the deadline and the steps to finish their application	Guidance on their website No reminder email	Guidance on their website No reminder email	Sent two reminder emails to all outstanding applicants who haven't submitting their applications			

TREASURY MINISTERIAL SUBMISSION

26 May 2021

PDR No. MS21-001185

Assistant Treasurer, Minister for Housing, Minister for Homelessness, Social and Community
Housing

cc: Treasurer

HOMEBUILDER UPDATE – VICTORIA’S TREATMENT OF APPLICATIONS**Timing:** At your earliest convenience.**KEY POINTS**

- There has been growing public concern about individuals who commenced a HomeBuilder application, but did not formally submit it before the 14 April 2021 deadline.
 - Media coverage has noted the complexity of the application process and limitations of state communications provided about the process.
- Under the National Partnership Agreement on HomeBuilder (NPA), State Revenue Offices can only consider HomeBuilder applications submitted by midnight, 14 April 2021 (MS21-001018 refers).
- Under the NPA, States and Territories (States) are responsible for administering HomeBuilder. This includes determining what constitutes a validly submitted application.
- The Commissioner of the Victorian Revenue Office has advised Treasury of Victoria’s intention to treat applications that been had been *started* by midnight, 14 April 2021, as ‘submitted’.
 - This represents a shift from the current approach whereby Victoria required applicants to fully complete and submit an application by midnight 14 April 2021 in order to be considered as ‘submitted’ for the purposes of the NPA.
 - Under this new approach, an applicant would still be required to meet the program’s eligibility criteria to receive the grant (with supporting documentation needing to be finally submitted by 30 April 2023).
 - Treasury understands that New South Wales and Queensland are considering the same approach. It is expected that other States would likely follow suit.
- Victoria’s proposed approach would be consistent with the NPA, and thus within existing policy authority. Accordingly the Commonwealth would be liable to reimburse the States for any grants paid to this cohort (subject to other eligibility criteria).
 - The resulting cost of the additional ‘submitted’ applications, will be reflected in an estimates variation at Mid-Year Economic and Fiscal Outlook.
- We understand that Victoria has around 7,000-8,000 applications in their system that at this time are not fully completed. If all of these applications were to be paid, it would cost the Commonwealth up to an estimated \$200 million. However, Victoria considers only a few thousand of these applications would be progressed and considered eligible for the program’s grant.

- Based on preliminary consultations with other States, were they to take a similar approach to Victoria, we understand that around 25,000 applications *could* be eligible to be treated as ‘submitted’. However, a proportion of these may be unlikely to satisfy the program’s eligibility criteria.

s 22

Director
Social Policy Division
Ext: s 22

Contact Officer: s 22

Consultation: The Department of the Prime Minister and Cabinet

ADDITIONAL INFORMATION

- Individuals who did not commence an application by midnight, 14 April 2021, including those who now meet the extended 18 month construction commencement period, and those who thought someone else was applying on their behalf, are likely to be frustrated at this change in treatment – as they will still be unable to apply for the grant.

State application process

- The media coverage on *9News* and *A Current Affair* has focused on individuals in New South Wales, Victoria and Queensland who believed they that commencing an application on the online portal constituted a submitted application.
 - New South Wales, Victoria, Queensland, South Australia and the Northern Territory all use the same online portal for HomeBuilder applications and are likely to adopt the same approach to managing applications.
- Western Australia uses a different, but similar process. Treasury understands Western Australia is facing similar issues with commenced, but not submitted applications.
- Tasmania and the Australian Capital Territory have unique application processes and are less likely to revisit the treatment of ‘submitted applications.’

National Partnership Agreement on HomeBuilder

- States and Territories are responsible for the administration of HomeBuilder in accordance with the National Partnership Agreement (NPA).
- Under the NPA, State or Territory Revenue Offices can only consider HomeBuilder applications submitted by midnight, 14 April 2021.

ROLE OF THE STATES

20. The States agree to be responsible for:

- (a) administering HomeBuilder. Each State will make the necessary arrangements to administer HomeBuilder consistent with the terms, conditions, eligibility criteria and principles set out in Schedule A;
- (b) ensuring the integrity of HomeBuilder by taking reasonable steps to make sure that recipients meet the eligibility criteria set out in Schedule A, and by having regard to the implementation guidelines outlined in Schedule B when designing their programs;

Schedule A of the NPA states:

9. Applications for contracts signed on or after 4 June 2020 up to and including 31 March 2021 must be submitted to the relevant State authority by no later than 14 April 2021. The Commonwealth will have the discretion to extend the application deadline.

- 9.1 Supporting documentation to the application, including evidence of construction commencement, must be submitted to the relevant State authority by no later than 30 April 2023.