

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Jacobs v The Commissioner of State Revenue* [2022] QCAT 291

PARTIES: **DAVID LAWRENCE JACOBS**
(applicant)

v

THE COMMISSIONER OF STATE REVENUE
(respondent)

APPLICATION NO/S: GAR673-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 29 July 2022

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member King-Scott

ORDERS: **The application to review is refused.**

The decision to refuse the HomeBuilder grant application is confirmed.

CATCHWORDS: GENERAL ADMINISTRATIVE REVIEW – FIRST HOME OWNER GRANT – whether eligibility criteria met – where application made when applicants were not Australian citizens – where Commissioner has no discretion

First Homeowners and Other Home Owners Grants Act 2000 (Qld)

Queensland Civil and Administrative Tribunal Act 2009 (Qld)

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION

- [1] David Lawrence Jacobs seeks to review the decision of The Commissioner of State Revenue to refuse payment of the HomeBuilder Grant (the Grant) to him and his wife Valerie Jacobs. The basis of the refusal was that Mr and Mrs Jacob were not eligible to receive a payment as neither of them was an Australian Citizen at the date the application was submitted being 6 April 2021.

Background of the scheme

- [2] On 4 June 2020, the Federal Government announced the HomeBuilder Grant Scheme. The grant was a time limited grant of \$25,000 intended to support and

stimulate the Australian residential construction industry in the wake of the Covid - 19 pandemic. The Grant was initially available to eligible home owner-occupiers who executed a contract for the construction of a new home between 4 June 2020 and 31 December 2020. Subsequently, the available application period was extended to 14 April 2021.

- [3] The Australian States and territories assumed responsibility for:
 - (a) administering the grant; and
 - (b) maintaining the integrity of the grant, by ensuring grant recipients satisfy the relevant eligibility criteria.
- [4] On 20 August 2020, the *First Homeowners and Other Home Owners Grants Act 2000* (Qld) (the Act) was amended to provide for the operation of the scheme in Queensland. Pursuant to section 25P of the Act the Commissioner is responsible for administering the home builder direction in Queensland.
- [5] The applicable eligibility criteria for the grant were prescribed under the “Australian Government HomeBuilder Grant - Queensland” administrative direction (“the direction”). Grant applicants were required to satisfy and comply with the direction and all eligibility criteria in order to receive payment of the grant. Pursuant to section 25S of the Act the amount of the grant was set at \$25,000.
- [6] Paragraph 50 of the direction provided that:
 - “Criterion 3 – Applicant to be an 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”*
- [7] The provisions of Part 3B of the Act make it clear that the Commissioner has no discretion to authorise payment if the conditions of the direction are not met.

The Application

- [8] Mr and Mrs Jacobs entered into a contract dated 17 November 2020 for a house and land package. (the Contract). As at that date neither Mr nor Mrs Jacobs was an Australian citizen. In March 2021 they received invitations to attend an Australian citizenship ceremony which was to be held on 1 April 2021. However, that citizenship ceremony was cancelled following the announcement of a lock down of Greater Brisbane due to COVID-19 pandemic.
- [9] On 6 April 2021 Mr and Mrs Jacobs made an application to the Commissioner for the payment of a grant in the amount of \$25,000 for the construction of a new home the subject of the Contract. As at that date neither Mr nor Mrs Jacobs was an Australian citizen.
- [10] Mr and Mrs Jacobs, subsequently, became Australian citizens on 22 April 2021.
- [11] On 20 August 2021 the Commissioner made the decision to refuse payment of the grant on the ground that Mr and Mrs Jacobs were not Australian citizens as at the date the application was made and, therefore, did not satisfy the eligibility criteria for the payment of a grant as required under paragraph 30 of the Direction.
- [12] On 8 September 2021, Mr and Mrs Jacobs filed an objection to the Commissioner’s decision in the first instance. They submitted that the Commissioner’s decision was

unfair as the cancellation of their citizenship ceremony was beyond their control. The basis of the objection was that but for the cancellation of the Australian citizenship ceremony scheduled on 1 April 2021 following the lockdown of Greater Brisbane, both of them would have had the opportunity attend that ceremony and obtain their citizenship on that date and would therefore have satisfied the eligibility criteria for payment of the Grant.

- [13] Following an internal review, the Commissioner made the decision to confirm the Commissioner's decision.

Resolution

- [14] It is quite clear that Mr and Mrs Jacobs did not satisfy the eligibility criteria for a grant to be made. Indeed, they must have been aware that was the case when they lodged their application. In that application they answered the question as to whether they were Australian citizens in the negative.
- [15] The Commissioner is not given a discretion to consider other factors but must decide the matter in accordance with the Direction.
- [16] Section 59 of the Act gives the Tribunal jurisdiction to review the Commissioner's decision. That review will be confined to the evidence that was before the Commissioner at the time the decision was made unless the Tribunal considers it necessary in the interests of justice to allow new evidence. No new evidence is relied upon. The Tribunal must decide the review in accordance with the same law that applied at the time of the original decision.
- [17] In conclusion, I confirm the Commissioner's decision.