

Guideline

First Home Owner Grant Act 2000

First Home Owner Grant – Commissioner’s Discretions (Version 2)

Introduction

The [First Home Owner Grant Act 2000](#) (the Act) provides for the Commissioner of State Revenue to exercise the following discretions:

- extend the time required to complete the eligible transaction;
- reduce the six-month residency period;
- increase the time to commence residency;
- exempt a non-complying applicant from the residency requirement;
- extend the time to apply for the First Home Owner Grant (the Grant); and
- vary the timeframe for payment of the Grant.

This document is a guide only. Any application for the Commissioner to exercise a discretion will be treated on a case-by-case basis and determined on the facts and circumstances of each applicant’s situation. If you are uncertain whether the Commissioner could exercise a discretion (under the Act) in your circumstances, please contact the State Revenue Office.

This guideline applies to all applications lodged with the State Revenue Office from 1 July 2021. It will also apply to all applications prior to 1 July 2021, where the Commissioner has not previously:

- made a decision to exercise a discretion; or
- commenced an investigation of an application.

Where the Commissioner has exercised a discretion before 1 July 2021, the historical interpretation applies. A copy of the [First Home Owner Grant Commissioner’s Discretions Guideline \(Version 1\)](#) can be found on the State Revenue Office’s website.

Meaning of ‘good reasons’ when exercising discretion

In some circumstances, in exercising a discretion the Commissioner must have ‘good reasons’ to exercise the discretion. In interpreting the phrase ‘good reasons’ in other statutory regimes, courts and tribunals have noted the phrase must be coloured by its statutory contextⁱ and understood in accordance with the underlying policy objectives and purpose of the relevant legislation.ⁱⁱ

The Act entered into law to provide assistance to individuals seeking to buy or build their first home as their principal place of residence. In particular, the Act sought initially to offset the increase in building costs due to the introduction of the GST. Additionally, over time and since the passing of the *Jobs Package (Miscellaneous Amendments) Act 2013*, the Act has had a stated secondary purpose of stimulating the building and construction industry in Tasmania.

The Act seeks to achieve these policy objectives by providing Grants to eligible applicants for building or purchasing new homes. In considering whether there are ‘good reasons’ to exercise a discretion under the Act, the Commissioner adopts an approach which is consistent with these underlying policy objectives. However, please note the policy objectives of the Act are not grounds for a discretion to be exercised in their own right.

Additionally, the Act exists within a wider statutory and administrative context where the Commissioner generally affords more favourable treatment to applicants that are honest and take responsibility to understand and comply with their obligations.ⁱⁱⁱ Accordingly, the Commissioner is more likely to consider there is a good reason to exercise a discretion in a given situation, where the applicant has sought to understand their obligations, acted reasonably (with due care) and contacted the State Revenue Office in the first instance.

Extend the time required to complete the eligible transaction

The information further below in 'Comprehensive home building contracts', 'Owner builders' and 'New homes' applies for contracts entered into from 1 July 2016. For contracts entered into on after 1 January 2013 but before 1 January 2016, please refer to [First Home Owner Grant Commissioner's Discretions Guideline \(Version 1\)](#) for more guidance.

Furthermore, pursuant to sections 18D(3), 18E(2), 18F(2), 18G(2), 18H(2), 18I(2) and 18J(2) of the Act, applications to extend the time required to complete the eligible transaction must be made before a decision on the application has been varied or reversed by the Commissioner. Accordingly, the below guidance only applies to applications prior to the Commissioner varying or reversing a decision to approve a Grant.

Comprehensive home building contracts

For comprehensive home building contracts, sections 18D(2)(b), 18E(1)(b), 18F(1)(b), 18G(1)(b), 18H(1)(b), 18I(1)(b) and 18J(1)(b) of the Act specify that an eligible transaction must be completed within 24 months of the commencement date of the eligible transaction (the date when the contract is made per section 13(4)(a) of the Act). Section 13(5)(b) of the Act states that in the case of a contract to have a home built, the eligible transaction is complete when the building is ready for occupation as a place of residence (i.e. practically when a valid occupancy permit has been issued).

The Commissioner has the discretion to extend the period for completion of the eligible transaction if satisfied that good reasons to do so exist. The duration of any extension sought and the extent to which building works were in fact performed within the relevant period (i.e. partial compliance) will be relevant factors to consider in exercising the discretion. In particular, where there has been no meaningful effort to undertake the building works or building was delayed by the applicant for contrived or illicit purposes, this will suggest the activities are inconsistent with the policy objectives of the Act and will weigh against exercising discretion.

However, where a reasonable explanation can be provided by the applicant, which suggests the activities to date are genuinely directed towards completing construction of the premises within the 24 month period, discretion will generally be exercised. The following list identifies the types of delays that may, generally, be considered to provide a reasonable basis for an exercise of the discretion:

- delays in obtaining council approvals;
- difficulties in obtaining construction materials and / or sub-contractors;
- delays in obtaining bank finance, including valuation issues;
- inclement weather, where the disruption is substantial;
- health problems relating to, or the death of, a person critical to the commencement of the project;
- prolonged industrial disputes;
- delays in the issue of title caused by the Land Title's Office; or
- natural disasters.

However, under section 23(2) of the Act, the Commissioner cannot vary or reverse a decision to approve an application for the Grant more than 5 years after it was made. Practically, this means the Commissioner is likely to only allow extensions for periods of under 12 months. Periods of 12 months or more may mean the Commissioner would be unable to vary or reverse a decision as the 5 year statutory timeframe would likely be exceeded. Specifically, it is noted once the extension is added to the initial 24 months and the residency period of up to 18 months under section 12(1) of the Act, the Commissioner may only have six to 12 months to undertake investigative action to determine whether a decision should be varied or reversed.

Owner builders

For owner builder transactions, sections 18D(2)(b), 18E(1)(b), 18F(1)(b), 18G(1)(b), 18H(1)(b), 18I(1)(b) and 18J(1)(b) of the Act specify that an eligible transaction must be completed within 24 months of the commencement date of the eligible transaction (when laying the foundations for the home commences per section 13(4)(b) of the Act). Section 13(5)(c) of the Act states that in the case of the building of a home by an owner builder, the eligible transaction is complete when the building is ready for occupation as a place of residence (i.e. practically when a valid occupancy permit has been issued).

The Commissioner has the discretion to extend the period for completion of the eligible transaction if satisfied that good reasons to do so exist. Applications for extensions to complete the eligible transaction will be considered similarly to comprehensive home building contracts.

New homes

In the case of contracts for the purchase of new home, sections 18D(2)(b), 18E(1)(b), 18F(1)(b), 18G(1)(b), 18H(1)(b), 18I(1)(b) and 18J(1)(b) of the Act specify that an eligible transaction must be completed within 24 months of the commencement date of the eligible transaction (the date when the contract is made per section 13(4)(a) of the Act). Section 13(5)(a) of the Act states that in the case of a contract for the purchase of a home, the eligible transaction is completed when the purchaser becomes entitled to possession of the home under the contract and, 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.

The Commissioner has the discretion to extend the period for completion of the eligible transaction if satisfied that good reasons to do so exist. Applications for extensions to complete the eligible transaction will be considered similarly to comprehensive home building contracts.

Reduce the residency period or increase the time to commence residency

Section 12(1) of the Act states that an applicant for the Grant must occupy the home to which the application relates as their principal place of residence for a continuous period of at least six months, commencing within the 12 month period immediately after completion of the eligible transaction.

Your principal place of residence is the home in which you intend to stay on a long-term basis as your settled abode rather than as a temporary or transient residence. It is commonly defined as “the place you usually eat and sleep”. Properties “used simply for storage or the occasional stay-over” are not normally considered an owner’s principal residence.

Where the Commissioner is satisfied that there are good reasons, the Commissioner may reduce (but not fully waive) the period that an applicant must occupy the home as their principal place of residence.^{iv}

The Commissioner will consider there are good reasons and will exercise a discretion where:

- a reasonable explanation can be provided, which explains why the occupation period was required to be shortened; and
- the evidence suggests the applicant has or will occupy the home as their principal place of residence. The Commissioner may require objective evidence to support either explanation.

The Commissioner is more likely to exercise this discretion where the applicant was unaware at the time of applying for the Grant that they would be unable to meet the residency conditions specified in the Act and the inability to meet the residency conditions is not the result of intentional decisions of the applicant.

The following explanations are likely to be considered favourably by the Commissioner when determining an application to exercise this discretion:

- the health of the applicant (e.g. hospitalisation, rehabilitation, nursing home care, requirement of care for physical or mental illness);
- the health of a relative where the applicant is to care for them;
- domestic violence and / or other circumstances where the personal safety of the applicant is at risk;
- unintentional damage to the home that renders it uninhabitable; or
- involuntary change in location of employment or loss of employment of the applicant or their spouse, such as forced transfers or closure of local business.

The Commissioner can also extend the time within which the occupation of a home as a principal place of residence must commence. The Commissioner will generally be informed by the abovementioned factors. However, given that section 12(1) does not require any 'good reason' to seek an extension, the Commissioner will also consider a wider range of requests that are reasonable in the circumstances. The Commissioner is unlikely to grant an extension to commence occupation where the extension would impede the Commissioner's capacity to vary or reverse a decision under section 23 of the Act. Practically, this means the Commissioner is unlikely to grant an extension to commence occupation, where occupation would commence more than 4 years after the decision to approve the Grant.

Finally, pursuant to section 12(1B) of the Act, a decision to approve a lesser period of occupation, or to approve a longer period before occupation is commenced, can only be made before a decision on the application has been reversed or varied by the Commissioner.

Exempt a non-complying applicant from residency

Section 12(2) of the Act states the Commissioner may exempt an applicant from the residence requirement if:

- the applicant is one of two or more applicants for the Grant;
- at least one applicant complies with the residence requirement; and
- there are, in the Commissioner's opinion, good reasons to exempt the non-complying applicant.

Generally, the Commissioner is more likely to exercise this discretion where:

- the applicant was unaware at the time of applying for the Grant they would be unable to meet the residency conditions specified in the Act;
- a reasonable explanation can be provided, which explains why the non-complying applicant cannot satisfy the residence requirements; and
- the complying applicant has an ongoing connection with the home as their principal place of residence.

The following are some of the factors that are likely to be considered favourably by the Commissioner when determining an application to exercise this discretion:

- court orders preventing an applicant from living in the property;
- divorce and relationship breakdowns;
- domestic violence and / or other circumstances where the personal safety of the applicant or non-complying applicant is at risk;
- health problems requiring an applicant to live away from the property; or
- involuntary change in location of employment or loss of employment of an applicant such as forced transfers or closure of local business.

Extend the time to apply for the First Home Owner Grant

Section 14(5) of the Act states that an application for the Grant must be made in the application period. The application period:

- commences on the commencement date of the eligible transaction; and
- ends 12 months after the completion of the eligible transaction to which it relates.

However, under section 14(6) of the Act, the Commissioner has the discretion to allow an application before or after the application period.

The Commissioner will generally extend the application period where a reasonable explanation can be provided and the circumstances suggests extending the period is consistent with the policy objectives of the Act. Whilst section 14(6) does not require any 'good reason' to seek an extension and, in turn, the Commissioner will consider a wider range of requests that are reasonable in the circumstances, the Commissioner will generally not exercise discretion where the applicant was simply unaware of the Grant.

Payment of the First Home Owner Grant

Section 17(1) of the Act provides that once the Commissioner is satisfied that a Grant is payable, based on the application, the Commissioner must authorise the payment of the Grant (which includes the residency test being satisfied). Section 17(1) is qualified by section 17(2) of the Act, which states the Commissioner may authorise the payment of a Grant before completion of the eligible transaction if satisfied that:

- there are good reasons for doing so; and
- the interests of the State can be adequately protected by conditions requiring repayment of the Grant if the transaction is not completed within a reasonable time.

In light of these provisions and the importance of ensuring strict compliance with the other requirements of the Act, the Commissioner generally makes payment to an individual applicant of a Grant at the completion of an eligible transaction.

Where the application is lodged via an 'approved agent' (e.g. a financial institution that has entered into a memorandum of understanding with the State Revenue Office) the Commissioner will generally make payment in the following manner:

- if the applicant is building a home under a comprehensive building contract, payment is usually made following completion of the laying of the foundations;
- if the applicant is building as an owner builder, payment is usually made on receipt of an occupancy permit; and
- If the applicant is purchasing a new home (including an off-the-plan purchase), then payment is usually made to the financial institution on settlement of the property.

Whilst these are the general circumstances where the Commissioner will make payment, the Commissioner will also contemplate earlier and later payment of a Grant, where the Commissioner considers:

- earlier or later payment is reasonably necessary in the circumstances;
- earlier or later payment is consistent with the policy objectives of the Act; and
- the interests of the State can be adequately protected in the circumstances.

Extend the time to commence building work

For contracts entered into on or after 1 January 2013 but before 1 January 2016, sections 18A(2)(b), 18B(2)(b) and 18C(2)(b) of the Act imposes restrictions on when the commencement of building must occur. The Commissioner has some discretion in relation to these restrictions. Please refer to [First Home Owner Grant Commissioner's Discretions Guideline \(Version 1\)](#) for more guidance.

Applying for the Commissioner to exercise a discretion

Requests for the Commissioner to exercise a discretion can only be considered once an application for the Grant has been received.

Applications for an exercise of a discretion should be made as soon as an applicant is aware that they may not be able to comply with a condition of the Grant and, where possible, before the relevant period of time has elapsed.

Applications should be made in writing and include the following:

- a detailed explanation of the situation that has resulted in the need to request an exercise of the discretion;
- the applicant's full name, UIN number (if known) and property address;
- in the case of requests for an extension to commence or complete building, the expected date that commencement or completion will occur;
- copies of relevant contracts such as the contract to purchase the property or the contract to build;
- copies of court orders or local government notices; and
- independent verification from third parties supporting the request, such as a letter from the builder explaining the nature of building delays and any action taken to resolve the issue/s, or letters or contracts relevant to your employment.

More information

Email: fhogs@treasury.tas.gov.au

Telephone: (03) 6166 4400 or 1800 001 388
(weekdays, 9:00am to 5:00pm)

Website: sro.tas.gov.au/fhog

In person: Ground floor
Salamanca Building Parliament Square
4 Salamanca Place HOBART TAS 7000
(weekdays, 9:00am – 5:00pm)

Mail: The Commissioner of State Revenue
GPO Box 1374
HOBART TAS 7001

ⁱ *Deputy Commissioner of Taxation v Clark* [2003] NSWCA 91, [115].

ⁱⁱ *O'Hara v Chief Commissioner of State Revenue* [2011] NSWADT 289, [29]; *Kozman v Chief Commissioner of State Revenue* [2013] NSWADT 143, [42].

ⁱⁱⁱ See e.g. *State Revenue Office, Taxpayer Charter*.

^{iv} For further guidance as to whether your residence is your 'principal place of residence' please see the [First Home Owner Grant Guideline](#).