

# Guideline

*HomeBuilder Grant Act 2020*

## Commissioner's Discretions

HomeBuilder Grants are available in accordance with the [HomeBuilder Grants Act 2020](#). 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 of the applicant's situation. In the event the details in this document are inconsistent with any provisions under the Act, the Act will prevail.

### Introduction

The [HomeBuilder Grants Act 2020](#) (the Act) allows the Commissioner of State Revenue to exercise the following discretions:

- reduce the residency period; and
- increase the time to commence residency.

### Meaning of 'good reasons' when exercising discretion

In some circumstances, in exercising his 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 context<sup>i</sup> and understood in accordance with the underlying policy and purpose of the relevant legislation.<sup>ii</sup>

The Act entered into law to provide assistance to individuals seeking to buy, build or renovate a home as their principal place of residence. The Act seeks to achieve these policy objectives by providing grants to eligible applicants. Accordingly, in considering whether there are 'good reasons' to exercise a discretion under the Act, the Commissioner adopts an approach which furthers the underlying policy intention.

### Extend the time to commence building work

#### Changes announced on 29 November 2020

When the HomeBuilder Grant was introduced, one of the eligibility criteria required that building commenced within three (3) months after signing the building contract. The Commissioner had the discretion to extend this time by a further three (3) months in certain circumstances.

On 29 November 2020, the Commonwealth Government announced a change to this eligibility criterion such that the building commencement deadline is now six (6) months after signing the building contract for building of new homes or undertaking substantial renovations. This change has been implemented for both the Commonwealth and Tasmanian HomeBuilder Grants.

The Commissioner no longer has the discretion to extend the time to commence building.

## **Reduce the residency period or increase the time to commence residency**

Sections 12 and 17 of the Act state that an applicant for the HomeBuilder Grant must occupy the home to which the application relates as their principal place of residence for a continuous period of at least six (6) months, commencing within the 12 month period immediately after completion of the eligible transaction.

Where the Commissioner is satisfied that there are good reasons, the Commissioner may reduce (but not waive) a) the period that an applicant must occupy the home as their principal place of residence, or b) extend the time within which the occupation of the home as their principal place of residence must commence.

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

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

The Commissioner is more likely to exercise this discretion where the applicant was not aware at the time of applying for the Grant that they would not be able to meet the residency conditions specified in the Act.

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

- the health of the applicant (eg hospitalisation, rehabilitation, nursing home care, requirement of care for physical or mental illness);
- the health of a relative where the applicant is required to care for them;
- the death of an occupant of the applicant's current residence;
- unintentional damage to the home that renders it uninhabitable; or
- change in location of employment or loss of employment of the applicant or their spouse, resulting from, for example, forced transfers or closure of a prominent local business.

Any request for exercise of this discretion must be made before a decision on the application has been reversed or varied under the Act.

## **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 must 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. The application must also be made before any decision to reverse or vary the Grant application has been made by the Commissioner.

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, State Revenue Office account number (if known) and property address;
- copies of relevant contracts such as the contract to purchase the property or the contract to build; and
- independent verification from third parties supporting the request, such as medical reports or a letter from your employer.

## More information

Email: [fhogs@treasury.tas.gov.au](mailto:fhogs@treasury.tas.gov.au)

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

Website: [www.sro.tas.gov.au/fhog](http://www.sro.tas.gov.au/fhog)

In person: Appointment only  
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

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

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