

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:

- extend the time required to commence building work;
- 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 contextⁱ and understood in accordance with the underlying policy and purpose of the relevant legislation.ⁱⁱ

The Act entered into law to provide assistance to individuals seeking to buy, build or renovate a home as their principal place of residence. Additionally, the Commonwealth and State Governments sought to stimulate economic recovery following the COVID-19 emergency. As such the timely commencement of building activity is important. 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

Building a new home

To qualify for the HomeBuilder Grant, building of your home must commence no later than 3 months after signing the building contract. Building is taken to have commenced when laying of foundations is complete.

The Commissioner has the discretion to extend the period for commencement of building for a further three months where satisfied that the commencement of building is delayed due to factors that are unforeseen and outside the control of the parties to the contract. The duration of any extension sought and the extent to which building works were in fact performed within the relevant three month period (ie partial compliance) will be relevant factors to consider in exercising the discretion.

In particular, where there has been no meaningful effort to commence construction, this will suggest the activities are inconsistent with the policy objective of economic stimulus and will weigh against exercising the discretion.

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;
- unexpected delays in obtaining bank finance;
- 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;
- significant delays in the issue of title caused by the Land Titles Office; or
- natural disasters.

The Commissioner is unlikely to exercise discretion in situations such as, but not limited to, the following:

- where an applicant does not undertake appropriate due diligence when entering into a contract, or makes deliberate and informed choices which make them ineligible without the exercise of the Commissioner's discretion;
- where delay results from the builder contracting to undertake more work than they could be reasonably expected to complete in the relevant timeframe; or
- where construction is delayed because the land developer has set pre-development sales targets and insufficient blocks have been pre-sold in a subdivision.

Substantially renovating your home

To qualify for the Commonwealth HomeBuilder Grant, the renovation of your home must commence no later than 3 months after signing the building contract.

Building is taken to have commenced when:

- laying of foundations is complete for the demolition and rebuild of your home; or
- the first actual, meaningful work commences on your home for all other renovations.

Where a reasonable explanation can be provided, which suggests the activities to date are genuinely directed towards starting renovation of your home, discretion is likely to 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;
- unexpected delays in obtaining bank finance;
- inclement weather, where the disruption is substantial and relevant to the renovation;
- health problems relating to, or the death of, a person critical to the commencement of the project;
- prolonged industrial disputes; or
- natural disasters.

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 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) the period that an applicant must occupy the home as their principal place of residence or 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 unaware at the time of applying for the Grant that they would be unable 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;
- in the case of requests for an extension to commence building, the expected date that commencement will occur;
- 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 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

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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].