



First Home Owner Grant Administrative Penalties

Preamble

1. This ruling applies to The [First Home Owner Grant Act 2000](#) (the Act), which is the Act under which the First Home Owner Grant Scheme in Tasmania is administered. The Act provides the Commissioner with the power to impose administrative penalties in certain circumstances.
2. This ruling explains when and at what level administrative penalties will be imposed by the Commissioner under the Act.

Legislation for administrative penalties in relation to First Home Owner Grant Scheme

3. [Section 38](#) gives the Commissioner the ability to recall the payment of the grant(s) from a grant recipient in certain circumstances, including where the Commissioner has varied or reversed the decision under [section 23](#).
4. [Section 23](#) gives the Commissioner the power to vary or reverse a decision on a first home owner grant application for up to five (5) years after the decision was made, where:
 - (a) the decision is incorrect; or
 - (b) the decision was made on the basis of, or having regard to, false or misleading information provided by the applicant or a third party; or
 - (c) the applicant failed to provide information that was relevant to the making of the decision on the application, which they ought reasonably to have provided; or
 - (d) the applicant failed to comply with any condition(s) upon which the grant was made or failed to comply with or meet any relevant eligibility criteria.
5. Several sections of the Act (sections [20](#), [21](#), [37](#) and [38](#)) impose requirements and conditions on applicants. These sections all describe events referred to from this point as “penalty events” (defined below in the definition of terms section). If a grant recipient contravenes these sections the Commissioner can impose a penalty, as well as recalling the grant.
6. Under [sections 38\(2\) and \(3\)](#) the Commissioner may also impose a penalty up to the amount of the grant that the applicant is required to repay, where a grantee:
 - (1) makes a false or misleading statement during the application process, either intentionally or unintentionally, and as a consequence of the misleading statement a grant is paid (section 38(2));
 - (2) fails to make a repayment required under section 38 or by the conditions of the grant (section 38(3)).

Note: a penalty will not be imposed if a grant recipient, who does not comply with residency requirements, contacts the State Revenue Office (SRO) in writing and repays the grant within 14 days from the time they first become aware that they were unable to comply.

7. [Section 37](#) concerns false or misleading statements, omissions and documents. It provides that a person must not dishonestly, intentionally or negligently:
- (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without the matter, the statement is false or misleading; or
 - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.
8. Under [section 20](#) the Commissioner may authorise payment of a first home owner grant in anticipation of compliance with the residence requirement. Contravention of section 20 is also considered a penalty event. Subsections 20(2) and (3A) state:

20. Payment in anticipation of compliance with residence requirement

...

(2) If a first home owner grant is paid in anticipation of compliance with the residence requirement, the payment is made on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the relevant date –

- (a) give written notice of that fact to the Commissioner; and
- (b) repay the amount of the grant.

...

(3A) If a first home owner grant is paid in anticipation of compliance with the residence requirement and an applicant ceases to retain his or her relevant interest in the land before satisfying the residence requirement, the applicant must, within 14 days after ceasing to retain his or her relevant interest –

- (a) give written notice of that fact to the Commissioner; and
- (b) repay the amount of the grant –

unless the Commissioner has exempted the applicant from the residence requirement in accordance with section 12(2).

Where an applicant does not comply with the residence requirement or does not retain their relevant interest in the land until satisfying the residence requirement, they are required to give written notice to the Commissioner and repay the grant(s) within 14 days after the relevant date.

9. Under [section 21](#) the Commissioner may authorise payment of a first home owner grant subject to additional conditions. Contravention of those conditions is also considered a penalty event.
10. The same methodology is used to determine the level of administrative penalty applied where an applicant contravenes sections [20](#), [21](#), and [37](#), or fails to make a repayment under [section 38\(3\)](#).

Ruling on administrative penalties

11. The decision to apply an administrative penalty under the Act, and the amount of penalty applied, is made by the Commissioner on a case-by-case basis, taking into account the unique facts and circumstances of each case.
12. A grant recipient may object to the imposition of an administrative penalty ([section 25](#)) and also may seek a review of the determination of their objection by the Magistrates Court (Administrative Appeals Division) ([section 27](#)).

13. Administrative penalties are imposed relative to the grant recipient's behaviour in relation to:
- the cause of the non-compliance (Cause of non-compliance);
 - the identification of the non-compliance and cooperation before or during an investigation (Standard of cooperation).
14. A summary of the rates of administrative penalties which the Commissioner will generally apply in relation to the First Home Owner Grant Scheme is shown in the table below:

Standard of cooperation	Cause of non-compliance		
	Reasonable care / Beyond control	Negligence / Recklessness	Intentional disregard
Full disclosure before investigation (-80 per cent)	0 per cent	5 per cent	15 per cent
Full disclosure during investigation (-20 per cent)	0 per cent	20 per cent	60 per cent
Neither disclosure nor concealment (base rate)	0 per cent	25 per cent	75 per cent
Hindrance during investigation	n/a	30 per cent	100 per cent

Base rates of administrative penalty

15. Where a penalty event occurs despite the grant recipient taking reasonable care or due to circumstances beyond their control, the Commissioner will not impose an administrative penalty.
16. Where a penalty event occurs due to the negligence of the grant recipient, the Commissioner will impose, as a base rate, an administrative penalty of 25 per cent of the amount of the grant(s) paid.
17. Where a penalty event occurs due to the intentional disregard of the law (defined below) by a grant recipient, the Commissioner will impose, as a base rate, an administrative penalty of 75 per cent of the amount of the grant(s) paid.
18. An administrative penalty will not be imposed if a grant recipient who does not comply with:
- (1) the residence requirement; or
 - (2) the requirement to retain a relevant interest in the land until the residence requirement is satisfied;

contacts the State Revenue Office (SRO) in writing and repays the grant(s) within 14 days from the time they first become aware that they were unable to comply. This is on the basis that they held a reasonable belief that they would qualify for the grant(s) at the time of applying for the grant(s) and therefore can demonstrate that they took reasonable care.

Example (Reasonable care): Mary receives the first home owner grant. At the time of applying for the grant, she intended the home to be her principal place of residence. Prior to moving into the home, Mary unexpectedly has to move interstate for work and chooses to lease the property. Mary contacts the SRO within 14 days of learning that she would be required to move interstate and fully discloses all the relevant facts to enable the Commissioner to recall the grant. In this instance, Mary has taken reasonable care and no administrative penalty is imposed.

Administrative penalty in cases of full disclosure

19. Reductions in administrative penalties in cases of full disclosure encourage grant recipients to disclose any issues regarding a penalty event.
20. Where a full disclosure is made *before* an investigation under [Part 3](#) commences, the level of administrative penalty is reduced by 80 per cent. (see examples next page)

Example (Negligence + Full disclosure prior to investigation): Caleb receives the first home owner grant. At the time of applying for the grant, he intended the home to be used as his principal place of residence. After residing in the home for a month, Caleb decides to sell the home because he believes he can obtain a good sale price. The sale settles before Caleb has resided in the home for 6 months and Caleb neglects to advise the Commissioner within 14 days that he did not meet the residence requirement. A year after the sale, Caleb realises that he did not qualify for the first home owner grant, notifies the Commissioner in writing and repays the grant. As Caleb acted negligently but made a full disclosure before an investigation, an administrative penalty of **5 per cent** is imposed.

Example (Intentional disregard + Full disclosure prior to investigation): Suella receives the first home owner grant. At the time of applying for the grant, she knew that her partner had previously received a first home owner grant for a different property. When Suella signs the application, she is aware that she is making a false declaration. After receiving the grant, Suella contacts the Commissioner in writing, advises that she made a false statement in her application, and repays the grant. As Suella intentionally disregarded the law but then made a full disclosure before an investigation, an administrative penalty of **15 per cent** is imposed.

21. Where a full disclosure is made *after* an investigation under [Part 3](#) commences, the level of administrative penalty is reduced by 20 per cent.

Example (Negligence + Full disclosure during investigation): Harry receives the first home owner grant. Harry lives in his new home for two months but then moves in with his new partner. Harry neglects to contact the Commissioner to advise of this fact because he did not realise that failing to meet the residence requirement would render him ineligible for the grant. The Commissioner commences an investigation and asks Harry to confirm the length of time he resided in the property as his principal place of residence. Harry makes a full disclosure. As Harry acted negligently but made a full disclosure after an investigation commenced, an administrative penalty of **20 per cent** is imposed.

22. A full disclosure after the grant recipient is informed that an investigation is to be carried out occurs when a grant recipient actively assists an investigation by obtaining, compiling and providing the information necessary to determine whether a penalty event has occurred.
23. A full disclosure will not be made if a grant recipient's response to being informed that an investigation is to be carried out is no more than conceding or agreeing with information already identified during an investigation. This will not attract a penalty reduction. A grant recipient who has been negligent and then makes a disclosure (but not a full disclosure) of their non-compliance without hindering the investigation will have the base rate penalty of 25 per cent applied.

Example (Negligence + Neither full disclosure nor concealment): Gordon receives the first home owner grant. After his new home is complete, he stays there occasionally and does not rent it out but remains living at his previous accommodation. The Commissioner commences an investigation and asks whether the property is Gordon's principal place of residence, as he had indicated in his application.

Gordon responds stating that it is his principal place of residence as this is his genuine belief. The Commissioner investigates further and presents additional facts and analysis to Gordon. At this point Gordon realises that his limited occupation of the property does not make it his principal place of residence and confirms that he unintentionally gave false information to the Commissioner. In this instance, because Gordon has acted negligently and made a disclosure without hindering the Commissioner's investigation (neither full disclosure nor concealment), an administrative penalty of **25 per cent** is imposed.

Administrative penalty in cases of hindrance

24. Where a grant recipient or their representative takes steps to prevent or hinder the Commissioner from becoming aware of a penalty event, the level of administrative penalty is increased.
25. In cases where the original cause of the non-compliance was negligence, followed by hindrance of the Commissioner's investigation, a penalty of 30 per cent will be applied.

Example (Negligence + Hindrance during investigation): The SRO discovers that Barry acted negligently by failing to declare a spouse in his FHOG application. His spouse had previously owned a residence, and therefore Barry was not eligible to receive a grant payment. Once contacted, Barry did not provide the SRO with the relevant information, and what he did provide was late. He also threw away some documents that could have acted as evidence. As a result, the Commissioner recalls the grant. In this instance, because Barry acted negligently and then hindered the Commissioner's investigation, an administrative penalty of **30 per cent** is imposed.

26. In cases where the original cause of the non-compliance was an intentional disregard of the law, followed by hindrance of the Commissioner's investigation, the administrative penalty is 100 per cent.

Example (Intentional disregard + Hindrance during investigation): Kristina and Lee receive the first home owner grant. At the time of applying for the grant, they are aware that Kristina owned a house in 1998 that was left to her by her grandfather and which she sold. The Commissioner commences an investigation and asks Kristina and Lee to confirm Kristina's previous relevant interest in land in Tasmania. Kristina responds saying that she owned the previous house as a trustee so it is not a relevant interest. The Commissioner conducts further investigations and discovers that Kristina owned the house beneficially. The Commissioner recalls the grant(s). Because Kristina and Lee intentionally disregarded the law and then hindered the Commissioner's investigation, an administrative penalty of **100 per cent** is imposed.

Debt recovery

27. If a grant is recalled, the SRO will issue a notice under [section 38](#) requiring the grant recipient to repay the grant(s) and documenting any penalty that has been imposed.
28. If the amount required to be repaid has not been paid by the due date set out in the notice, the debt will be referred to the SRO Debtor Management Unit for debt recovery action (unless the grant recipient has already contacted the SRO to enter into a payment arrangement).
29. Interest on the outstanding debt may be imposed under [section 39](#). The interest rate is the sum of the market rate component and the premium rate component. The market rate component is the Bank Accepted Bill rate or a rate the Minister specifies by order published in the Tasmanian Government Gazette. The premium rate component is currently set at 4 per cent unless changed by the Minister pursuant to [section 35\(4\)\(b\) of the Taxation Administration Act 1997](#).¹ For the current and historical rates of interest go to sro.tas.gov.au/resources/rates-of-interest.
30. Unpaid debts that are being managed by the Debtor Management Unit may also be referred to a collection service or the Director of Public Prosecutions.

¹ This is the only reference to the *Taxation Administration Act 1997*. All other legislative references in this Ruling are to the *First Home Owner Grant 2000*.

Definition of terms used in this Revenue Ruling

Circumstances beyond the control of the grant recipient

31. Circumstances beyond the control of the grant recipient include, but are not limited to, the following insofar as they result in a penalty event:
- (a) an unexpected deterioration in the health of the applicant (e.g. hospitalisation, rehabilitation, nursing home care, requirement of care for physical or mental illness) at the relevant time;
 - (b) an unexpected deterioration in the health of a relative where the applicant is required to care for them at the relevant time;
 - (c) unintentional damage to the home (for example caused by natural disasters) that renders the home uninhabitable; and
 - (d) an unexpected change in location of employment or loss of employment of the applicant or their spouse.
32. Financial incapacity unrelated to (d) above is not considered to be a circumstance outside of the taxpayer's control.

Disclosure

33. A disclosure is a letter, email or other written communication received from a grant recipient or their representative which contains information which, while incomplete, indicates that a penalty event may have occurred.
34. A disclosure will generally require the Commissioner to make additional enquiries of the grant recipient or another person or additional source of information about material facts in order to determine whether the grant(s) should be recalled.

Full disclosure

35. A full disclosure is a letter, email or other written communication received from a grant recipient or their representative which provides sufficient information to enable the Commissioner to determine that the grant(s) should be recalled without requiring further investigation by the Commissioner.

Grant recipient

36. A grant recipient means a person who was paid the first home owner grant.

Hindrance

37. Hindrance of an investigation means an act or omission by a grant recipient, occurring during an investigation, which hinders the Commissioner from determining whether the grant paid to the grant recipient should be recalled.
38. A grant recipient takes steps to prevent or hinder the Commissioner if the grant recipient:
- (a) without reasonable excuse, refuses or fails to comply with a request made by the Commissioner in exercise of the powers in [Part 3](#) for the purposes of determining the grant recipient's eligibility to retain the grant(s);
 - (b) deliberately damages or destroys records to which the investigation relates, at the relevant time; or
 - (c) generally hinders or obstructs an authorised officer performing functions or exercising powers under that Part for that purpose.

Intentional disregard of a taxation law

39. Intentional disregard means a deliberate act or omission by the grant recipient to obtain or keep the first home owner grant despite knowing that they were not entitled to receive or retain the grant.
40. Intentional disregard will usually be determined based on direct evidence of a grant recipient's intention (for example, an admission by the grant recipient). However, it can in some circumstances be inferred from other evidence of the grant recipient's conduct.
41. Conduct which may demonstrate intentional disregard of the FHOG Act includes but is not limited to:
 - (a) knowingly making false or misleading records or statements;
 - (b) knowingly concealing relevant facts related to their eligibility;
 - (c) ignoring advice, a guideline or a Revenue Ruling of which the grant recipient is aware;
 - (d) applying for or retaining the first home owner grant while knowing that the grant recipient is ineligible or that the grant conditions will not be met; or
 - (e) repeatedly failing to respond, without good reason, in a timely manner, to SRO requests.

Investigation

42. Investigation means an investigation under [Part 3](#). In general, a grant recipient will be informed that an investigation has commenced at the time a Notice under [section 34](#) is issued to them.

Negligence

43. A person has acted negligently if they have not taken reasonable care in the circumstances. That is, they held an honest but mistaken belief as to the circumstances or what was expected of them and did not intentionally disregard the law.

Penalty event

44. A penalty event occurs when a grant recipient fails to meet their obligations under the Act including:
 - (a) failing to give written notice to the Commissioner that they have not complied with the residence requirement and failing to repay the grant paid in anticipation of compliance with the residence requirement within 14 days of the date it becomes apparent that they will not comply (see [section 20\(2\)](#));
 - (b) failing to give written notice to the Commissioner that they have not retained their relevant interest in the land the subject of their grant application until after satisfying the residence requirement and failing to repay the associated grant within 14 days after disposing of their relevant interest (see [section 20\(3A\)](#));
 - (c) failing to comply with any additional conditions imposed by the Commissioner (see [section 21](#));
 - (d) dishonestly, intentionally or negligently making a statement that is false or misleading (see [section 37](#));
 - (e) dishonestly, intentionally or negligently omitting any matter from a statement if, without the matter, the statement is false or misleading (see [section 37](#));
 - (f) dishonestly, intentionally or negligently providing a document that is false or misleading without informing the person to whom the document is provided of that fact (see [section 37](#));
 - (g) failing to make a repayment required under [section 38](#); and
 - (h) failing to make a repayment required under the conditions of the grant received (see [section 38\(3\)](#)).

Reasonable care

45. The standard of reasonable care requires first home owner grant recipients to make diligent efforts to understand and comply with their obligations under the FHOG Act, seek expert advice on uncertain or complex matters and be honest in their dealings with the SRO.
46. Reasonable care can be defined as the level at which a grant recipient would have been considered to have given appropriate and serious attention to complying with the obligations imposed under the FHOG Act.
47. This standard of care is measured objectively and takes into account the grant recipient's circumstances.
48. The Commissioner considers that a grant recipient's declarations in their application for the first home owner grant indicate that they are aware of the eligibility criteria including:
 - (a) the residence requirement;
 - (b) the period within which the eligible transaction must occur;
 - (c) their obligation to notify the Commissioner and repay the grant if they are unable to comply.
49. Issues the Commissioner will take into account when determining whether a person has taken reasonable care include, but are not limited to, whether the grant recipient has:
 - (a) read the application form and accompanying guideline before making the application for the grant;
 - (b) contacted the SRO to clarify any uncertainty they may have about the nature and extent of their obligations in relation to the grant; and
 - (c) acted in good faith in applying any independent grant advice received.
50. Being unaware of an eligibility criteria or condition of retaining the first home owner grant does not constitute reasonable care.

Residence requirement

51. Grant recipients are required to occupy the grant home as their principal place of residence for a continuous period of at least 6 months commencing within the 12-month period immediately after the completion of the relevant eligible transaction. The term "principal place of residence" has been the subject of case law and is taken to be the place at which you usually eat and sleep. Leaving personal property at a vacant residence does not meet these conditions. A principal place of residence is the home in which the grant recipient intends to stay with a level of permanency as their settled abode rather than as a temporary or transient residence.
52. The Commissioner may approve a lesser period of occupation in some circumstances (see [section 12\(1A\)](#)). Similarly, the Commissioner may extend the period to commence occupation in some circumstances (see [section 12\(1\)](#)). See the *Guideline: First Home Owner Grant - Commissioner's Discretions (Version 2)*.

Application of this Ruling

53. This Ruling applies to all first home owner grants recalled on or after 7 February 2024.
54. *Rulings do not have the force of law.* Each decision made by the Commissioner is made on the merits of each individual case having regard to any relevant Ruling.

More information

For more information about this ruling, please contact the SRO's Legislation, Communication and Review section by emailing revenuereview@treasury.tas.gov.au or calling (03) 6166 4400.

For all [Revenue Rulings](#) go to sro.tas.gov.au/resources/rulings.

All Rulings must be read subject to Revenue Ruling [Explanation and Status of Revenue Rulings](#), available at sro.tas.gov.au/resources/rulings.

A handwritten signature in black ink, appearing to read 'JC Root', with a horizontal line extending to the right.

JC Root
Commissioner of State Revenue

7 February 2024