



HomeBuilder Grants Administrative Penalties

Preamble

This ruling applies to the *HomeBuilder Grants Act 2020* (the Act), which provides for the administration of the Commonwealth and Tasmanian HomeBuilder Grants. The Act provides the Commissioner with the power to impose administrative penalties in certain circumstances.

This ruling explains when and at what level administrative penalties will be imposed by the Commissioner under the Act.

Legislation for administrative penalties

1. [Section 45\(1\)](#) of the Act gives the Commissioner the ability to recall the payment of the grant(s) from a grant recipient in certain circumstances.
2. Under [sections 45\(2\) and \(3\)](#) the Commissioner may also impose a penalty up to the amount of the grant that the applicant is required to repay. These subsections read as follows:

45. Power to require repayment and impose penalty

...

(2) The Commissioner, in a written notice under subsection (1), may impose a penalty not exceeding the amount the applicant, or former applicant, is required to repay under subsection (1) if –

(a) the applicant or former applicant contravenes section 41 or 42 in respect of the application; and

(b) as a result of the contravention, a grant is paid or payable under the application.

(3) If an applicant, or former applicant, for a grant under this Act fails to make a repayment required under this section or the conditions of the grant, the Commissioner may, by written notice, impose a penalty not exceeding the amount the applicant or former applicant is required to repay under this section.

3. Several sections of the Act ([sections 25, 26, 41 and 42](#)) impose requirements and conditions on applicants. These sections all describe events referred to from this point as “penalty events” (described in the definition of terms section, beginning at page 6). If a grant recipient contravenes these sections the Commissioner can impose a penalty, as well as recalling the grant.
4. [Section 41](#) concerns a situation where the transaction value of the eligible transaction changes from the point of determining an application to completion of the transaction. Subsection (2) reads:

41. Applicant to notify of changes

...

(2) Within 14 days after becoming aware of a change in transaction value of an eligible transaction, a person must notify the Commissioner of the change if –

(a) the person applied for a grant under this Act in respect of the eligible transaction; and

(b) a grant is paid, or payable, under this Act in respect of the application.

[Section 41](#) does not apply to eligible transactions where the transaction value on completion is less than \$750 000 (see [section 9](#) of the Act), or in the case of a contract for substantial renovation under [section 18\(2\)\(b\)](#) of the Act, the transaction value on completion remains greater than \$150 000.

5. [Section 42](#) of the Act 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.
6. Under [section 25](#) of the Act, the Commissioner may authorise payment of the grant(s) in anticipation of compliance with the residence requirement. Contravention of section 25 is also considered a penalty event. Subsections 25(2) and (4) state:

25. Payment in anticipation of compliance with residence requirement

...

(2) If a grant is paid under this Act in anticipation of compliance with the residence requirement, the payment is made on the 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.

... (4) If a grant is paid under this Act 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.

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.

7. Under [section 26](#) of the Act, the Commissioner may authorise payment of the grant(s) subject to additional conditions. Contravention of those conditions is also considered a penalty event.
8. The same methodology is used to determine the level of administrative penalty applied where an applicant contravenes [section 25](#), [26](#), [41](#) and [42](#) of the Act, or fails to make a repayment under [section 45\(3\)](#) of the Act.

Ruling on administrative penalties

9. 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.
10. A grant recipient may object to the imposition of an administrative penalty ([section 30](#)) and also may seek a review of the determination of their objection by the Magistrates Court (Administrative Appeals Division) ([section 32](#)).

11. A summary of the rates of administrative penalties which the Commissioner will generally apply 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

12. Administrative penalties are imposed relative to the grant recipient's behaviour in relation to:
- i. the cause of the non-compliance (Cause of non-compliance);
 - ii. the identification of the non-compliance and cooperation before or during an investigation (Standard of cooperation).

Base rates of administrative penalty

13. 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.
14. 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.
15. Where a penalty event occurs due to the intentional disregard of the law (described in the definition of terms section, beginning at page 6) 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.
16. An administrative penalty will not be imposed if a grant recipient who does not comply with:
- i. the residence requirement;
 - ii. the requirement to retain a relevant interest in the land until the residence requirement is satisfied; or
 - iii. the requirement to notify of a change in transaction value;

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): Kiri receives the grant(s). At the time of applying for the grant(s), she intended the home to be her principal place of residence. Prior to moving into the new home, Kiri has to move interstate for work and chooses to lease the property. Kiri 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(s). In this instance, Kiri has taken reasonable care and no administrative penalty is imposed.

Administrative penalty in cases of full disclosure

17. Reductions in administrative penalties in cases of full disclosure encourage grant recipients to disclose any issues regarding a penalty event.
18. Where a full disclosure is made *before* an investigation under Part 5 of the Act commences, the level of administrative penalty is reduced by 80 per cent.

Example (Negligence + Full disclosure prior to investigation): Ben receives the grant(s). At the time of applying for the grant(s), he intended the home to be used as his principal place of residence. After residing in his new home for a month, Ben decides to sell the home because he believes he can obtain a good sale price. The home sale settles before Ben has resided in the home for 6 months and Ben neglects to advise the Commissioner within 14 days that he did not meet the residence requirement. A year after the sale, Ben realises that he did not qualify for the grant(s), notifies the Commissioner in writing and repays the grant(s). As Ben 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): Rebecca receives the grant(s). At the time of applying for the grant(s), she intended the home to be used as an investment property and never intended residing in the home as her principal place of residence. When she signs the application, she is aware that she is making a false declaration. After the home is constructed, Rebecca contacts the Commissioner in writing and advises that she made a false statement in her application and repays the grant(s). As Rebecca intentionally disregarded the law but then made a full disclosure before an investigation, an administrative penalty of **15 per cent** is imposed.

19. Where a full disclosure is made *after* an investigation under Part 5 of the Act commences, the level of administrative penalty is reduced by 20 per cent.

Example (Negligence + Full disclosure during investigation): Lou receives the substantial renovation grant. After receiving the grant, Lou varies his contract which has the effect of reducing the transaction value to less than \$150 000. Lou neglects to contact the Commissioner to advise of this fact because he did not realise that the adjusted transaction value would render him ineligible for the grant. The Commissioner commences an investigation and asks Lou to confirm the final transaction value. Lou makes a full disclosure. As Lou acted negligently but made a full disclosure after an investigation commenced, an administrative penalty of **20 per cent** is imposed.

20. 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.
21. 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): Sophia receives the substantial renovation grant. The Commissioner commences an investigation and asks whether the home was Sophia's principal place of residence at the time of signing the renovation contract, as she had indicated on her application. Sophia responds stating that it was her principal place of residence as this is her honest belief. However, though it was the first home she had purchased, Sophia did not live in the home before the renovation. The Commissioner investigates further and presents additional facts and analysis to Sophia. At this point Sophia realises that the home was not her principal place of residence and confirms that she unintentionally gave false information to the Commissioner. In this instance, because Sophia 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

22. 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.
23. 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): Tyson receives the grant(s). The Commissioner commences an investigation and asks Tyson to confirm the final transaction value. Although he is aware that after lodging his application he varied his contract above a transaction value of \$750 000 (to incorporate unforeseen foundation work), Tyson submits a copy of his original contract, deliberately omitting his contract variation. The Commissioner conducts further investigations, including contacting Tyson's builder, and discovers the varied contract. The Commissioner recalls the grant(s). In this instance, because Tyson has acted negligently and then hindered the Commissioner's investigation, an administrative penalty of **30 per cent** is imposed.

24. 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): Asha and John receive the grant(s). At the time of applying for the grant(s), they are aware that their combined taxable incomes are above the maximum threshold allowable under the Act but they provide a doctored copy of Asha's income tax notice of assessment. The Commissioner commences an investigation and asks Asha and John to confirm their taxable incomes for the relevant financial year. They resubmit the same assessment notices. The Commissioner conducts further investigations, including contacting the Australian Taxation Office, and discovers that Asha had submitted a fake assessment notice. The Commissioner recalls the grant(s). Because Asha and John intentionally disregarded the law and then hindered the Commissioner's investigation, an administrative penalty of **100 per cent** is imposed.

Debt recovery

25. If a grant is recalled, the SRO will issue a notice under [section 45](#) of the Act requiring the grant recipient to repay the grant(s) and documenting any penalty that has been imposed.
26. 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).
27. Interest on the outstanding debt may be imposed under [section 46](#) of the Act. 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% unless changed by the Minister pursuant to section 35(4)(b) of the *Taxation Administration Act 1997*. For the current and historical rates of interest go to sro.tas.gov.au/resources/rates-of-interest.
28. 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.

Definition of terms used in this Revenue Ruling

Circumstances beyond the control of the grant recipient

29. 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.
30. Financial incapacity unrelated to (d) above is not considered to be a circumstance outside of the taxpayer's control.

Disclosure

31. 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.
32. 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

33. 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 the further investigation by the Commissioner.

Grant recipient

34. A grant recipient means a person who was paid one or both of the Commonwealth and Tasmanian HomeBuilder grants.

Hindrance

35. 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(s) paid to the grant recipient should be recalled.
36. 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 5 of the Act 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

37. Intentional disregard means a deliberate act or omission by the grant recipient to obtain or keep the grant(s) despite knowing that they were not entitled to receive or retain the grant(s).
38. 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.
39. Conduct which may demonstrate intentional disregard of the 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 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

40. Investigation means an investigation under Part 5 of the Act. In general, a grant recipient will be informed that an investigation has commenced at the time a Notice under [section 37](#) of the Act is issued to them.

Negligence

41. 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

42. 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(s) 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 25\(2\)](#) of the Act);
 - (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(s) application until after satisfying the residence requirement and failing to repay the associated grant(s) within 14 days after disposing of their relevant interest (see [section 25\(4\)](#) of the Act);
 - (c) failing to comply with any additional conditions imposed by the Commissioner (see [section 26](#) of the Act);
 - (d) failing to notify the Commissioner within 14 days of a change in the value of their transaction to:
 - i. exceed \$750 000; or
 - ii. if their eligible transaction is a contract referred to in [section 18\(2\)\(b\)](#) of the Act and falls below \$150 000 (see [section 41\(2\)](#) of the Act);
 - (e) dishonestly, intentionally or negligently making a statement that is false or misleading (see [section 42](#) of the Act);

'Penalty event' continues to the next page ...

- (f) dishonestly, intentionally or negligently omitting any matter from a statement if, without the matter, the statement is false or misleading (see [section 42](#) of the Act);
- (g) 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 42](#) of the Act);
- (h) failing to make a repayment required under [section 45](#) of the Act; and
- (i) failing to make a repayment required under the conditions of the grant(s) received (see [section 45\(3\)](#) of the Act).

Reasonable care

- 43. The standard of reasonable care requires grant recipients to make diligent efforts to understand and comply with their obligations under the Act, seek expert advice on uncertain or complex matters and be honest in their dealings with the SRO.
- 44. 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 Act.
- 45. This standard of care is measured objectively and takes into account the grant recipient's circumstances.
- 46. The Commissioner considers that a grant recipient's declarations in their application for the grant(s) indicate that they are aware of the eligibility criteria including:
 - (a) the residence requirement;
 - (b) the transaction value requirements;
 - (c) the period within which to complete construction of the new home;
 - (d) their obligation to notify the Commissioner and repay the grant(s) if they are unable to comply.
- 47. 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(s);
 - (b) contacted the SRO to clarify any uncertainty they may have about the nature and extent of their obligations in relation to the grant(s); and
 - (c) acted in good faith in applying any independent grant advice received.
- 48. Being unaware of an eligibility criteria or condition of retaining the grant(s) does not constitute reasonable care.

Residence requirement

- 49. Grant recipients are required to occupy the grant(s) 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.
- 50. The Commissioner may approve a lesser period of occupation in some circumstances. Similarly, the Commissioner may extend the period to commence occupation in some circumstances. See the [Guideline: HomeBuilder Grants Act 2020 - Commissioner's Discretions](#) for more information.

Application of this Ruling

51. This Ruling applies to all HomeBuilder grants recalled on or after 26 April 2023.
52. *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 & 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.

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JC Root
Commissioner of State Revenue

26 April 2023